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MIRAGLIA, F. J. Division of Pressurized Water Reactor Licensing - B (post 8

SUBJECT: Forwards two vols of transaction documents re 861218 closing of two sale & leasback transactions, one w/affiliate Chrysler Corp & one w/affiliate Commercial Federal Corp. A&G finance

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February 3, 1987

Director of Nuclear Reactor Regulation
Attention: Frank J. Miraglia, Director
Division of Pressurized Water Reactor
Licensing-B
Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Sale and Leaseback Transactions
by EL PASO ELECTRIC COMPANY--
Palo Verde Nuclear Generating Station Unit 2
(Docket No. STN 50-529)

Dear Mr. Miraglia:

Enclosed herewith on behalf of El Paso Electric Company in connection with the above-captioned docket are two volumes of transaction documents relating to the December 18, 1986 closing of two sale and leaseback transactions, one with an affiliate Chrysler Corporation and the other with an affiliate of Commercial Federal Corporation. An index is attached to each volume indicating the documents contained therein.

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If I can be of further assistance, please do not hesitate to call at (212) 510-7750.

Sincerely,

Timothy Michael Toy

Timothy Michael Toy

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1021.700.2898.59:1

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EL PASO ELECTRIC COMPANY

Sale and Leaseback of an Undivided Interest in Palo Verde Nuclear Generating Station Unit 2 and Certain Common Facilities

CHRYSLER FINANCIAL CORPORATION

December 18, 1986

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PARTICIPATION AGREEMENT

dated as of December 1, 1986

among

CHRYSLER FINANCIAL CORPORATION,

as Owner Participant

EL PASO FUNDING CORPORATION,

as Loan Participant

THE FIRST NATIONAL BANK OF BOSTON,

in its individual capacity and as Owner Trustee
under a Trust Agreement,
dated as of December 1, 1986
with Chrysler Financial Corporation, as
Owner Trustee

FIRST CITY NATIONAL BANK OF HOUSTON,

in its individual capacity and as Indenture Trustee
under a Trust Indenture, Mortgage, Security Agreement
and Assignment of Rents, dated as of December 1, 1986
with the Owner Trustee, as Indenture Trustee

and

EL PASO ELECTRIC COMPANY,

as Lessee

Sale and Leaseback of an Undivided Interest in
Palo Verde Nuclear Generating Station Unit 2
and Certain Common Facilities

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PARTICIPATION AGREEMENT

PARTICIPATION AGREEMENT, dated as of December 1, 1986, among CHRYSLER FINANCIAL CORPORATION, a Michigan corporation (the Owner Participant), EL PASO FUNDING CORPORATION, a Delaware corporation (the Loan Participant), THE FIRST NATIONAL BANK OF BOSTON, a national banking association, in its individual capacity (FNB) and as Owner Trustee (the Owner Trustee) under a Trust Agreement, dated as of December 1, 1986, with the Owner Participant, FIRST CITY NATIONAL BANK OF HOUSTON, a national banking association, in its individual capacity (FCNB) and as Indenture Trustee (the Indenture Trustee) under a Trust Indenture, Mortgage, Security Agreement and Assignment of Rents, dated as of December 1, 1986, with the Owner Trustee, and EL PASO ELECTRIC COMPANY, a Texas corporation (the Lessee).

WITNESSETH:

WHEREAS, the Owner Participant desires to cause the Trust to acquire the Undivided Interest and the grant of the Real Property Interest and to lease them to the Lessee under the Facility Lease;

WHEREAS, the Lessee desires to sell the Undivided Interest and grant the Real Property Interest to the Trust and lease them back from the Trust under the Facility Lease;

WHEREAS, the Owner Trustee and the Lessee will enter into the Purchase Documents with respect to the sale and purchase of the Undivided Interest and the grant of the Real Property Interest;

WHEREAS, pursuant to the terms and provisions of the Indenture, the Owner Trustee will authorize the creation, issuance and sale and delivery of the Initial Series Notes and the granting of the security therefor, and the Indenture Trustee will authenticate the Initial Series Notes; and

WHEREAS, the Loan Participant is willing to purchase the Initial Series Notes on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Definitions.

For the purposes hereof, capitalized terms used herein shall have the meanings assigned to such terms in Appendix A; provided, however, that, for all purposes of this Participation Agreement, to the extent different from Appendix A hereto, the terms Deemed Loss Event, Event of Loss, Economic Useful Life and Final Shutdown (including for purposes of such definitions, all defined terms contained in or relating to any of such definitions) shall have the respective meanings set forth or appended to the Facility Lease as amended from time to time in accordance with its terms. References in this Participation Agreement to sections, paragraphs and clauses are to sections, paragraphs and clauses in this Participation Agreement unless otherwise indicated.

SECTION 2. Participation by the Loan Participant; Releveraging; Refunding; Reoptimization; Issuance of Initial Series Bonds.

(a) *Loan Participant's Commitment.* Subject to the satisfaction of the conditions in Sections 5(a) and 11(a), on the Closing Date the Loan Participant agrees to lend to the Owner Trustee, on a nonrecourse basis, an amount (the Loan) equal to the Loan Percentage of the Purchase Price and to issue the Initial Series Bonds in a public offering to be consummated on the Closing Date for the purposes of funding the Loan.

(b) *Payment; Terms of the Initial Series Notes.* Proceeds of the Loan shall be made available in such manner as the parties may agree upon. The Loan shall be evidenced by the Initial Series Notes. The Initial Series Notes shall be issued by the Owner Trustee under and pursuant to the Indenture, shall be in the aggregate principal amount of the Loan and shall bear interest at the rate or rates per annum and shall be payable as set forth in the Indenture.

(c) *Releveraging.* Upon the occurrence of an adjustment pursuant to Section 3(d) of the Facility Lease, subject to the conditions set forth in Section 11(c), on the Releveraging Date the Loan Participant agrees to lend to the Owner Trustee, on a nonrecourse basis, an additional amou[redacted] Releveraging Loan) equal to the applicable Releveraging Amount. There may be up to two Rele[redacted]ing Loans under this Section 2(c), the Releveraging Date or Dates of which shall be mutually acceptable to the Lessee, the Owner Participant and the Loan Participant. Proceeds of each Releveraging Loan shall be paid directly to the Indenture Trustee, in immediately available funds, at the Indenture Trustee's Office, and such proceeds shall be applied forthwith as a partial refund of the Investment. Each Releveraging Loan shall be evidenced by a Releveraging Note, which Note shall be issued by the Owner Trustee under and pursuant to the Indenture, be in the principal amount of the Releveraging Loan in respect of which it is issued, and bear interest at the rate or rates per annum and be payable as set forth in the Indenture. No releveraging shall increase the principal amount of the Notes above 80 percent of the Purchase Price.

(d) *Refunding.* Subject to the satisfaction of the conditions set forth in Section 11(d), if El Paso and the Owner Participant agree that the Initial Series Notes should be refunded on the Refunding Date, if any, the Loan Participant agrees to lend to the Owner Trustee, on a nonrecourse basis, an amount (the Refunding Loan) equal to the sum of (i) the amount necessary to refund the principal amounts of the Initial Series Notes plus any premium thereon and each Releveraging Note theretofore issued and to pay accrued interest on each thereof from, and including, the last date as of which interest was payable thereon (or, if no such date has occurred, the date of issue thereof) to, but excluding, the Refunding Date and (ii) if any releveraging is to occur on the Refunding Date, an amount equal to the applicable Releveraging Amount. Proceeds of the Refunding Loan shall be paid directly to the Indenture Trustee at the Indenture Trustee's Office and applied (x) to the extent necessary to refund the unpaid principal of, and such premium and accrued interest on, the Initial Series Notes and each Releveraging Note (if theretofore issued), and (y) to the extent of such Releveraging Amount, for the account of the Owner Trustee, as a partial refund of the Investment, in each case in immediately available funds. The Refunding Loan shall be evidenced by the Refu[redacted] Note or Notes, which Note or Notes shall be issued by the Owner Trustee under and pursuant t[redacted] Indenture, be in the principal amount of the Refunding Loan, and bear interest at the rate or rates per annum and be payable as set forth in the Indenture. On the Refunding Date the Refunding Note or Notes shall be exchanged by the Owner Trustee for the Initial Series Notes and each Releveraging Note theretofore issued. The Lessee shall give the parties hereto written notice of the Refunding Date (if a refunding shall have been agreed to by the Owner Participant) no less than seven Business Days prior thereto. Not less than four Business Days prior to the Refunding Date, the Loan Participant shall deliver to the Owner Participant and the Lessee a certificate setting forth the information necessary to complete the form of Refunding Notes (including the schedules thereto). Upon such delivery, and upon approval by the Lessee and the Owner Participant of the terms thereof, the Owner Participant and the Lessee shall cause the form of Refunding Notes to be completed. The parties hereto shall make a good faith effort to cooperate to effect such amendments of the Transaction Documents as may be necessary or appropriate to effect such refunding, so long as such amendments do not, in the opinion of Cravath, Swaine & Moore, adversely affect the tax benefits contemplated by the Owner Participant in entering into the transactions contemplated by this Participation Agreement and the other Transaction Documents. No refunding shall increase the principal amount of the Notes above 80 percent of the Purchase Price.

(e) *Reoptimization.* Subject to the satisfaction of the conditions set forth in Section 11(e), if the Lessee, in a timely manner, provides the Owner Trustee and the Owner Participant with information sufficient for the Owner Trustee to direct the adjustments described in Section 3.12 of the Indenture, together with a certificate (in form and substance reasonably satisfactory to the Owner Participant) to the effect that such adjustments minimize the aggregate increase in Basic Rent occurring as a result of the operation of Section 3(d) of the Facility Lease while preserving Net Economic Return, the Owner Trustee shall deliver to the Indenture Trustee a certificate pursuant to such Section 3.12. Notw[redacted] standing the foregoing, the Owner Participant and the Owner Trustee may rely on the certi[redacted]

delivered by the Lessee and shall have no obligation to verify the same. No reoptimization pursuant to this Section 2(e) shall occur without the consent of the Owner Participant during the month of November or December of any year.

SECTION 3. Participation by the Owner Participant; Partial Refund of the Investment.

(a) *Owner Participant's Commitment.* Subject to the satisfaction of the conditions in Sections 5(a) and 11(a), on the Closing Date the Owner Participant agrees to (i) cause the Trust to make an equity investment in the Undivided Interest in an amount (the *Investment*) equal to the Investment Percentage of the Purchase Price and (ii) cause the Trust to make an equity investment in the Real Property Interest for the amount set forth in Schedule 2 as the "Real Estate Investment" (the *Real Estate Investment*). On the Closing Date, the Owner Participant shall provide to the Owner Trustee an amount equal to the Estimated Transaction Expenses. Proceeds of the Investment and the Real Estate Investment shall be made available in such manner as the parties may agree upon.

(b) *Partial Refund.* In the event that the Indenture Trustee shall have received the proceeds of a Releveraging Loan or that portion of the Refunding Loan equal to the applicable Releveraging Amount, the Indenture Trustee shall, immediately upon its receipt thereof, return the same to the Owner Participant as a partial refund of the Investment, and for purposes hereof the "Investment" shall thereupon be reduced accordingly.

SECTION 4. Purchase, Sale, Financing and Lease of the Undivided Interest and the Real Property Interest.

(a) *The Undivided Interest.* Subject to the satisfaction of the conditions in Sections 5(a) and 11(a), receipt from the Owner Participant of the Investment and receipt from the Loan Participant of the proceeds of the Loan, the Owner Trustee shall (i) on the Closing Date cause the Trust to purchase the Undivided Interest from the Lessee for the amount specified in Schedule 2 as the "Purchase Price" (the *Purchase Price*), and (ii) promptly after receipt of the amount thereof from the Owner Participant disburse the Estimated Transaction Expenses, in each case in accordance with the payment instructions in the Notice of Closing. Subject to the satisfaction of the conditions in Section 11(b), on the Closing Date the Lessee shall sell the Undivided Interest to the Trust for the Purchase Price. Concurrently with such purchase and sale, the Trust shall lease the Undivided Interest to the Lessee, and the Lessee shall lease the Undivided Interest from the Trust, pursuant to the Facility Lease.

(b) *The Real Property Interest.* Subject to the satisfaction of the conditions in Sections 5(a) and 11(a) and receipt from the Owner Participant of the Real Estate Investment, on the Closing Date the Owner Participant shall cause the Trust to acquire the Real Property Interest from the Lessee for a purchase price equal to the amount set forth in Schedule 2 as the "Real Estate Investment." Subject to the satisfaction of the conditions in Section 11(b), on the Closing Date the Lessee shall grant the Real Property Interest to the Trust for the amount set forth in Schedule 2 as the "Real Estate Investment." Concurrently with such acquisition by the Trust, the Trust shall lease the Real Property Interest to the Lessee, and the Lessee shall lease the Real Property Interest from the Trust, pursuant to the Facility Lease.

SECTION 5. Notice of Closing; Closing.

(a) *Notice of Closing.* Not later than two Business Days prior to the Closing Date, the Lessee shall deliver to the Owner Participant, the Owner Trustee, the Loan Participant, the Collateral Trust Trustee and the Indenture Trustee a notice, substantially in the form of Schedule 1 (the Notice of Closing), which shall (i) state that the Closing Date shall occur on the date specified therein, (ii) list the then known Transaction Expenses payable by the Owner Trustee pursuant to Section 14(a) (the Estimated Transaction Expenses), and (iii) provide payment instructions in respect of the disposition of the Purchase Price and acquisition price of the Real Property Interest.

(b) *Closing.* Upon satisfaction of the conditions in Section 5(a) and 11(a) and receipt from the Owner Participant of the Investment and the Real Estate Investment and receipt from the Loan Participant of the proceeds of the Loan, on the Closing Date the Owner Trustee shall cause the Purchase Price to be paid and the acquisition price of the Real Property Interest to be paid, in each case in accordance with the payment instructions in the Notice of Closing. Upon satisfaction of the conditions in Section 11(b), on or as of the Closing Date the Lessee shall deliver to the Owner Trustee the Purchase Documents.

SECTION 6. Representations, Warranties, Agreements and Directions of the Loan Participant.

(a) *Representations and Warranties.* The Loan Participant represents and warrants that:

(1) ***Due Organization.*** The Loan Participant is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware and has the corporate power and authority to carry on its business as presently conducted, own its properties, and enter into and perform its obligations under this Participation Agreement and each other Transaction Document and each Financing Document to which it is a party.

(2) ***Due Authorization.*** This Participation Agreement and each other Transaction Document and each Financing Document to which the Loan Participant is a party has been duly authorized by all necessary corporate action on the part of the Loan Participant and does not require the consent or approval of its stockholders or any trustee or holder of any of its indebtedness or other obligations, except such as have been, or on or before the Closing Date will have been, duly obtained, given or accomplished.

(3) ***Execution and Enforceability.*** This Participation Agreement and each other Transaction Document and each Financing Document to which the Loan Participant is a party has been duly executed and delivered by the Loan Participant and constitutes its legal, valid and binding agreement, enforceable against it in accordance with its terms.

(4) ***No Violation.*** Neither the execution, delivery or performance by the Loan Participant of this Participation Agreement, any other Transaction Document or any Financing Document to which it is a party, nor the consummation by the Loan Participant of the transactions contemplated hereby or thereby, nor compliance by the Loan Participant with the provisions hereof or thereof, conflicts with, or results or will result in the breach of any provision of, or is inconsistent with, the Certificate of Incorporation or ByLaws of the Loan Participant or contravenes any Federal, Delaware or New York law applicable to it, or any indenture, mortgage or agreement to which the Loan Participant is a party or by which it or its property is bound, or requires any Governmental Action with respect to the Loan Participant under any Federal, Delaware or New York law applicable to it, except such as have been, or on or before the Closing Date will have been, duly obtained, given or accomplished.

(5) ***No Other Business.*** Except as contemplated by this Participation Agreement, the other Transaction Documents and the Financing Documents and except as otherwise contemplated by the Section 6(c) Application, the Loan Participant has not engaged in any business or activity of any type or kind whatever.

(6) ***ERISA.*** The Loan Participant is not acquiring, and will not acquire, any Note with the "plan assets" of any "employee benefit plan," within the meaning of section 3(3) of ERISA, or any "plan," within the meaning of section 4975(e)(1) of the Code.

(7) ***Investment Representation.*** The Loan Participant is acquiring, and will acquire, each Note to be acquired by it hereunder and under the Indenture solely for purposes of pledging such Notes to the Collateral Trust Trustee to secure Bonds issued from time to time under the Collateral Trust Indenture. The Loan Participant understands that no Note to be acquired by it hereunder or under the Indenture will have been registered under the Securities Act and that each such Note will bear the legend set forth in Section 4.5 of the Indenture.

(b) *Agreements.* The Loan Participant agrees that:

(1) *Transfers of Notes.* Any transfer or assignment of any Note or of all or any part of the Loan Participant's interest hereunder or under any other Transaction Document or any Financing Document shall be effected in a transaction constituting an exempted transaction under the Securities Act and on the express condition that each transferee, assignee or participant shall agree to be bound by the terms and provisions hereof and thereof. Neither the Loan Participant nor any subsequent Holder of a Note may sell, exchange or transfer any Note to any other Person (other than the Collateral Trust Trustee) unless such transferee delivers to the other parties hereto a representation and warranty (and an opinion of counsel satisfactory to each of the other parties hereto) to the effect that neither the transfer of such Note to, nor the ownership of such Note by, such transferee will cause such transferee, or any other party hereto, to be engaged in a "prohibited transaction," as defined in section 406 of ERISA or section 4975 of the Code, which is not at such time subject to an exemption contained in ERISA or in the rules, regulations, releases or bulletins adopted thereunder.

(2) *Payment of Bonds.* Except as provided in this Participation Agreement, without the consent of the Owner Participant and the Lessee, the Loan Participant will not refund or optionally prepay any Bond issued in respect of any Note except in connection with the refunding or optional prepayment of an equal principal amount of the corresponding Notes pledged pursuant to the Collateral Trust Indenture in respect thereof.

(3) *Quiet Enjoyment.* The Loan Participant acknowledges Section 6(a) of the Facility Lease.

(4) *No Other Business.* During such time as any Note is outstanding and held by the Loan Participant or the Collateral Trust Trustee, the Loan Participant will not (i) engage in any business or activity other than (1) in connection with the Transaction Documents or the Financing Documents or (2) as otherwise contemplated by the Section 6(c) Application or (ii) amend or engage in any activity or take any action not permitted by Article THIRD, FOURTH or SIXTH of its Certificate of Incorporation, as in effect on the date of execution and delivery hereof, without, in each case, the consent of the other parties hereto.

(c) *Direction to the Indenture Trustee.* The Loan Participant, as purchaser of each Note, (i) authorizes and directs the Indenture Trustee to execute, deliver and perform this Participation Agreement, (ii) authorizes and directs the Indenture Trustee to register such Note in the name of the Loan Participant and, upon authentication and delivery thereof pursuant to this Participation Agreement and the Indenture, to deliver such Note (upon completion by the Loan Participant of the assignment attached thereto) to the Collateral Trust Trustee pursuant to the Collateral Trust Indenture, (iii) acknowledges and agrees that, in connection with this Participation Agreement, the Indenture Trustee shall have the benefits and protections of Article VIII of the Indenture and (iv) agrees that, in the event of a conflict between the provisions of this Participation Agreement and the Indenture, the Indenture Trustee shall, as between the Indenture Trustee and the Loan Participant, be fully protected in relying on the express terms of the Indenture.

SECTION 7. Representations, Warranties and Agreements of the Owner Participant.

(a) *Representations and Warranties.* The Owner Participant represents and warrants that:

(1) *Due Organization.* The Owner Participant is a corporation duly organized and validly existing in good standing under the laws of the State of Michigan and has the corporate power and authority to enter into and perform its obligations under this Participation Agreement and each other Transaction Document to which it is a party.

(2) *Due Authorization.* This Participation Agreement and each other Transaction Document to which the Owner Participant is a party has been duly authorized by all necessary corporate action on the part of the Owner Participant and does not require the consent or

approval of its stockholders or any trustee or holder of any of its indebtedness or other obligations, except such as have been duly obtained. given or accomplished.

(3) *Execution and Enforceability.* This Participation Agreement and each other Transaction Document to which the Owner Participant is a party has been duly executed and delivered by the Owner Participant and constitutes its legal, valid and binding agreement, enforceable against it in accordance with its terms.

(4) *No Violation.* Neither the execution, delivery or performance by the Owner Participant of this Participation Agreement or any other Transaction Document to which it is a party, nor the consummation by the Owner Participant of the transactions contemplated hereby or thereby, nor compliance by the Owner Participant with the provisions hereof or thereof, conflicts with, or results in the breach of any provision of, or is inconsistent with, its documents of incorporation or By-Laws or contravenes any Applicable Law applicable to it, or any indenture, mortgage or agreement for borrowed money to which the Owner Participant is a party or any other agreement or instrument to which the Owner Participant is a party or by which it or its property is bound or requires any Governmental Action with respect to the Owner Participant under Federal, Texas or Michigan law applicable to it on or before the Closing Date, except such as are contemplated by the Transaction Documents or the Financing Documents or such as have been, or on or before the Closing Date will have been, duly obtained, given or accomplished; provided, however, that the Owner Participant makes no representation or warranty as to any Applicable Law or Governmental Action relating to the Securities Act, the Securities Exchange Act, the Trust Indenture Act, the Federal Power Act, the Atomic Energy Act, the Nuclear Waste Act, the Holding Company Act, the New Mexico Public Utility Act, the Texas Public Utility Regulatory Act, the Arizona Public Utility Act, energy or nuclear matters, public utilities, the environment, health and safety or Unit 2.

(5) *No Owner Participant's Liens.* Neither the execution and delivery by the Owner Participant of this Participation Agreement or any other Transaction Document to which the Owner Participant is or is to become a party, nor the performance by the Owner Participant of its obligations hereunder or thereunder, will subject the Trust Estate or the Lease Indenture Estate or any portion of either thereof, to any Owner Participant's Lien.

(6) *Acquisition for Investment.* The Owner Participant is acquiring the beneficial interest in the Trust and the Trust Estate for its own account, for investment and not with a view to, or for sale in connection with, any distribution thereof in violation of Section 5 of the Securities Act, but subject, nevertheless, to any requirement of law that the disposition of the Owner Participant's property shall at all times be within its control.

(7) *No Prior Security Interest.* There exists no security interest in or other Lien on the Lease Indenture Estate in the States of Texas, New Mexico, Arizona or Michigan arising as a result of claims against the Owner Participant unrelated to the transactions contemplated by the Transaction Documents or the Financing Documents which is prior to the Indenture Trustee's security interest in the Lease Indenture Estate.

(8) *Securities Act.* Neither the Owner Participant nor anyone authorized to act on its behalf has directly or indirectly offered or sold any security issued or to be issued to finance Unit 2, or any security the offering of which for the purposes of the Securities Act would be deemed to be part of the offerings contemplated by the Transaction Documents and the Financing Documents, or solicited any offer to acquire any such security from any Person, in violation of Section 5 of the Securities Act.

(9) *ERISA.* The Owner Participant is not acquiring its interest in the Trust with the "plan assets" of any "employee benefit plan" within the meaning of section 3(3) of ERISA or any "plan" within the meaning of section 4975(e)(1) of the Code.

(b) *Agreements.* The Owner Participant agrees that:

(1) *No Owner Participant's Liens.* The Owner Participant will not create or permit to exist, and, at its own cost and expense, will promptly take such action as may be necessary duly to discharge, all Owner Participant's Liens.

(2) *Quiet Enjoyment.* The Owner Participant acknowledges the provisions of Section 6(a) of the Facility Lease and Section 8(c) of this Participation Agreement.

(3) *No Petition Agreement.* Prior to the 181st day following the payment in full of the Bonds and the discharge in accordance with its terms of the Collateral Trust Indenture, the Owner Participant agrees that it will not file a petition, or join in the filing of a petition, seeking reorganization, arrangement, adjustment or composition of, or in respect of, the Loan Participant under the Bankruptcy Code or any other applicable Federal or state law or the law of the District of Columbia.

(4) *Transfer of Interest in the Trust Estate.* If the Lessee shall not have assumed the Notes as contemplated by Section 3.9(b) of the Indenture and the Lessor shall not have Transferred the Undivided Interest and the Real Property Interest to the Lessee in accordance with Section 9(c), 9(d), 13(c) or 16(e) of the Facility Lease or Section 10(b)(3)(xvii) hereof, then, upon receipt by the Owner Participant, from the Indenture Trustee or otherwise, of the payments specified in Sections 9(c), 9(d), 13(c) or 16(e) of the Facility Lease or Section 10(b)(3)(xvii) hereof, the Owner Participant shall assign, convey and transfer (the Special Transfer) to the Lessee all of the Owner Participant's right, title and interest in, to and under the Trust Estate (except the right to receive Excepted Payments), such transfer to be effected by the execution and delivery by the Owner Participant of a Bill of Sale and Assignment substantially in the form of Exhibit A hereto but without any further act (whether under any Transaction Document or otherwise) by the Owner Trustee, the Owner Participant, the Lessee, the Indenture Trustee or any other Person, whereupon the Lessee shall be deemed for all purposes to have assumed, and the Owner Participant shall be deemed for all purposes to have been released from, all obligations and liabilities of the Owner Participant under this Participation Agreement and the other Transaction Documents.

At any time following the occurrence of an Event of Loss or the declaration of a Deemed Loss Event, or at any time when an Event of Default shall have occurred and be continuing, the Owner Participant may, in lieu of a Transfer referred to in Section 9(c), 9(d) or 16(a) of the Facility Lease, as the case may be, effect the Special Transfer, whether or not the Owner Participant shall have received the payments referred to in the preceding sentence or the payments specified in Section 16(a) of the Facility Lease, as the case may be.

The Lessee hereby agrees to accept and cooperate in receiving the Special Transfer. If at the time of the Special Transfer the Owner Participant shall not have received the payments specified in the first sentence of this Section 7(b)(4) or the payments specified in Section 16(a) of the Facility Lease, as the case may be, the obligation of the Lessee to make such payments (together with interest thereon at the Penalty Rate) shall continue until so received, and such obligation shall be secured by (and the Lessee hereby grants to the Owner Participant a security interest in and general lien upon) all the Lessee's right, title and interest in, to and under the Trust Estate. In connection therewith, the Lessee hereby agrees that (i) the Owner Participant shall have all the rights and remedies of a secured party under the UCC and the Texas Business and Commerce Code, (ii) the Lessee hereby appoints the Owner Participant as its attorney-in-fact, irrevocably, with full power of substitution, to ask, require, demand, receive and give acquittance for any and all moneys and claims for moneys due and to become due to the Lessee under or arising out of the Trust Estate, to endorse any checks or other instruments or orders in connection therewith, and to take any action (including the filing of financing statements or other documents and the delivery of written instructions to the Owner Trustee and the Indenture Trustee specifying that all payments to be made to the Lessee under the Trust Agreement and the Indenture shall be made directly to the Owner Participant) or institute any proceedings which the Owner Participant may

deem necessary or appropriate to protect and preserve such security interest and the rights of the Owner Participant to receive payments thereunder, (iii) until all amounts due to the Owner Participant have been received by the Owner Participant, the Lessee (in its capacity as such and as transferee under the Special Transfer) shall not, without the prior written consent of the Owner Participant, take any action under, accept or approve any amendment to, or deliver any instruction under, any Transaction Document the effect of which would be to (A) relieve or otherwise affect the obligation of the Lessee to make such payments, (B) terminate the Trust Agreement, (C) terminate or rescind the Facility Lease or (D) sell, assign, transfer or deliver the Trust Estate to any Person and (iv) the Lessee agrees, from time to time, to do all such acts and execute all such instruments of further assurance as shall be reasonably requested from time to time by the Owner Participant for the purpose of fully carrying out and effectuating this Section 7(b)(4) and the intent hereof.

On the date which is 100 days after the receipt by the Owner Participant of all amounts due to the Owner Participant, the security interest and lien hereinabove provided shall, so long as the Lessee is not then the subject of any bankruptcy, insolvency or similar proceeding, terminate, and the Owner Participant, at the request of the Lessee, shall execute and deliver to the Lessee such termination statements, releases or other instruments presented to the Owner Participant as shall be reasonably required to effect such termination.

(5) *Letter of Credit Drawings.* The Owner Participant will, not later than the later of (a) a reasonably practicable period after delivery of a notice under Section 9(c) or 9(d) of the Facility Lease and (b) the time when a failure of the Lessee to pay the amounts specified in such section in and of itself becomes an Event of Default under the Facility Lease, attempt once to draw under the Letter of Credit, if one is in effect and drawable in an amount at least equal to the applicable Equity Portion of Rent; *provided, however,* that the failure of the Owner Participant so to attempt to draw shall have no consequence but to limit its claim against the Lessee to an amount equal to what the Owner Participant would have been entitled to had such failure to pay of the Lessee not in and of itself become an Event of Default.

SECTION 8. Representations, Warranties and Agreements of the Owner Trustee and FNB.

(a) *Representations and Warranties.* FNB, as Owner Trustee and (except as otherwise provided in the last sentence of this Section 8(a)) in its individual capacity, represents and warrants that:

(1) *Due Organization.* FNB is a national banking association duly organized and validly existing in good standing under the laws of the United States of America and has all requisite corporate power and authority to enter into and perform its obligations under (x) the Trust Agreement and, to the extent it is a party hereto in its individual capacity, this Participation Agreement and (y) acting as Owner Trustee, this Participation Agreement and each other Transaction Document to which FNB is a party as Owner Trustee.

(2) *Due Authorization; Enforceability; etc.* This Participation Agreement and each other Transaction Document to which FNB is a party have been duly authorized by all necessary corporate action of FNB (in its individual capacity or as Owner Trustee, as the case may be) and, upon execution and delivery hereof and thereof, each of this Participation Agreement and each such other Transaction Document will have been duly executed and delivered and will be a legal, valid and binding agreement of FNB (in its respective capacities), enforceable against it (in its respective capacities) in accordance with its terms; *it being understood* that FNB is not making any representation or warranty as to the priorities of the Liens created or to be created under any Transaction Document, title to the Trust Estate or recordings or filings necessary in connection therewith.

(3) *Notes.* Upon execution of the Initial Series Note, authentication thereof pursuant to the Indenture and delivery thereof against payment therefor in accordance with this Participation Agreement, such Note will be a legal, valid and binding obligation of the Owner Trustee, enforceable against the Owner Trustee in accordance with its terms.

(4) *No Violation.* Neither the execution and delivery by (x) FNB of the Trust Agreement and, to the extent FNB is a party hereto in its individual capacity, this Participation Agreement and (y) the Owner Trustee of this Participation Agreement and each other Transaction Document (*other than* the Trust Agreement) to which the Owner Trustee is a party, nor the performance by FNB, in its individual capacity or as Owner Trustee, as the case may be, of its obligations under each thereof, conflicts with, or results in the breach of any provision of, its Articles of Association or By-Laws and does not contravene any Applicable Law of the United States of America or The Commonwealth of Massachusetts governing the banking or trust powers of FNB, and does not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which FNB is a party or by which it is bound or require any Governmental Action with respect to the Owner Trustee under any Federal or Massachusetts law, *except* such as are contemplated by the Transaction Documents or the Financing Documents or such as have been duly obtained, given or accomplished; *provided, however*, that no representation or warranty is made (i) with respect to the right, power or authority of FNB or the Owner Trustee to act under the ANPP Participation Agreement or the License in respect of the Undivided Interest or Unit 2, or (ii) as to any Applicable Law or Governmental Action relating to the Securities Act, the Securities Exchange Act, the Trust Indenture Act, the Federal Power Act, the Atomic Energy Act, the Nuclear Waste Act, the Holding Company Act, the New Mexico Public Utility Act, the Texas Public Utility Regulatory Act, the Arizona Public Utility Act, energy or nuclear matters, public utilities, the environment, health and safety or Unit 2.

(5) *Defaults.* To the best knowledge of the Owner Trustee, no Indenture Default or Indenture Event of Default has occurred and is continuing. The Owner Trustee is not in violation of any of the terms of this Participation Agreement or any other Transaction Document to which it is a party.

(6) *Litigation.* There is no action, suit, investigation or proceeding pending or, to the knowledge of FNB, threatened against FNB (in any capacity) before any court, arbitrator or administrative or governmental body and which relates to its banking or trust powers which, individually or in the aggregate, if decided adversely to the interests of FNB in such capacity, would have an adverse effect upon the ability of FNB (in any capacity) to perform its obligations under this Participation Agreement or any other Transaction Document to which it (in any capacity) is a party.

(7) *Location of the Chief Place of Business and Chief Executive Office; etc.* The chief place of business and chief executive office of the Owner Trustee and the office where its records concerning the accounts or contract rights relating to the transactions contemplated hereby are kept are located in Boston, Massachusetts.

(8) *No Prior Security Interest.* There exists no security interest in the Lease Indenture Estate in the States of Texas, New York or Arizona or in The Commonwealth of Massachusetts arising as a result of any claim against FNB unrelated to the transactions contemplated by the Transaction Documents or the Financing Documents which is prior to the Indenture Trustee's security interest in the Lease Indenture Estate.

(9) *No Lessor's Liens.* Neither the execution by FNB (in any capacity) of this Participation Agreement or any other Transaction Document to which it (in any capacity) is a party, nor the performance in such capacity by it of its obligations hereunder or thereunder, will subject the Trust Estate or the Lease Indenture Estate, or any portion thereof, to any Lessor's Lien.

The representations and warranties in Section 8(a)(2) and Section 8(a)(3), as to Transaction Documents and each Note being legal, valid and binding obligations enforceable in accordance with their respective terms, are given only by FNB in its capacity as Owner Trustee and not in its individual capacity, except that FNB does represent in its individual capacity that it is authorized under the laws of the United States of America and The Commonwealth of Massachusetts to execute and deliver the Transaction Documents to which it is a party.

(b) *Agreements.* FNB agrees, in its individual capacity, that:

(1) *Discharge of Liens.* FNB will not create or permit to exist, and will, at its own cost and expense, promptly take such action as may be necessary duly to discharge, all Lessor's Liens.

(2) *Certain Amendments. Unless* a Default or an Event of Default has occurred and is continuing or an Event of Loss has occurred or a Deemed Loss Event has been declared, FNB will not amend any of the payment terms of any Note or take any action to refund any Note after the date of issue thereof pursuant to the terms of this Participation Agreement and the Indenture without the prior written consent of the Lessee. *Except* for amendments or supplements made pursuant to Article X of the Trust Agreement or contemplated by Section 7(b)(4), FNB will not amend or supplement, or consent to any amendment of or supplement to, the Trust Agreement without the prior written consent of the Lessee *unless* a Default or an Event of Default has occurred and is continuing or the Lease Termination Date has occurred or an Event of Loss has occurred or a Deemed Loss Event has been declared, if such amendment would materially and adversely affect the rights of the Lessee under the Facility Lease or this Participation Agreement.

(3) *Change in Location of Chief Place of Business and Chief Executive Office, etc.* FNB shall notify the Lessee, the Loan Participant and the Indenture Trustee promptly after any change in the location of its chief executive office, principal and chief place of business or place where its records concerning the accounts or contract rights relating to the transactions contemplated hereby are kept.

(4) *No Petition Agreement.* Prior to the 181st day following the payment in full of the Bonds and the discharge in accordance with its terms of the Collateral Trust Indenture, FNB (in any capacity) agrees that it will not file a petition, or join in the filing of a petition, seeking reorganization, arrangement, adjustment or composition of or in respect of the Loan Participant under the Bankruptcy Code or any other applicable Federal or state law or the law of the District of Columbia.

(5) *Quiet Enjoyment.* FNB acknowledges Section 6(a) of the Facility Lease.

(c) *Agreements.* The Owner Trustee agrees that:

(1) *Rights in Relation to ANPP Participants.* The rights and remedies of the Owner Trustee and the Owner Participant in the Undivided Interest and in the Real Property Interest are subject and subordinate to the rights and remedies of the ANPP Participants (*other than* (i) the Lessee or (ii) any Person who shall become an ANPP Participant in respect of the Lessor's Interest) under the ANPP Project Agreements.

(2) *Lessee to be Participant. Except* as provided in Sections 15.2.2, 15.6.4 and 15.10 (or any comparable successor provisions) of the ANPP Participation Agreement, the Lessee shall be and remain the sole "*Participant*" for all purposes of the ANPP Participation Agreement and the sole representative (with power to bind the Lessor and the Indenture Trustee) in all dealings with the other ANPP Participants in relation to the property, rights, titles and interests of the Lessee transferred to the Lessor pursuant to the Transaction Documents; *provided, however*, that the foregoing shall not limit in any way any liability or obligation that the Lessee may incur to the Owner Trustee or the Owner Participant under any Transaction Document as a result thereof.

(3) *Cash Bids.* On the Lease Termination Date and upon the Lessee failing to purchase or otherwise reacquire all the right, title and interest in PVNGS and contractual rights related thereto necessary for the operation of the interest (the *Lessor's Interest*) acquired by the Lessor pursuant to the Transaction Documents, the Lessor shall, and, subject to the rights of the Lessee under Sections 12 and 13(b) of the Facility Lease, at any time prior to the Lease Termination Date the Lessor may, entertain cash bids from each ANPP Participant for the Lessor's Interest.

(4) *Survival.* The provisions of Sections 8(c)(1), (2) and (3) shall remain in full force and effect until such time as the ANPP Administrative Committee or the ANPP Participants shall otherwise consent, by amendment to the ANPP Participation Agreement or otherwise.

The Owner Trustee acknowledges that before taking possession of the Undivided Interest or any part thereof or of any other interest in PVNGS, either of the following may be required: (i) the issuance of an appropriate license from the NRC, whether by amendment to the License or otherwise, or (ii) a partial transfer of the License authorizing the Lessor to possess its interest in PVNGS, to the extent of the Undivided Interest, upon application for partial transfer of such License to such extent filed pursuant to Applicable Law.

(5) *Affidavit.* The Owner Trustee will, upon the request of the Owner Participant, execute and cause to be filed with the County Recorder, Maricopa County, Arizona, a duly completed affidavit in substantially the form of Exhibit B.

(6) *Reimbursement for Certain Insurance Costs.* The Owner Trustee will reimburse the Lessee, or shall cause the Lessee to be reimbursed, for the incremental costs incurred by the Lessee in obtaining the nuclear liability insurance required by Section 10(a)(2)(ii) of the Facility Lease to be maintained after the Lease Termination Date to the extent such costs are attributable to the marginal cost of providing such coverage for the Owner Trustee and the Owner Participant; *provided, however*, that the Owner Trustee's obligation for such reimbursement shall not include any costs of such insurance attributable to coverage for the Lessee's continuing obligations set forth in Section 10(b)(3)(xi) or 13(a) or attributable to the Lease Term.

SECTION 9. Representations, Warranties and Agreements of FCNB.

(a) *Representations and Warranties.* FCNB represents and warrants that:

(1) *Due Organization.* FCNB is a national banking association duly organized and validly existing in good standing under the laws of the United States of America and has the corporate power and authority and legal right to enter into and perform its obligations under the Indenture, this Participation Agreement and each other Transaction Document to which it is a party.

(2) *Due Authorization; Enforceability; etc.* This Participation Agreement and each other Transaction Document to which FCNB is a party have been or will be duly authorized by all necessary corporate action on the part of FCNB and each has been duly executed and delivered by FCNB.

(3) *Authentication of Each Note.* The individual who shall on behalf of FCNB authenticate each Note to be issued pursuant to the Indenture shall be, at the time of such authentication, an Authorized Officer.

(4) *No Violation.* Neither the execution and delivery by FCNB of this Participation Agreement or the Indenture, nor the authentication on its behalf of any Note, nor the consummation by it of the transactions contemplated hereby or thereby, nor the compliance by it with the provisions hereof or thereof, will contravene any Applicable Law governing its banking or trust powers, or contravene or result in a breach of, or constitute a default under, its Articles of Incorporation or By-Laws, or require any Governmental Action under any Federal or Texas law, *except* such as have been, or on or before the Closing Date will have been, duly obtained, given or accomplished; *provided, however*, that no representation or warranty is made as to any Applicable Law or Governmental Action relating to the Securities Act, the Securities Exchange Act, the Trust Indenture Act, the Federal Power Act, the Atomic Energy Act, the Nuclear Waste Act, the Holding Company Act, the New Mexico Public Utility Act, the Texas Public Utility Regulatory Act, the Arizona Public Utility Act, energy or nuclear matters, public utilities, the environment, health and safety or Unit 2.

(b) *Agreements.* FCNB agrees that:

(1) *Agreement to Discharge Liens.* FCNB will not create or permit to exist, and will promptly take such action as may be necessary duly to discharge, all Indenture Trustee's Liens.

(2) *No Petition Agreement.* Prior to the 181st day following the payment in full of the Bonds and the discharge in accordance with its terms of the Collateral Trust Indenture, the Indenture Trustee agrees that it will not file a petition, or join in the filing of a petition, seeking reorganization, arrangement, adjustment or composition of or in respect of the Loan Parti[redacted] under the Bankruptcy Code or any other applicable Federal or state law or the law of the D[redacted] of Columbia.

(3) *Quiet Enjoyment.* The Indenture Trustee acknowledges Section 6(a) of the Facility Lease.

SECTION 10. Representations, Warranties and Agreements of the Lessee.

(a) *Representations and Warranties.* The Lessee represents and warrants that, as of the date of execution and delivery hereof and as of the Closing Date:

(1) *Due Organization.* The Lessee is a corporation duly organized and validly existing in good standing under the laws of the State of Texas and has the corporate power and authority to carry on its business as presently conducted, to own or hold under lease its properties and to enter into and perform its obligations under this Participation Agreement and each other Transaction Document and Financing Document to which it is a party. The Lessee is duly qualified and in good standing to do business as a foreign corporation in the States of New Mexico and Arizona and has not failed to qualify to do business or to be in good standing in any other jurisdiction where failure so to qualify or be in good standing would materially and adversely affect the financial condition of the Lessee or its ability to perform any obligations under this Participation Agreement, any other Transaction Document or any Financing Document to which it is a party.

(2) *Due Authorization.* The execution, delivery and performance by the Lessee of this Participation Agreement and each other Transaction Document and Financing Document to which it is a party have been duly authorized by all necessary corporate action on the part of the Lessee and do not, and will not, require the consent or approval of the stockholders of the Lessee or any trustee or holder of any indebtedness or other obligation of the Lessee, other than (i) the Mortgage Releases, (ii) the finding of the ANPP Administrative Committee described in Se[redacted] 15.6.2 of the ANPP Participation Agreement and (iii) such other consents and approvals as [redacted] been duly obtained, given or accomplished, with true copies thereof delivered to the Owner Participant.

(3) *Execution.* This Participation Agreement has been, and each other Transaction Document and Financing Document to which the Lessee is a party have been duly executed and delivered by the Lessee, and this Participation Agreement constitutes, and each such Transaction Document and Financing Document constitutes, the legal, valid and binding agreement of the Lessee, enforceable against it in accordance with its terms.

(4) *No Violation, etc.* Neither the execution, delivery or performance by the Lessee of this Participation Agreement or any other Transaction Document or Financing Document to which it is a party, nor the consummation by the Lessee of the transactions contemplated hereby or thereby, nor compliance by the Lessee with the provisions hereof or thereof, conflicts or will conflict with, or results or will result in a breach or contravention of any of the provisions of, the Restated Articles of Incorporation or By-Laws of the Lessee or any subsidiary of the Lessee or, to the best of its knowledge, any other Affiliate of the Lessee, or any Applicable Law applicable to it, or any indenture, mortgage, lease or any other agreement or instrument to which the Lessee or any subsidiary of the Lessee or, to the best of its knowledge, any other Affiliate of the Lessee, is a party or by which the property of the Lessee or any such subsidiary or, to the best of its knowledge, any other Affiliate of the Lessee, is bound, or results or will result in the creation or imposition of any Lien (other than Permitted Liens) upon any property of the Lessee, any such subsidiary or, to the best of its knowledge, any other Affiliate of the Lessee. There is no provision of the Restated Articles of Incorporation or By-Laws of the Lessee, or any Applicable Law applicable to it, or any such indenture, mortgage, lease or other agreement or instrument which materially adversely affects, or in the future is likely (so far as the Lessee can now forese[redacted]

materially adversely affect, the business, operations, affairs, condition, properties or assets of the Lessee, or its ability to perform its obligations under this Participation Agreement or any other Transaction Document or Financing Document to which it is a party.

(5) *Governmental Actions.* No Governmental Action under any Federal, Texas, New Mexico, Arizona or New York law is or will be required in connection with the execution, delivery or performance by the Lessee of, or the consummation by the Lessee of the transactions contemplated by, this Participation Agreement or any other Transaction Document or Financing Document to which it is a party, except such Governmental Actions (i) as have been, or on or before the Closing Date will have been, duly obtained, given or accomplished, with true copies thereof delivered to the Owner Participant and the Loan Participant, (ii) as may be required under existing Federal, Texas, New Mexico, Arizona or New York law to be obtained, given or accomplished from time to time after the Closing Date in connection with the maintenance, use, possession or operation of Unit 2 or otherwise with respect to Unit 2 and the Lessee's or the Operating Agent's involvement therewith and which are, for PVNGS, routine in nature and which the Lessee has no reason to believe will not be timely obtained and (iii) as may be required under Applicable Law not now in effect. No Governmental Action by any Federal, Texas, New Mexico, Arizona or New York Governmental Authority relating to the Securities Act, the Securities Exchange Act, the Trust Indenture Act, the Federal Power Act, the Atomic Energy Act, the Nuclear Waste Act, the Holding Company Act, the New Mexico Public Utility Act, the Texas Public Utility Regulatory Act, the Arizona Public Utility Act, energy or nuclear matters, public utilities, the environment, health and safety or Unit 2 is or will be required: (a) by virtue of the participation by the Owner Trustee, the Indenture Trustee, the Owner Participant or the Loan Participant in the consummation of the transactions contemplated by this Participation Agreement, any other Transaction Document or any Financing Document or (b) to be obtained with respect to Unit 2 by any of such Persons during the Lease Term, except such Governmental Actions (i) as have been, or on or before the Closing Date will have been, duly obtained, given or accomplished, with true copies thereof delivered to the Owner Participant and the Loan Participant, (ii) as may be required by Applicable Law not now in effect, (iii) as may be required in consequence of any transfer of ownership of any Note or Bond by the Holder thereof, the beneficial interest in the Trust by the Owner Participant, or the Undivided Interest or the Real Property Interest by the Owner Trustee, (iv) as may be required in consequence of the issuance, sale or exchange and delivery of Bonds (other than the Initial Series Bonds), (v) as would be required by Applicable Law existing on the Lease Termination Date in connection with taking possession of an interest in Unit 2, (vi) as may be required by existing Applicable Law if, after the Lease Termination Date, the Lessee should provide transmission services for the Owner Trustee or cease to be agent for the Owner Trustee as provided under the Assignment and Assumption, or (vii) as may be required in consequence of any exercise of remedies or other rights by any such Person in connection with taking possession of an interest in Unit 2. Nothing in the License or the License Amendment or any other Governmental Action with respect to the NRC will materially interfere with the ability of the Owner Trustee to transfer or convey the Undivided Interest and the Real Property Interest to a person, partnership, corporation or governmental corporation or agency engaged in the generation, transmission or distribution of energy who will be in a position to enjoy all the benefits of, have all the rights of, and be an ANPP Participant, so long as such person, partnership, corporation or governmental corporation or agency complies with the licensing requirements of the NRC and obtains, or becomes a transferee of, a license from the NRC.

(6) *Securities Act.* Neither the Lessee nor anyone acting on its behalf has directly or indirectly offered or sold any Bond, any interest in any Note, any note issued with respect to any other undivided interest in Unit 2, the Undivided Interest or any other undivided interest in Unit 2, the Facility Lease or any other lease of an undivided interest in Unit 2, or any similar security or lease, or any interest in any security or lease the offering of which, for purposes of the Securities Act, would be deemed to be part of the same offering as the offering of the aforementioned

securities or leases, or solicited any offer to acquire any of the aforementioned securities or leases, in violation of Section 5 of the Securities Act, and, except as contemplated by this Participation Agreement, neither the Lessee nor any one authorized to act on its behalf will take any action which would subject the issuance or sale of any Note or any interest in the Facility Lease or other debt instrument (other than the Bonds) issued or to be issued to finance the Undivided Interest to the registration requirements of such Section 5.

(7) *Title to the Undivided Interest; Real Property Interest; Security Interest.* On the Closing Date, (i) good and marketable title to the Undivided Interest will be duly, validly and effectively conveyed and transferred to the Owner Trustee, free and clear of all Liens, except (A) Permitted Liens described in clauses (i), (vi), (ix), (x) and (xi) of the definition of such term, (B) the matters set forth in the exceptions to the title report delivered pursuant to Section 11(a)(19) (which, in the case of accrued taxes shall not exceed 14% of $1,750,000) and (C) Permitted Liens described in clause (v) of the definition of such term aggregating not more than 14% of $5,000,000, (ii) good and marketable title to the Real Property Interest will be duly, validly and effectively conveyed and transferred to the Owner Trustee, as provided in the Deed and the Assignment of Beneficial Interest, (iii) El Paso will have good and marketable title to its ownership interest in the Retained Assets, free and clear of all Liens except Permitted Liens, the Lien of the Existing Mortgages and matters disclosed in the title report referred to in Section 11(a)(19), (iv) the Lessee will have good and valid title to its ownership interest in the PVNGS Site, (v) Unit 2 will be wholly located on the PVNGS Site without any material encroachments by any portion thereof on any other property, (vi) all filings and recordings necessary or advisable to perfect the Owner Trustee's right, title and interest in and to the Undivided Interest and the Real Property Interest, and to perfect for the benefit of the Indenture Trustee and the Holder of the Notes the first priority security interest, mortgage and assignment of rents provided for in the Indenture, will have been duly made and (vii) no other action, including any action under any fraudulent conveyance statute, will be required to protect the right, title and interest of the Owner Trustee in and to the Undivided Interest and the Real Property Interest, in each case against the claims of all Persons (other than the Permitted Lien described in clause (xi) of the definition thereof). To perfect such first priority security interest, mortgage and assignment of rents in favor of the Indenture Trustee under and pursuant to the Indenture.

(8) *Non-Interference.* None of the Permitted Liens described in clauses (ii), (iii), (iv), (v), (vii), (viii) and (xii) of the definition of such term will, on and after the Closing Date, materially interfere with the use or possession of the Undivided Interest or the Real Property Interest or the use of or the exercise by the Owner Trustee of its rights under the Purchase Documents and the Assignment and Assumption with respect to the interests in PVNGS granted or to be granted under the Purchase Documents and the Assignment and Assumption. Nothing in the ANPP Participation Agreement or in any ANPP Project Agreement will materially interfere with the ability of the Owner Trustee, subject to Applicable Law, to transfer or convey the Undivided Interest and the Real Property Interest to a person, partnership, corporation or governmental corporation or agency engaged in the generation, transmission or distribution of energy, who will be in a position to enjoy all the benefits of, have all the rights of, and be an ANPP Participant.

(9) *Personal Property.* Unit 2, based on the agreements of El Paso and the other ANPP Participants in the ANPP Participation Agreement and of the Lessee and the Owner Trustee herein and in the other Transaction Documents, is, to the full extent permitted by Applicable Law, personal property.

(10) *Location of Chief Executive Office.* The chief executive office and place of business of the Lessee and the office where it keeps its records concerning its accounts or contract rights is located at 303 North Oregon Street, El Paso, Texas 79901.

(11) *Financial Statements.* The consolidated balance sheets of the Lessee and subsidiary (A) as of December 31, 1985 and 1984, respectively, and the related consolidated statements

income, retained earnings and sources of funds invested in utility plant and other plant for each of the years in the three-year period ended December 31, 1985, together with the notes accompanying such financial statements, all certified by Peat, Marwick, Mitchell & Co., and (B) as of September 30, 1986 and 1985, respectively, and the related consolidated statements of income, retained earnings and sources of funds invested in utility plant and other plant for the nine-month periods ended September 30, 1986 and September 30, 1985, respectively, together with the notes accompanying such financial statements, all certified by the Chief Financial Officer, the Controller or an Assistant Controller of the Lessee, as furnished to the Owner Participant, fairly present the financial position of the Lessee and its subsidiary taken as a whole at each such date and the results of their operations for each of the periods then ended, in conformity with generally accepted accounting principles applied on a consistent basis, subject in the case of the consolidated balance sheets and the related consolidated statements described in clause (B) above, to the condensation of certain financial information and the omission of certain footnote disclosures as permitted by the rules and regulations of the SEC and to year-end audit adjustments. The Lessee knows of no such adjustments which would, if made on the date hereof, be material.

(12) *Disclosure.* Neither any of the financial statements to which reference is made in paragraph 11 above, nor the reports to which reference is made in this paragraph 12, nor any certificate, written statement or other document prepared by or for, or at the direction of, the Lessee and furnished to the Owner Participant in connection with the transactions contemplated hereby (under the circumstances at the time and for the purposes for which any statement made therein was made) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. There is no fact known to the Lessee that materially and adversely affects or, so far as the Lessee can now reasonably foresee, is likely to materially and adversely affect, the business or financial condition of the Lessee or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligations under this Participation Agreement or any other Transaction Document or Financing Document to which the Lessee is a party except as disclosed in the Lessee's Annual Report on Form 10-K for the year ended December 31, 1985, as amended by Amendment No. 1 on Form 8 dated April 2, 1986, the Lessee's Quarterly Reports on Form 10-Q for the quarters ended March 31, 1986, June 30, 1986 and September 30, 1986, and the Lessee's Current Reports on Form 8-K dated June 16, 1986, July 22, 1986, August 29, 1986, September 11, 1986 and October 1, 1986, copies of which have been provided to the Owner Participant.

(13) *Litigation.* There is no action, suit, investigation or proceeding pending or, to the knowledge of the Lessee, threatened against the Lessee before any court, arbitrator or administrative or governmental body which questions the validity or enforceability of this Participation Agreement or any other Transaction Document or Financing Document to which the Lessee is a party, and, except as disclosed in the reports to which reference is made in paragraph 12, there is no action, suit, investigation or proceeding pending or, to the best knowledge of the Lessee, threatened against the Lessee before any court, arbitrator, or administrative or governmental body which, individually or in the aggregate, if decided adversely to the interests of the Lessee, would have a material adverse effect on the business or financial condition of the Lessee or materially and adversely affect the ability of the Lessee to perform its obligations under this Participation Agreement or any other Transaction Document or Financing Document.

(14) *Tax Returns.* The Lessee has filed all Federal, state, local and foreign, if any, tax returns which were required to be filed, and has paid all Taxes shown to be due and payable on such returns and has paid all other Taxes in respect of the Lessee's interest in Unit 2 and in the real property described in the Real Property Interest which are payable by the Lessee to the extent the same have become due and payable and before they have become delinquent, except for (i) any Taxes the amount, applicability or validity of which may be in dispute and which are currently being contested in good faith by appropriate proceedings and with respect to which the Lessee has set aside on its books reserves (segregated to the extent required by generally accepted

accounting principles) deemed by it to be adequate and (ii) any Taxes relating to PVNGS in respect of which the Operating Agent has not given notice to the Lessee that the same are due and payable. The Federal income tax returns of the Lessee have been audited by the IRS for taxable years through 1973.

(15) *ERISA.* In reliance upon, and subject to the accuracy of the representations ma[redacted] the Loan Participant in Section 6(a)(6) and the Owner Participant in Section 7(a)(9), the execution and delivery of this Participation Agreement and the other Transaction Documents and Financing Documents to which the Lessee is a party will not involve any prohibited transaction within the meaning of ERISA or section 4975 of the Code.

(16) *Regulation.* So long as the Facility Lease is in effect, assuming the proper filing of Form U-7D with the SEC on or within 30 days after the Closing Date, under Applicable Law now in effect, neither the Loan Participant, the Owner Participant, FNB nor the Owner Trustee will be or become, solely by reason of either its entering into this Participation Agreement or any other Transaction Document or Financing Document to which any of them is a party, or the transactions contemplated hereby or thereby, subject to regulation (i) as an electric utility, a public utility or a holding company of a public utility or an electric utility by any Federal, state or local public utility commission or other regulatory body, authority or group (including, without limitation, the SEC, the FERC, the NMPSC, the Arizona Corporation Commission or Texas Public Utility Commission) or (ii) in any manner by the NRC. The Lessee is not subject to regulation by the Arizona Corporation Commission as a public utility or a public service corporation.

(17) *Authorizations, etc.* The Lessee has not failed to obtain any Governmental Action or other authorization, license, approval, permit, consent, right or interest where a failure to obtain such would materially and adversely affect the ability of the Lessee to carry on its business, as presently conducted.

(18) *No Default, etc.* The Lessee is not in default, and no condition exists that, with the giving of notice or lapse of time or both, would constitute a default by the Lessee, under either Existing Mortgage or any other material mortgage, deed of trust, indenture, lease, contra[redacted] other instrument or agreement to which the Lessee is a party or by which it or any [redacted] properties or assets may be bound.

(19) *Certain Documents.* True and correct copies of the ANPP Participation Agreement, the Material Project Agreements and the Existing Mortgages have been delivered to Cravath, Swaine & Moore. No ANPP Project Agreement will, on and after the Closing Date, materially and adversely interfere with (i) except, in the case of the Generation Entitlement Share only, for the ANPP Participation Agreement, the title of the Owner Trustee to the Undivided Interest or the Real Property Interest or (ii) except for the ANPP Participation Agreement, the use of, or the exercise by the Owner Trustee of its rights under the Facility Lease, the Purchase Documents and the Assignment and Assumption with respect to, the Undivided Interest and the interests in the PVNGS Site (including the Real Property Interest) granted or to be granted under the Purchase Documents and the Assignment and Assumption. No payment default or other default of a material nature by the Lessee has occurred and is continuing under either Existing Mortgage or any ANPP Project Agreement. Each of the ANPP Participation Agreement and the other ANPP Project Agreements is in full force and effect, and no breach of any thereof, to the Lessee's knowledge, by any other party thereto has occurred and is continuing, except where the failure to be in force and effect or such breach would not have a material and adverse effect on the Undivided Interest, the Real Property Interest, Unit 2 or the rights, interests and benefits of the Owner Trustee or the Owner Participant under any Transaction Document. Upon execution and delivery of the Mortgage Releases and the recordation thereof or of UCC-3 releases in respect thereof, (i) the respective mortgagees and secured parties thereunder will have released the lien of the Existing Mortgages on the Undivided Interest and the Real Property Interest and (ii) the rights of the Owner Trustee in the Undivided Interest and the Real Property Interests will not be, and will not become, subject or subordinate to the rights of any Person, except the Inde[redacted]

Trustee under the Indenture and the ANPP Participants under, and to the extent expressly set forth in, the ANPP Participation Agreement (as in effect on the Closing Date), and except as may otherwise expressly be permitted by the Facility Lease. The lien of the Existing Mortgages does not extend to rights of the Lessee under any Transaction Document (other than the Lessee's leasehold interest under the Facility Lease), or to the Generation Entitlement Share included in the Undivided Interest.

(20) *Unit 2.* The description of Unit 2 set forth in Exhibit B to the Bill of Sale, as delivered on the Closing Date, will be correct and sufficiently complete to identify such property.

(21) ***Investment Company Act, Etc.*** The Lessee is not (a) an "investment company," or a company "controlled" by an "investment company," within the meaning of the Investment Company Act or (b) a "holding company" or a "subsidiary company" or an affiliate of a "holding company," within the meaning of the Holding Company Act.

(b) *Agreements.*

(1) ***Delivery of Documents.*** The Lessee shall deliver to the Owner Participant and the Loan Participant (and, in the case of Sections 10(b)(1)(iii) and 10(b)(1)(iv), the Owner Trustee):

(i) FINANCIAL STATEMENTS: (A) as soon as practicable, and in any event within 120 days, after the end of each fiscal year of the Lessee, a consolidated balance sheet of the Lessee as of the end of such fiscal year and related consolidated statements of income, retained earnings and sources of funds invested in utility plant and other plant for such year, all in reasonable detail and certified in an opinion by a nationally recognized firm of independent public accountants, and the annual and interim reports of the Lessee to its stockholders as soon as the same have been mailed to such stockholders, (B) as soon as practicable, and in any event within 60 days, after the end of each fiscal quarter (other than the last fiscal quarter) of each fiscal year of the Lessee, a consolidated balance sheet of the Lessee as of the end of said period and a related consolidated statement of income, retained earnings and sources of funds invested in utility plant and other plant for said period, all in reasonable detail, and certified by the Chief Financial Officer, the Controller or an Assistant Controller of the Lessee and (C) as soon as practicable after the same have been filed, a copy of all documents filed by the Lessee with the SEC pursuant to the reporting requirements of the Securities Exchange Act;

(ii) OTHER REPORTS: promptly upon their becoming available, any registration statement, offering statement, investment memorandum or prospectus prepared by the Lessee in connection with the public offering of securities (other than public offerings of securities under employee benefit plans, customer stock purchase plans or dividend reinvestment plans);

(iii) NOTICE OF DEFAULT: promptly upon the Lessee becoming aware of the existence thereof, written notice specifying any condition which constitutes a Default or an Event of Default or a default by any ANPP Participant under the ANPP Participation Agreement, and, in each case, the nature and status thereof;

(iv) ANNUAL CERTIFICATE: within 120 days after the end of each fiscal year of the Lessee, a certificate of the Lessee, signed by the Chief Financial Officer, the Controller or an Assistant Controller of the Lessee, to the effect that such officer has reviewed, or caused to be reviewed by individuals under his supervision, this Participation Agreement and each other Transaction Document and each Financing Document to which the Lessee is a party, and has made, or caused to be made under his supervision, a review of the transactions contemplated hereby and thereby and the condition of the Lessee during such preceding fiscal year, and such review has not disclosed the existence during such fiscal period, nor does such officer have knowledge of the existence as of the date of such certificate, of any condition or event that constitutes a Default or Event of Default or, if any such condition or event exists,

specifying the nature and period of existence thereof and any action the Lessee has taken, is taking, or proposes to take with respect thereto;

(v) OPINION OF COUNSEL: within 120 days after the end of each fiscal year of the Lessee, an opinion or opinions, satisfactory to the Owner Participant, the Owner Trustee, the Collateral Trust Trustee and the Indenture Trustee, of Kemp, Smith, Duncan & Hammond, counsel for the Lessee, Snell & Wilmer, special Arizona counsel for the Lessee, and/or other counsel acceptable to the Owner Participant (A) either to the effect that (1) all filings and recordations (or refilings and rerecordations) required to (i) convey to the Owner Trustee, and preserve the title of the Owner Trustee to, the Undivided Interest and the Real Property Interest, and (ii) so long as any Note is Outstanding, grant, perfect, and preserve the security interest of the Indenture Trustee in the Lease Indenture Estate, have been duly made, or (2) no such additional filings, recordings, refilings or rerecordings are necessary to (i) convey to the Owner Trustee, and preserve the title of the Owner Trustee to, the Undivided Interest and the Real Property Interest, and (ii) so long as any Note is Outstanding, grant, perfect and preserve the security interest of the Indenture Trustee in the Lease Indenture Estate and (B) specifying the particulars of all action required during the period from the date of such opinion through the last day of the next succeeding calendar year, *including*, in the case of each UCC continuation statement required to be filed during such period, the office in which each such continuation statement is to be filed and the filing date and filing number of the original financing statement or fixture filing to be continued, and the dates within which such continuation statement may be filed under Applicable Law; such opinion shall address such additional matters relating to actions to be taken by the Lessee pursuant to Section 10(b)(2) as the Owner Participant or the Loan Participant may reasonably request;

(vi) ANPP INFORMATION: upon receipt by the Lessee, unless prohibited by Applicable Law and subject to applicable confidentiality undertakings with respect thereto, copies of (A) minutes of all committee meetings of the ANPP Administrative Committee, the ANPP Engineering and Operating Committee, the ANPP Auditing Committee and any [redacted] committee composed of the ANPP Participants, (B) all annual capital budgets, and operation and maintenance budgets and monthly statistical reports on the operation of PVNGS and (C) all notices to or from the NRC with respect to violations or other material occurrences with respect to PVNGS.

(vii) REQUESTED INFORMATION: with reasonable promptness, unless prohibited by Applicable Law, such other data and information as to the business and properties of the Lessee or as to Unit 2, PVNGS or the PVNGS Site as from time to time may be reasonably requested by the Owner Participant, *subject, however,* to applicable confidentiality undertakings with respect thereto.

(2) ***Further Assurances.*** The Lessee shall cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents and assurances as the Owner Participant may from time to time reasonably request in order to carry out more effectively the intents and purposes of this Participation Agreement, the other Transaction Documents and the Financing Documents, and the transactions contemplated hereby and thereby. The Lessee shall cause the financing statements (and continuation statements with respect thereto) and the documents enumerated and described in Schedule 3, and all other documents necessary or advisable in that connection, to be recorded or filed at such places and times, and in such manner, and will take all such other actions or cause such actions to be taken, as may be necessary or reasonably requested by the Owner Participant, the Collateral Trust Trustee, the Owner Trustee or the Indenture Trustee, in order to establish, preserve, protect and perfect the title of the Owner Trustee to the Undivided Interest and in order to protect the Owner Trustee's interest in the PVNGS Site granted by the Real Property Interest, and the Owner Trustee's rights and interests under this Participation Agreement and the other Transaction Documents and, so long as

any Note is Outstanding, the first and prior security interest of the Indenture Trustee in the Lease Indenture Estate.

(3) *Covenants.*

(i) MAINTENANCE OF CORPORATE EXISTENCE, ETC. The Lessee shall at all times maintain its existence as a corporation under the laws of the State of Texas, *except* as permitted by paragraph (ii) below (*including* any consent given by the Owner Participant pursuant to such paragraph (ii)), and qualify and remain qualified to do business in each jurisdiction where the conduct of its business or the ownership of its properties requires such qualification. The Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its rights (charter and statutory) and franchises: *provided, however*, that the Lessee may discontinue any right or franchise if its board of directors shall determine that such discontinuance is necessary or desirable in the conduct of its business and does not materially and adversely affect or diminish any right of the Owner Participant or the Loan Participant.

(ii) MERGER, SALE, ETC.: OWNER PARTICIPANT. Without the consent of the Owner Participant, the Lessee shall not, and shall not permit any of its subsidiaries to, convey, transfer or lease to any Person any asset except for fair value. Without the consent of the Owner Participant, the Lessee shall not, and shall not permit any of its subsidiaries to, (1) consolidate with any Person, (2) merge with or into any Person or (3) *except for* (i) payments, in accordance with normal dividend policy of the Lessee, of cash dividends to holders of common stock and preferred stock, (ii) exchanges of fixed assets for other fixed assets whose fair value is equal to or greater than the fair value of the fixed assets exchanged or (iii) conveyances, transfers or leases of assets for cash where such cash is to be recorded by the Lessee, convey, transfer, lease or dividend to any Person, in any single transaction or series of related transactions, any asset or assets if the book value of such asset or assets exceeds 5% of its total assets as shown on the most recent consolidated balance sheet of the Lessee delivered to the Owner Participant pursuant to Section 10(b)(1)(i)(A): unless immediately after giving effect to such transaction:

(A) the Person who is the "*Lessee*" under the Facility Lease immediately following such consolidation, merger, conveyance, transfer, lease or dividend (the *Surviving Lessee*) shall be a corporation which (i) is organized under the laws of the United States of America, a state thereof or the District of Columbia, (ii) is a "public utility" under applicable law, (iii) is an ANPP Participant under the ANPP Participation Agreement with respect to Unit 2 (*including* the Undivided Interest), (iv) shall have assumed each covenant and condition of the Lessee under the ANPP Participation Agreement and each other ANPP Project Agreement and (v) holds a valid and subsisting license from the NRC to possess Unit 2 (*including* the Undivided Interest);

(B) the Surviving Lessee, if other than the Lessee immediately prior to such transaction, shall execute and deliver to the Owner Participant an agreement, in form and substance reasonably satisfactory to the Owner Participant, containing the assumption by the Surviving Lessee of each covenant and condition of this Participation Agreement, each other Transaction Document and each Financing Document to which the Lessee immediately prior to such transaction was a party immediately preceding such transaction;

(C) no Default (*other than* failure to deliver documents and other information specified in Section 10(b)(1)(vi)) and no Event of Default shall have occurred and be continuing, no Event of Loss shall have occurred and no Deemed Loss Event shall have been declared;

(D) the Bonds (or, if the Bonds are not then rated, the preferred stock of the Surviving Lessee) after giving effect to such transaction, (1) shall be rated at least

"*investment grade*" by Standard & Poor's Corporation and Moody's Investors Service, Inc. and (2) shall have an investment rating by Standard & Poor's Corporation and Moody's Investors Service, Inc. not less than one "*smallest notch*" below the rating assigned to the Bonds (or, if the Bonds are not then rated, the preferred stock of the Surviving Lessee immediately prior to such transaction (or, if neither of such rating organizations rate the Bonds (or, if applicable, the preferred stock of the Surviving Lessee) at the time, by any nationally recognized rating organization in the United States of America);

(E) the Surviving Lessee shall have a Net Worth equal to or greater than the Net Worth of the Lessee immediately prior to such transactions and equal to or greater than $500,000,000;

(F) the Surviving Lessee shall have delivered to the Owner Participant and the Indenture Trustee an Officers' Certificate and an opinion, reasonably satisfactory to the Owner Participant, of counsel to the Surviving Lessee, each stating that (1) such transaction complies with this subparagraph (ii) and (2) all conditions precedent to the consummation of such transaction have been satisfied and any Governmental Action required in connection with such transaction has been obtained, given or accomplished;

(G) the Surviving Lessee shall have delivered to the Owner Participant an opinion, reasonably satisfactory to the Owner Participant, of independent counsel to the Surviving Lessee stating that such transaction would not result in a loss of any of the tax benefits described in Section 13(c)(1);

(H) such transaction is otherwise permitted by and in compliance with the ANPP Participation Agreement;

(I) the Coverage Ratio of the Surviving Lessee shall be at least 1.6 to 1; and

(J) the Surviving Lessee, if other than the Lessee immediately prior to such transaction, shall have provided a Letter of Credit which meets the requirements set forth in Section 10(b)(3)(xvii) to the Owner Participant in the same amount as available immediately prior to such transaction.

Upon the consummation of such transaction the Surviving Lessee, if other than the Lessee, shall succeed to, and be substituted for, and may exercise every right and power of, the Lessee immediately prior to such transaction under this Participation Agreement, each other Transaction Document and each Financing Document to which the Lessee immediately prior to such transaction was a party immediately prior to such transaction, with the same effect as if the Surviving Lessee had been named herein and therein.

(iii) MERGER, SALE, ETC.; BONDHOLDERS. The Lessee shall not enter into any transaction constituting a consolidation, merger, conveyance, transfer, lease or dividend not permitted by Section 10(b)(3)(ii), irrespective of any consent or waiver of the Owner Participant, *unless* immediately after giving effect to such transaction, the Bonds (or, if the Bonds are not then rated, the preferred stock of the Surviving Lessee) shall be rated at least "*investment grade*" by Standard & Poor's Corporation and Moody's Investors Service, Inc.

(iv) PRIOR NOTICE TO RATING AGENCIES. Prior to entering into any transaction as to which the conditions set forth in paragraphs (ii) and (iii) above shall be applicable, the Lessee shall give notice thereof to the rating agencies specified in such paragraphs, such notice to be sufficiently in advance of such transaction to enable the rating agencies to respond thereto prior to consummation thereof.

(v) INCURRENCE OF DEBT. Without the consent of the Owner Participant, the Lessee shall not, and shall not permit any of its subsidiaries (whether consolidated or unconsolidated) to, issue, assume or become liable in respect of (A) any Debt maturing more than one

year after the date of such issuance, assumption or liability (including current maturities of Debt with an original maturity of more than one year) if, immediately thereafter, (i) the total amount of all Debt of the Lessee and its subsidiaries (whether consolidated or unconsolidated) maturing more than one year after the date of such issuance, assumption or becoming liable (reduced by Cash Available for Investment and excluding $115,000,000 of such Debt until August 31, 1987) shall exceed 70% of Consolidated Capitalization, in each case as shown on a pro forma consolidated balance sheet on and as of the date of such issuance, assumption or becoming liable, or (ii) the Coverage Ratio of the Lessee would be less than 1.6 to 1, or (B) any Debt maturing one year or less after the date of such issuance, assumption or becoming liable (excluding current maturities of Debt with an original maturity of more than one year) if, immediately thereafter, the total amount of all Debt of the Lessee and its subsidiaries (whether consolidated or unconsolidated) maturing one year or less after the date of such issuance, assumption or becoming liable shall exceed 20% of Consolidated Capitalization, in each case as shown on a pro forma consolidated balance sheet on and as of the date of such issuance, assumption or becoming liable. For purposes of the foregoing clause (A), there shall be excluded any Debt which has been legally defeased or for the payment of which funds have been segregated in escrow.

(vi) CHANGE IN CHIEF EXECUTIVE OFFICE. The Lessee shall notify the Owner Trustee, the Owner Participant, the Loan Participant and the Indenture Trustee promptly after any change in the location of its chief executive office and place of business, principal place of business or place where the Lessee maintains its business records.

(vii) NO PETITION AGREEMENT. Prior to the 181st day following the payment in full of the Bonds and the discharge in accordance with its terms of the Collateral Trust Indenture, the Lessee shall not file a petition, or join in the filing of a petition, seeking reorganization, arrangement, adjustment or composition of or in respect of the Loan Participant under the Bankruptcy Code or any other applicable Federal or state law or the law of the District of Columbia.

(viii) ANPP PROJECT AGREEMENTS. Except where the failure to do so would not have a material and adverse effect on the Undivided Interest, the Real Property Interest, Unit 2 or the rights, interests and benefits of the Owner Trustee or the Owner Participant under any Transaction Document, the Lessee at all times, unless the Owner Participant shall otherwise consent, shall (1) perform its obligations under, and comply with the terms of, each ANPP Project Agreement to be complied with by it, (2) exercise its rights under the ANPP Participation Agreement to maintain each ANPP Project Agreement in full force and effect, (3) keep unimpaired all of the Lessee's rights, powers and remedies under each ANPP Project Agreement and prevent any forfeiture or impairment thereof, (4) enforce the ANPP Participation Agreement in accordance with its terms, (5) not take, fail to take or join in any action with respect to any ANPP Project Agreement *except* as otherwise permitted by subclause (7), (6) not accept or approve any amendment or any other change to the ANPP Participation Agreement and (7) not accept or approve any amendment to any ANPP Project Agreement the effect of which would be to (A) reduce the Generation Entitlement Share included in the Undivided Interest, (B) relieve the Lessee of any obligation under the ANPP Participation Agreement in respect of the Undivided Interest or the Real Property Interest on or after the Closing Date, (C) impose, directly or indirectly, on the Owner Trustee or the Owner Participant at any time any obligations, (D) discriminate against (x) the Owner Trustee or the Owner Participant in its capacity as lessor in a sale and leaseback transaction or (y) any present or future ANPP Participant because such ANPP Participant derived or will derive its status as "*Participant*" under the ANPP Participation Agreement from a lessor in a sale and leaseback transaction, or (E) deprive the Owner Trustee or the Owner Participant, as the case may be, of the benefit of Sections 15.2.2, 15.10 and 32.1 of the ANPP Participation Agreement (or any comparable successor provisions). The Lessee shall (X) provide copies of

any proposed amendment to or modification of the ANPP Participation Agreement to the Owner Participant not less than 45 days prior to the execution thereof by the Lessee (*except* where the Lessee is unaware thereof 45 days prior to such execution, in which case the Lessee shall provide notice thereof as promptly as possible after becoming so aware) and upon such execution furnish to the Owner Participant a copy of any such amendment modification as executed.

(ix) NOTES AND BONDS. The Lessee will not, and will not permit any of its subsidiaries or any of its Affiliates over which it has control to, acquire any Notes or Bonds, except in strict compliance with the provisions of Section 1.04(b) of the Bond Supplemental Indenture, as in effect on the Closing Date.

(x) COOPERATION. The Lessee shall cooperate with the Owner Participant and the Owner Trustee in obtaining the valid and effective issue, or, as the case may be, transfer or amendment of all Governmental Actions (including, without limitation, the License) necessary or, in the opinion of the Owner Participant, desirable for the ownership, operation and possession of the Undivided Interest (including the related Generation Entitlement Share) or any portion of Unit 2 represented thereby, or the exercise by the Owner Trustee of the rights created by the Real Property Interest, by the Owner Trustee or any transferee, lessee or assignee of the Owner Trustee for the period from and after the Lease Termination Date. The Lessee shall accept and cooperate in receiving the Special Transfer.

(xi) DECOMMISSIONING. The Lessee shall comply with and discharge all of its obligations under the ANPP Participation Agreement and Applicable Law with respect to Decommissioning, and will use its best efforts to ensure that Decommissioning is accomplished utilizing the safest means available. The Lessee shall (i) establish the Decommissioning Trust Fund and, if the Lessee elects, a second fund in order to meet the requirements of Section 468A of the Code (the Second Fund), (ii) grant to the Owner Trustee a security interest in the Decommissioning Trust Fund and the Second Fund, if any, as security for the performance by the Lessee of its obligations under this Section 10(b)(3)(xi), and (iii) provide any additional funds required in respect of Decommissioning to the extent that the Decommissioning Trust Fund and the Second Fund, if any, are inadequate for any reason. The Lessee agrees to pay, be solely responsible for, indemnify, and hold harmless each Indemnitee and any successor, assign or transferee (including by way of a lease) of any Indemnitee, from and against all Decommissioning Cost and all claims relating or allocable to, or incurred in connection with, Decommissioning notwithstanding (i) the occurrence of the Lease Termination Date, any Event of Default, Default, Event of Loss, Deemed Loss Event or any other event or occurrence, (ii) any provision of any Transaction Document, or other document, instrument or agreement, including the ANPP Participation Agreement, (iii) any provision of the License or any other license or permit, or (iv) any Applicable Law, charter or by-law provision, Governmental Action or other impediment (including, without limitation, the bankruptcy or insolvency of the Lessee), either now or hereafter in effect; it being understood that the obligations of the Lessee hereunder are and shall be absolute, unconditional and irrevocable and shall not be affected by any circumstances of any character, including, without limitation, those of the type set forth in Section 4 of the Facility Lease.

Not later than July 1, 1989, the Owner Participant and the Lessee shall cause a Person or Persons, selected by the Lessee and reasonably acceptable to the Owner Participant (which may include any Person designated by the ANPP Participants to conduct a review of decommissioning costs related to PVNGS, provided such Person be reasonably acceptable to the Owner Participant), who shall be expert in the area of decommissioning of nuclear electric generating units, to establish a best estimate of Decommissioning Cost and to establish the periodic payments to be deposited on the following October 1 or April 1, as the case may be, and every six months thereafter in the Decommissioning Trust Fund and the Second Fund, if any, in order to make the aggregate amount in the Decommissioning Trust

Fund and the Second Fund, if any, at October 1, 2013, equal to Decommissioning Cost. No later than one month before October 1 of each of the years 1994, 1999, 2004, 2009, 2011 and 2013, and not later than one month before October 1 of each odd-numbered year thereafter until Decommissioning shall have been completed, the Owner Participant and the Lessee shall cause such a Person or Persons to review and revise, if necessary, as of such October 1, such estimate and such amounts. The initial estimate and each such review shall take into consideration (i) the experience of the electric utility industry generally in the decommissioning of nuclear generating units, (ii) all Applicable Law and Governmental Action relating to the decommissioning of nuclear generating units, (iii) all technological or scientific developments in the decommissioning of nuclear generating units, (iv) earnings and projected earnings during the Basic Lease Term on funds paid into the Decommissioning Trust Fund and the Second Fund, if any, prior to such review, (v) the amount of periodic payments required to be made into the Decommissioning Trust Fund and the Second Fund, if any, during the Basic Lease Term subsequent to such October 1, (vi) the investments permitted under the Decommissioning Trust Agreement and (vii) any other facts or circumstances relating to the decommissioning of nuclear generating units which such Person or Persons shall deem relevant to such review. In conducting such review, such Person or Persons shall be permitted to employ, at the expense of the Lessee, such additional consultants, including, but not limited to, investment advisors and legal counsel, as it or they shall reasonably deem necessary for such review. In addition, if as a result of any Governmental Action dealing with decommissioning of nuclear generating units (including, but not limited to, the financing thereof or responsibility therefor), either the Owner Participant or the Lessee shall reasonably conclude that the Decommissioning Trust Fund and the Second Fund, if any, are inadequate or excessive for the purposes thereof, it may request a review of the Decommissioning Trust Fund and the Second Fund, if any, pursuant to this Section 10(b)(3)(xi). The determination of such Person or Persons shall be conclusive and binding as between the parties hereto. In no event shall any periodic payment be less than zero. The Lessee shall not deposit any funds in respect of Decommissioning Cost in any fund other than the Decommissioning Trust Fund and the Second Fund, if any. All costs incurred pursuant to this Section 10(b)(3)(xi) shall be paid by the Lessee.

The Lessee agrees to pay, and shall indemnify, defend and hold harmless each Indemnitee and any successor, assign or transferee (including by way of a lease) of any Indemnitee, on an After-Tax Basis, from and against any and all Taxes howsoever imposed with respect to the Decommissioning Trust Fund or the Second Fund, including, without limitation, the establishment, existence or funding of the Decommissioning Trust Fund or the Second Fund, if any, and the earnings on amounts paid into or retained by the Decommissioning Trust Fund or the Second Fund, if any (whether imposed on or with respect to such Indemnitee, successor, assign or transferee, the Decommissioning Trust Fund or the Second Fund, if any, the Decommissioning Trustee, the Lessee, or any Affiliate of any thereof). Any such indemnity payment shall be payable not later than 10 days after demand by the Indemnitee entitled thereto. As to any matter indemnified pursuant to the foregoing sentence involving Federal income taxes, the contest provisions contained in Section (13)(c)(9) shall apply, *mutatis mutandis*, and as to other matters indemnified pursuant to the foregoing sentence, the contest provisions contained in Section 13(b)(4) shall apply, *mutatis mutandis*.

In the event that (i) the Facility Lease shall have expired or been terminated (other than in connection with an Event of Loss, Deemed Loss Event or Event of Default), (ii) the Lessor shall (other than in connection with a termination pursuant to Section 14 of the Facility Lease) sell the Undivided Interest and the Real Property Interest to any Person (including the Lessee in connection with the exercise by the Lessee of the purchase option provided by Section 13(b) of the Facility Lease) and (iii) the net sales proceeds (discounted back semiannually to the Lease Termination Date at a rate per annum equal to the Prime Rate) received by the Lessor shall exceed 20% of Facility Cost, then the Lessor shall reimburse the

Lessee from any additional net proceeds of such sale in an amount equal to such net proceeds attributable to the decommissioning obligation of the Lessee under this Section 10(b)(3)(xi) with respect to the period from and after the date of such sale through the remaining useful life of Unit 2 (whereupon the reimbursement obligations of the Lessor under this paragraph shall terminate): *provided, however*, that any such reimbursement shall not reduce the amount of such net sales proceeds (discounted as aforesaid) retained by the Lessor to an amount equal to less than 20% of Facility Cost.

The reimbursement obligations of the Lessor under the preceding paragraph are for the sole benefit of the Lessee, and no other Person shall be a third party beneficiary with respect thereto. In the event that the Lessee and the Lessor shall not agree as to the amount of net sales proceeds attributable to the decommissioning obligation of the Lessee under this Section 10(b)(3)(xi), such amount shall be determined by the Appraisal Procedure.

The Owner Trustee and El Paso shall cause the Decommissioning Trust Agreement to be executed as promptly as practicable after the Closing Date. The Decommissioning Trust Agreement shall be based upon the version thereof heretofore agreed to insofar as restrictions on permissible investments are concerned. The terms and conditions thereof shall provide that (a) the arrangements thereunder shall, to the extent consistent with this Section 10(b)(3)(xi), be structured to permit qualification under Section 468A of the Code and (b) to the maximum possible extent consistent with the Owner Trustee's being granted a security interest in the Decommissioning Trust Fund or the Second Fund of the Lessee, provide protection to the Owner Trustee and the Owner Participant against creditors of El Paso and against the bankruptcy or insolvency of El Paso.

(xii) COMMERCIAL OPERATION OF UNIT 2. On or before September 30, 1987, Unit 2 will have achieved an electric output of not less than 95% of its nominal capacity of 1,270 megawatts during a test period of at least 100 consecutive hours.

(xiii) OTHER LEASES WITH RESPECT TO PVNGS. The Lessee agrees that it will deliver to the Owner Participant, promptly following execution and delivery thereof, all transaction documents (the New Lease Documents) pertaining to any true lease transaction that the Lessee or any Affiliate of the Lessee may enter into with respect to Unit 2. The parties hereto agree, upon the written request of the Owner Participant delivered within 60 days of receipt of such transaction documents, to enter into (within a reasonable time as specified in such request) such amendments to the Facility Lease and the other Transaction Documents as are necessary or desirable to (a) include as Events of Loss, Deemed Loss Events and provisions relating to Economic Useful Life any or all (as the Owner Participant may select) comparable events, occurrences or circumstances under the New Lease Documents and (b) delete or modify any or all (as the Owner Participant may select) Events of Loss, Deemed Loss Events and provisions relating to Economic Useful Life in connection with the foregoing; it being the intent and purpose of the foregoing to permit the Owner Participant to cause the Facility Lease and the other Transaction Documents to be amended, as it shall elect, to augment the specified Events of Loss, Deemed Loss Events and provisions relating to Economic Useful Life to include, *mutatis mutandis*, any or all comparable events, occurrences and circumstances under the New Lease Documents; *provided, however*, that each such additional Event of Loss, Deemed Loss Event and provision relating to Economic Useful Life shall include, *mutatis mutandis*, the same qualifications and incorporate, *mutatis mutandis*, the same definitions as shall be provided in the New Lease Documents and that in connection with the foregoing the Owner Participant shall be entitled to amalgamate any such additional Events of Loss, Deemed Loss Events and provisions relating to Economic Useful Life into the then present provisions of the Facility Lease and the other Transaction Documents so as to succinctly incorporate such additional events, occurrences and circumstances. In connection with any proposed amendment under the foregoing provisions, neither the Lessor nor the Lessee shall be required to accept any change to the schedules of Casualty Values. Spe

Termination Values, Special Casualty Values, Enhanced Casualty Values and Termination Values attached to the Facility Lease. The Owner Participant agrees. without limiting its rights under Section 13(c), that it will not seek any amendment to the Facility Lease and the other Transaction Documents pursuant to this Section 10(b)(3)(xiii) unless the Owner Participant shall have determined, based upon an opinion of its counsel and after consultation with the Lessee, that such amendment will not materially adversely affect its status as owner of the Undivided Interest for Federal income tax purposes.

(xiv) CERTAIN CHANGES TO ANPP PARTICIPATION AGREEMENT. El Paso shall use its best efforts to grant a ground lease to the Lessor covering the PVNGS Site (which shall provide for rent of $1 per year until the expiration of the Lease Term and Fair Market Rental Value thereafter), in which case the Lessor shall simultaneously sell back to the Lessee the realty covered by the Deed and the Assignment of Beneficial Interest for a price equal to the Real Estate Investment. The parties hereto will cooperate in effecting the foregoing. El Paso shall, within a reasonable time following the Closing Date, undertake to have Section 15.6.3.1 and Section 15.8 of the ANPP Participation Agreement amended to delete the requirement in such Section 15.6.3.1 and Section 15.8 that the rights and remedies of the parties to sale and leaseback transactions be subject and subordinate to the rights and remedies of the ANPP Participants. El Paso's obligations under the preceding sentence shall be discharged if El Paso shall once introduce, for consideration by all the ANPP Participants, an amendment, in form and substance reasonably satisfactory to the Owner Participant, to the ANPP Participation Agreement and vote affirmatively for such amendment in connection with all deliberations concerning such amendment by the ANPP Participants and all committees of ANPP. If at any time, through the efforts of El Paso or otherwise, any of the restrictions on lessors contained in Sections 15.6.3, 15.8, 15.10 and 20.8 of the ANPP Participation Agreement are eliminated or reduced for or are made inapplicable to (through amendment, waiver or otherwise) any lessor acquiring an interest in all or any part of any Generating Unit or Capital Improvement (as such terms are defined in the ANPP Participation Agreement), El Paso shall cause such restrictions to be comparably eliminated or reduced or made inapplicable to the Owner Trustee. The parties hereto agree to enter into such amendments to this Participation Agreement and the other Transaction Documents and such other instruments and documents as shall be necessary or appropriate to effect the foregoing.

If for any reason any of the restrictions on lessors contained in Section 15.6.3, 15.8 or 15.10 of the ANPP Participation Agreement are applicable on the Lease Termination Date or the Lessee shall not have granted to the Lessor a ground lease as contemplated above by the Lease Termination Date, and the effect of such restriction or restrictions is to reduce the amount received by the Lessor upon a disposition (by sale, lease or otherwise) from what would have been realized had such restriction or restrictions not been applicable or had such ground lease been in effect, then the Lessee shall pay to the Lessor an amount equal to such reduction, payable within 10 days after determination of such amount. Such amount shall be determined promptly after the Lease Termination Date by agreement between the Owner Participant and the Lessee or, if they shall be unable to agree within 30 days after the Lease Termination Date, by the Appraisal Procedure.

(xv) ACQUISITION OF OTHER LEASED INTERESTS IN PVNGS. The Lessee shall not acquire, by purchase or lease, any interest in PVNGS from or through any ANPP Participant (including any interest at any time owned by any other ANPP Participant) from and after the date which is five years prior to the date on which the Lessee is required to give its notice pursuant to Section 13(a) of the Facility Lease unless and until the Lessee shall have irrevocably given the notice pursuant to Section 13(a) of the Facility Lease of its election to exercise the purchase option permitted by Section 13(b) of the Facility Lease.

(xvi) OTHER AGREEMENTS. The Lessee shall not enter into or become bound by any agreement or arrangement which would proscribe its ability to assume the obligations and

liabilities of the Owner Trustee in accordance with Section 3.9(b) of the Indenture or to accept the Special Transfer.

(xvii) LETTER OF CREDIT. At all times during the Basic Lease Term there shall be in full force and effect for the benefit of the Owner Participant an irrevocable, transferable stand-by letter or letters of credit (such letter or letters of credit and all letters of credit or other credit support instruments issued or executed from time to time being herein referred to as the *Letter of Credit*) having an original stated term of not less than 2 years, issued by an Eligible Bank or Eligible Banks (the *Issuing Bank*), or some other form of credit support acceptable to the Owner Participant in its sole judgment. The initial Letter of Credit shall be issued by BONY and shall be substantially in the form heretofore agreed upon. Each Letter of Credit shall (1) be in an amount not less than Casualty Value less the principal amount of and accrued and unpaid interest (since the Basic Rent Payment Date immediately preceding each date in the schedule of Casualty Value) on the Notes Outstanding from time to time (except that if, as a result of the occurrence of an event requiring an adjustment to Rent pursuant to Sections 3(d) or 3(e) of the Facility Lease or Section 13, the amount available to be drawn under the Letter of Credit becomes less than such amount, the Lessee shall not be in default under this provision if, within 30 days of the implementation of such adjustment pursuant to Section 3(f) of the Facility Lease, the Lessee replaces the Letter of Credit with a Letter of Credit complying with the terms and provisions of this Section 10(b)(3)(xvii), and except that until January 2, 1992, the amount of the Letter of Credit shall not be less than the amount of the initial Letter of Credit issued by BONY), (2) permit partial drawings, (3) permit the Owner Participant to assign all or any part of its interest therein without the Issuing Bank's or the Lessee's consent, (4) not contain provisions materially less favorable to the Owner Participant than those of the initial Letter of Credit, and (5) provide for reinstatement within three Business Days from the date of any drawing thereunder in respect of Supplemental Rent (other than Casualty Value, Termination Value, Special Termination Value, Special Casualty Value or Enhanced Casualty Value) (except that the Lessee shall not be in default under this provision if such a reinstatement does not occur, but the Lessee replaces the Letter of Credit within 30 days of the date of such a drawing with a Letter of Credit complying with the terms of this Section 10(b)(3)(xvii)).

Any reimbursement agreement between the Lessee and the Issuing Bank relating to any Letter of Credit shall (1) not contain default or termination provisions which are less favorable to the Lessee than those in the Letter of Credit Agreement, (2) require that the Issuing Bank pay any draws on the Letter of Credit from general funds, (3) not permit the Issuing Bank to exercise its right to set off against any amount owed as reimbursement to the Issuing Bank for draws on the Letter of Credit and (4) if the Lessee's reimbursement obligation is collateralized, be no less favorable to the Owner Participant than the terms of the Letter of Credit Agreement. The Lessee shall not amend any provision of the Letter of Credit Agreement or any reimbursement agreement with respect to any replacement Letter of Credit in a manner materially adverse to the interests of the Owner Participant (including without limitation provisions relating to termination of the Letter of Credit) without the prior written consent of the Owner Participant. The Lessee shall give the Owner Participant notice of the scheduled expiration date of the Letter of Credit not more than 90 nor less than 60 days before the scheduled expiration date. If BONY or any Issuing Bank has its long-term unsecured debt securities (or if it has no long-term unsecured debt securities rated, its long-term deposits) downrated to less than Baa1 by Moody's, then within 30 days thereafter the Lessee shall replace the Letter of Credit with one issued by an Eligible Bank. The Lessee will deliver any certificates required to be delivered under the Letter of Credit as and when required.

If the Lessee has not secured a commitment for a renewal or replacement Letter of Credit complying with all the terms of this Section 10(b)(3)(xvii) on or prior to the 60th da

preceding the stated expiration date of the Letter of Credit then in effect, or within 15 days after any Issuing Bank shall have given not less than 30 days' notice of the termination of its Letter of Credit prior to its stated expiration date, the Lessee shall notify the Owner Participant of such fact and the Owner Participant shall have the opportunity to find a Person acceptable to it willing to issue a letter of credit for the account of the Lessee on substantially the same terms as the Letter of Credit then in effect, except that the annual fee payable under such replacement letter of credit may be up to ½% of the maximum drawable amount under the Letter of Credit. If the Owner Participant has not so found a Person on or prior to the 45th day preceding the stated expiration date of the Letter of Credit then in effect, or within 25 days after any Issuing Bank shall have given not less than 30 days' notice of the termination of its Letter of Credit prior to its stated expiration date or, when the Issuing Bank may terminate the Letter of Credit on less than 30 days' notice, at least five days prior to the termination of the Letter of Credit pursuant to such notice, the Lessee shall, unless an Event of Default shall have occurred and be continuing or an Event of Loss shall have occurred or Deemed Loss Event shall have been declared, have the right to purchase the Undivided Interest and the Real Property Interest at any time thereafter at least two Business Days before the expiration date of the Letter of Credit for an amount equal to the excess of (x) the greater of (i) Enhanced Casualty Value and (ii) Fair Market Sales Value of the Undivided Interest and the Real Property Interest, over (y) the unpaid principal amount of, and (if such Enhanced Casualty Value is equal to or greater than such Fair Market Sales Value) accrued interest since the last preceding Basic Rent Payment Date on, the Notes outstanding on such purchase date, after giving effect to the payment, if any, of the principal installment due and payable and paid in respect of the Notes on such date. If the Lessee shall have made such payment and shall have assumed all obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Lessor shall, so long as no Default or Event of Default shall have occurred and be continuing, Transfer the Undivided Interest and the Real Property Interest to the Lessee. If the Lessee shall have made such payment but shall not have assumed all obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Owner Participant shall effect the Special Transfer, *in which case, without further act on the part of the Lessor or the Lessee,* (i) the obligation of the Lessee to pay further Basic Rent shall be reduced to an amount, payable on each Basic Rent Payment Date thereafter, equal to the aggregate amount of principal, premium, if any, and accrued interest then payable on all Notes then Outstanding and (ii) the Facility Lease shall become a security agreement for all purposes of Applicable Law.

The foregoing paragraphs of this Section 10(b)(3)(xvii) are for the benefit only of the Owner Participant and the Lessee.

Section 11. Conditions Precedent.

(a) *Owner Participant and Loan Participant Conditions.* The obligation of (x) the Loan Participant to make the Loan on the Closing Date, and (y) the Owner Participant to make the Investment and the Real Estate Investment on the Closing Date, shall be subject to the fulfillment, on or prior to the Closing Date, of the following conditions precedent (each instrument, document, certificate, opinion, policy or writing referred to below to be in form and substance satisfactory to the Loan Participant and the Owner Participant):

(1) *Notice of Closing; Transaction Documents.* Each shall have received executed copies, or sets of executed counterparts, of the Notice of Closing, each Transaction Document, each Financing Document and such other documents as are contemplated by this Participation Agreement.

(2) *Authentication Request.* The Owner Trustee shall have delivered to the Indenture Trustee a request, dated the Closing Date, authorizing the Indenture Trustee to authenticate and

deliver to the Collateral Trust Trustee (pursuant to the Loan Participant's order herein contained) the Initial Series Notes upon the Loan Participant's payment of the proceeds of the Loan.

(3) *Original Counterpart of the Facility Lease.* The Owner Trustee shall have delivered to the Indenture Trustee the counterpart of the Facility Lease marked "THIS COUNTERPART IS THE ORIGINAL COUNTERPART."

(4) *Due Authorization, Execution and Delivery.* All of the documents described in clause (1) of this Section 11(a) shall have been duly authorized, executed and delivered by the respective parties thereto and shall be in full force and effect on the Closing Date, and the Loan Participant and the Owner Participant shall have received evidence as to such authorization, execution and delivery.

(5) *Initial Series Note and Bond Transactions; Investment.* In the case of the Loan Participant, (A) the Loan Participant shall have received the proceeds from the sale of the Initial Series Bonds as a result of the consummation of the transactions contemplated by the Underwriting Agreement, (B) the Owner Trustee shall have executed, and the Indenture Trustee shall have authenticated and delivered to the Loan Participant, the Initial Series Notes evidencing the Loan made on the Closing Date, (C) the Collateral Trust Trustee shall have accepted the Bond Supplemental Indenture and shall have released the amount of the Loan from the lien of the Collateral Trust Indenture, and (D) the Owner Participant shall have made the Investment and the Real Estate Investment.

(6) *Loan.* In the case of the Owner Participant, the Loan Participant shall have made the Loan.

(7) *ANPP Administrative Committee.* The ANPP Administrative Committee shall have made the finding required by Section 15.6.2 of the ANPP Participation Agreement.

(8) *No Violation.* The making by the Owner Participant of the Investment and the Real Estate Investment and by the Loan Participant of the Loan shall not violate any Applicable Law.

(9) *No Default.* No Default or Event of Default or, in the case of the Loan Participant, Indenture Default or Indenture Event of Default, shall have occurred and be continuing and no Event of Loss or Deemed Loss Event shall have occurred.

(10) *Recording and Filing.* The recordations and filings described in Schedule 3 shall have been duly made and all recording and filing fees with respect thereto shall have been paid. A certificate on Form U-7D with respect to the Facility Lease shall have been duly executed and delivered and shall be in due form for filing.

(11) *Representations and Warranties.* In the case of the Owner Participant, the representations and warranties of the Loan Participant, the Owner Participant, FNB and the Owner Trustee and the Indenture Trustee set forth in Sections 6(a), 7(a), 8(a) and 9(a), respectively, shall be true and correct on and as of the Closing Date with the same effect as though made on and as of the Closing Date, and the Loan Participant and the Owner Participant shall have received an appropriate certificate, dated the Closing Date, to such effect.

(12) *Representations and Warranties of the Lessee.* (A) The representations and warranties of the Lessee set forth in Section 10(a), in any other Transaction Document, in the Underwriting Agreement and in any certificate or other document to which the Lessee is a party executed or delivered in connection with the transactions contemplated hereby or thereby shall be true and correct on and as of the Closing Date with the same effect as though made on and as of the Closing Date and (B) no Deemed Loss Event or Event of Loss shall have occurred and no Default or Event of Default shall have occurred and be continuing and the Loan Participant and the Owner Participant shall have received an Officers' Certificate of the Lessee, dated the Closing Date, to such effect. The following statements shall be true, and such Officers' Certificate shall state that: (i) there has been no material adverse change in the properties, business, prospects or financial condition of the Lessee since September 30, 1986, and no event has occurred since that

which would materially adversely affect the ability of the Lessee to perform its obligations under this Participation Agreement or any other Transaction Document or Financing Document and (ii) to such officer's knowledge there has been no material adverse change or development since September 30, 1986 relating to Unit 2, to PVNGS or to nuclear power plants generally which affects the operation of Unit 2 or the value of the Undivided Interest or the financial condition of the Lessee.

(13) *Opinions of Counsel.* In the case of the Owner Participant, it shall have received (a) favorable opinions of Mudge Rose Guthrie Alexander & Ferdon, Shaw, Pittman, Potts & Trowbridge, Meyer, Hendricks, Victor, Osborn & Maledon, Rodey, Dickason, Sloan, Akin & Robb, P.A. and Baker & Botts, each dated the Closing Date and addressed to the Owner Participant, addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents and Financing Documents as the Owner Participant may reasonably request, (b) a favorable opinion of Cravath, Swaine & Moore, as special counsel to the Owner Participant, with respect to such Federal tax and other tax matters as the Owner Participant may reasonably request, and (c) a favorable opinion of Sullivan & Cromwell, counsel to BONY, addressing such matters relating to the Letter of Credit and the Letter of Credit Agreement as the Owner Participant may reasonably request. In the case of the Loan Participant, it shall have received favorable opinions of Cravath, Swaine & Moore and Mudge Rose Guthrie Alexander & Ferdon each dated the Closing Date and addressed to the Loan Participant addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents and Financing Documents as the Loan Participant may reasonably request. The Loan Participant and the Owner Participant shall have received favorable opinions of Mudge Rose Guthrie Alexander & Ferdon, Kemp, Smith, Duncan & Hammond, Snell & Wilmer and Csaplar & Bok, each dated the Closing Date and addressed to each such Person, addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents and Financing Documents as either such Person may reasonably request.

(14) *Taxes.* All Taxes, if any, payable in connection with the execution, delivery, recording and filing of the Transaction Documents and Financing Documents and all the documents and instruments described in Schedule 3, or in connection with the issue and sale of the Initial Series Notes and the Initial Series Bonds and the making by the Owner Participant of the Investment and the Real Estate Investment, and all Taxes payable in connection with the consummation of the transactions contemplated hereby and by the other Transaction Documents and Financing Documents, shall have been duly paid in full.

(15) *Appraisals.* The Owner Participant shall have received a letter, dated the Closing Date and addressed to the Owner Participant, from Ebasco Business Consulting Company containing an appraisal of the Undivided Interest, which appraisal shall cover such matters as the Owner Participant shall have requested and shall reflect such appraiser's reasonable conclusion that (w) the fair market value in the hands of the Owner Trustee of the Undivided Interest on the Closing Date, taking into account the effect and existence of the Real Property Interest, the Assignment and Assumption and the ANPP Participation Agreement, is equal to the Purchase Price as set forth in the Notice of Closing, (x) the estimated remaining economic useful life of Unit 2 (including the Undivided Interest) is at least thirty-eight and three-quarters years, (y) at the expiration of the first four years of the Renewal Term the Undivided Interest will have an estimated residual value, taking into account the effect and the existence of this Participation Agreement, the Real Property Interest, the Assignment and Assumption and the ANPP Participation Agreement, in the hands of the Owner Trustee or a Person (unrelated to the Lessee) who could lease or purchase the Undivided Interest from the Owner Trustee for commercial use, equal to at least 20% of the Purchase Price, determined without including in such value any increase or decrease for inflation or deflation during the period from the Closing Date through the expiration of the first four years of the Renewal Term, and (z) taking into account the effect and the existence of the Real Property Interest, the Assignment and Assumption and the ANPP Participation Agreement, the

use of the Undivided Interest at the Lease Termination Date by any User is feasible from an engineering and economic point of view and is commercially reasonable. The Owner Participant shall have received an appraisal of the value of the Real Property Interest, which appraisal shall reflect the appraiser's reasonable conclusion that the fair market value in the hands of the Owner Trustee of the Real Property Interest on the Closing Date is equal to the Real Estate Investment as set forth in the Notice of Closing and shall cover such other matters as the Owner Participant shall have requested.

(16) *Offering and Sale of Interest.*. The Loan Participant, the Owner Trustee and the Owner Participant shall have received a letter or letters from Babcock & Brown Financial Corporation and Systems Marketing, Inc. with respect to the offering and sale of the interests in the transactions contemplated by this Participation Agreement and each other participation agreement dated the date hereof relating to an undivided interest in Unit 2.

(17) *Governmental Action.* The Lessee shall have obtained all Governmental Actions (including, without limitation, the License Amendment, the New Mexico Order, and the FERC Order, which orders shall be final and nonappealable) required or, in the opinion of the Owner Participant, advisable, for the consummation of all the transactions contemplated by this Participation Agreement and the other Transaction Documents and the Financing Documents.

(18) *No Change or Proposed Change in Tax Laws.* No change shall have occurred or been proposed in the Code or any other tax statute, the regulations thereunder or any interpretation thereof or executive order in respect thereof that would adversely affect the tax consequences anticipated by the Owner Participant with respect to the transactions contemplated by the Transaction Documents, unless the effect of such change or proposed change can be wholly accommodated through Section 3(d) of the Facility Lease.

(19) *Title Matters; Certain Reports.* The Owner Participant shall have received (i) an updated title report, dated the Closing Date, with respect to the Nuclear Plant Site (as defined in the ANPP Participation Agreement), which report does not disclose any exceptions materially adverse to the possession or operation of Unit 2 or the performance by the Lessee of its obligations under this Participation Agreement and the other Transaction Documents, (ii) such title insurance policies with respect to the Nuclear Plant Site (as defined in the ANPP Participation Agreement) and improvements thereon (including the Owner Trustee's interests therein) as it shall have reasonably requested, (iii) such insurance policies with respect to PVNGS or the Lessee as the Owner Participant shall have requested, (iv) a survey of the Nuclear Plant Site, (v) such certificates and reports from the Lessee, independent insurance brokers and the insurance manager for PVNGS with respect to insurance relating to PVNGS, Unit 2 or the Undivided Interest as the Owner Participant shall have requested, (vi) such certificates and reports from its independent insurance consultant as the Owner Participant shall have requested, (vii) such certificates and reports from its independent engineering consultant as the Owner Participant shall have requested and (viii) a site arrangement plan of the Nuclear Plant Site.

(20) *Special Certificate of the Lessee.* The Owner Participant shall have received a certificate of the Lessee, dated the Closing Date, to the effect that, (A) Unit 2 has been in all material respects completed in a good and workmanlike manner and in accordance with the plans and specifications relating thereto (as the same may have been modified from time to time to reflect Unit 2 as actually completed), Applicable Law (including, without limitation, the regulations of the NRC), the License and the ANPP Participation Agreement, (B) all Governmental Actions necessary for the commercial operation of Unit 2 (including the Undivided Interest) have been received, other than any such Governmental Action that is routine in nature for PVNGS or that cannot be obtained under Applicable Law, or is typically not applied for, prior to the time it is required, and that the Lessee expects to be obtained in due course, (C) the plans and specifications relating to Unit 2 are complete in all material respects (modified or to be modified as aforesaid) and consistent with prudent engineering practice, (D) the testing and s

procedures and the operation and maintenance programs for Unit 2 were consistent with such plans and specifications. Applicable Law and prudent engineering practice. (E) Unit 2 has been tested in accordance with all customary testing and startup procedures which would have been performed on or prior to the Closing Date, and such tests and procedures indicate that Unit 2 will have the capacity and functional ability to perform in commercial operation, on a continuing basis, the function for which it is designed in accordance with such plans and specifications and has a nominal capacity of 1,270 megawatts electric. (F) all material Governmental Actions relating to the construction, operation or maintenance of Unit 2 are listed in a schedule thereto. (G) there is no present event or condition which would materially adversely affect the capability of Unit 2 to operate in accordance with such plans and specifications and (H) based upon the Lessee's present reasonable expectations, and subject to Applicable Law, the rights and interests made available to the ANPP Participants (including the Lessee) pursuant to the ANPP Participation Agreement (including the Real Property Interest), as such rights and interests are made available or are to be made available to the Owner Trustee, any successor or assign of the Owner Trustee or any "Transferee" of the Owner Trustee under Section 15.10 of the ANPP Participation Agreement, under and pursuant to this Participation Agreement, and the Assignment and Assumption, are adequate to permit, during the period following the Lease Termination Date or the taking of possession of the Undivided Interest and the Real Property Interest in the exercise of remedies under Section 16 of the Facility Lease, in accordance with the ANPP Project Agreements (i) the construction, location, occupation, connection, maintenance, replacement, renewal, repair or removal of Unit 2, (ii) the use, operation and possession of Unit 2, (iii) the construction, use, operation, possession, maintenance, replacement, renewal and repair of all alterations, modifications, additions, accessions, improvements, appurtenances, replacements and substitutions thereof and thereto, (iv) adequate ingress to and egress from Unit 2 for any reasonable purpose in connection with the exercise of rights under the Assignment and Assumption and the ownership and possession of the Undivided Interest and the Real Property Interest and (v) the obtaining of nuclear fuel, of water and of transmission services to the ANPP Switchyard sufficient to enable delivery of the Generation Entitlement Share related to the Undivided Interest in a commercially efficient manner and on commercially reasonable terms. Nothing in the foregoing clause (H) shall be deemed to be or be construed as a warranty by the Lessee as to the performance by the Operating Agent of its obligations under the ANPP Participation Agreement. Such certificate shall also be attested to by the Vice President — Power Supply of the Lessee, who shall state that (i) as a qualified engineer, he has made such investigation, inspection and review as he deems necessary to make the statements in such certificate and (ii) to the best of his knowledge, the statements of the Lessee in such certificate are true and correct.

(21) *Registration Statement.* The Loan Participant and the Owner Participant shall have received an Officers' Certificate of the Lessee, dated the Closing Date, to the effect that on the date it became effective and on the Closing Date, the Registration Statement did not and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading, and the final prospectus did not and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading under the circumstances under which any such shall have been made.

(22) *Completion of Documentation.* All schedules to and blanks in the Transaction Documents and Financing Documents shall have been completed to the satisfaction of the parties hereto.

(23) *Commitment Fee.* The Lessee shall have paid the Owner Participant before the Closing Date a commitment fee in the amount heretofore agreed upon.

(24) *Other Matters.* The Loan Participant and the Owner Participant shall have received such other documents, certificates and opinions as the Loan Participant or the Owner Participant, or their respective counsel, shall reasonably request.

(b) *Lessee Conditions.* The obligation of the Lessee to sell and lease back the Undivided Interest and to grant the Real Property Interest on the Closing Date pursuant to Section 4 shall be subject to the fulfillment on or prior to the Closing Date of the following conditions precedent, in each case in form and substance satisfactory to the Lessee:

(1) *Paragraph (a) Documents.* The Lessee shall have received copies of the documents, certificates, opinions (other than the opinion referred to in clause (b) of the first sentence of Section 11(a)(13)), appraisals, letters and forms described in paragraph (a) of this Section 11. All such opinions shall be addressed to the Lessee, except the opinions of (i) Shaw, Pittman, Potts & Trowbridge, (ii) Meyer, Hendricks, Victor, Osborn & Maledon, (iii) Rodey, Dickason, Sloan, Akin & Robb, (iv) Baker & Botts, (v) Mudge Rose Guthrie Alexander & Ferdon to the Owner Participant and to the Loan Participant and (vi) Cravath, Swaine & Moore to which reference is made in clause (b) of the first sentence of Section 11(a)(13).

(2) *Payment of Purchase Price.* The Owner Trustee shall have paid to the Lessee an amount equal to the Purchase Price and the acquisition price of the Real Property Interest.

(3) *Special Opinion of the Lessee's Counsel.* The Lessee shall have received a favorable opinion of Kemp, Smith, Duncan & Hammond, dated the Closing Date and addressed to the Lessee, with respect to such Federal tax and other matters as the Lessee may reasonably request.

(4) *Accountant's Letter.* The Lessee shall have received a letter satisfactory to it from Peat, Marwick, Mitchell & Co., to the effect that, under generally accepted accounting principles and FASB No. 13, the Facility Lease is an "operating lease."

(5) *Orders.* The FERC Order, the NMPSC Order and the License Amendment shall be in form and substance satisfactory to the Lessee.

(6) *Registration Statement.* The Registration Statement shall have been declared effective by the SEC and the Underwriters shall have purchased, or shall substantially simultaneously purchase, the Initial Series Bonds pursuant to the Underwriting Agreement.

(7) *Completion of Documentation.* All schedules to and blanks in the Transaction Documents and Financing Documents shall have been completed to the satisfaction of the parties hereto.

(c) *Conditions to Releveraging.* The obligation of the Loan Participant to make, and the Owner Trustee to borrow the proceeds of, a Releveraging Loan on a Releveraging Date shall be subject to the fulfillment on or prior to such Releveraging Date of the following conditions precedent (each instrument, document, certificate, opinion or other writing to be in form and substance satisfactory to the Loan Participant and the Owner Participant):

(1) *Authentication Request, etc.* The Owner Trustee shall have delivered to the Indenture Trustee a request, dated such Releveraging Date, authorizing the Indenture Trustee to authenticate and deliver a Releveraging Note to the Loan Participant upon its payment to the Indenture Trustee, for the account of the Owner Trustee, of the proceeds of such Releveraging Loan.

(2) *Releveraging Note and Bond Transactions.* (A) The Loan Participant shall have received the proceeds from the sale of Releveraging Bonds in an amount sufficient to make such Releveraging Loan, (B) the Owner Trustee shall have executed, and the Indenture Trustee shall have authenticated and delivered to the Loan Participant, a Releveraging Note or Notes evidencing such Releveraging Loan and (C) the Collateral Trust Trustee shall have accepted a supplement to the Collateral Trust Indenture subjecting such Releveraging Note or Notes to the lien of the Collateral Trust Indenture and shall have released the amount of such Releveraging Loan from the lien of the Collateral Trust Indenture.

(3) *No Violation.* The return to the Owner Participant of a portion of the Investment and the making by the Loan Participant of the Releveraging Loan shall not violate any Applicable Law.

(4) *No Default.* No Default or Event of Default or (in the case of the Loan Participant) Indenture Default or Indenture Event of Default shall have occurred and be continuing, no Event of Loss shall have occurred and no Deemed Loss Event shall have been declared.

(5) *Representations and Warranties.* The representations and warranties of FNB and the Owner Trustee and the Lessee set forth in Sections 8(a) and 10(a), respectively, shall be true and correct on and as of such Releveraging Date with the same effect as though made on and as of such Releveraging Date (with all references to the Closing Date in such representations and warranties being changed to a reference to such Releveraging Date), and the Loan Participant and the Owner Participant shall have received appropriate certificates, dated such Releveraging Date, to such effect.

(6) *Opinions of Counsel.* The Loan Participant and the Owner Participant shall have received favorable opinion of each of Cravath, Swaine & Moore, as special counsel for the Owner Participant, Csaplar & Bok, as counsel for the Owner Trustee, Snell & Wilmer, as special counsel for the Lessee, and Kemp, Smith, Duncan & Hammond, as counsel for the Lessee, each dated such Releveraging Date and addressing such matters relating to the transactions in connection with the Releveraging Loan as the Loan Participant or the Owner Participant may reasonably request.

(d) *Conditions to Refunding.* The obligation of the Owner Participant and the Loan Participant to participate in a refunding of the Notes, if any, as provided in Section 2(d), shall be subject to the fulfillment on or before the Refunding Date of the following conditions precedent (each instrument, document, certificate, opinion or other writing to be in form and substance satisfactory to the Loan Participant and the Owner Participant):

(1) *Authentication Request, etc.* The Owner Trustee shall have delivered to the Indenture Trustee a request, dated the Refunding Date, authorizing the Indenture Trustee to authenticate and deliver the Refunding Note or Notes to the Loan Participant against redelivery of the Initial Series Notes (and each Releveraging Note theretofore issued) to the Indenture Trustee for cancellation.

(2) *Refunding Note and Bond Transactions.* (A) The Loan Participant shall have received the proceeds from the sale of Refunding Bonds in an amount sufficient to make the Refunding Loan, (B) the Owner Trustee shall have executed, and the Indenture Trustee shall have authenticated and delivered to the Loan Participant, the Refunding Note or Notes evidencing the Refunding Loan made on the Refunding Date and (C) the Collateral Trust Trustee shall have accepted the Refunding Supplemental Indenture subjecting the Refunding Note or Notes to the lien of the Collateral Trust Indenture and shall have released the Initial Series Notes (and each Releveraging Note, theretofore issued) from the lien of the Collateral Trust Indenture.

(3) *No Default.* No Event of Default or (in the case of the Loan Participant) Indenture Event of Default shall have occurred and be continuing, no Event of Loss shall have occurred and no Deemed Loss Event shall have been declared.

(4) *Representations and Warranties.* The representations and warranties of FNB and the Owner Trustee and the Lessee set forth in Sections 8(a) and 10(a), respectively, shall be true and correct on and as of the Refunding Date with the same effect as though made on and as of the Refunding Date (with all references to the Closing Date in such representations and warranties being changed to a reference to the Refunding Date), and the Loan Participant and the Owner Participant shall have received appropriate certificates, dated the Refunding Date, to such effect.

(5) *Refunding Registration Statement.* The Loan Participant and the Owner Participant shall have received an Officers' Certificate of the Lessee, dated the Refunding Date, to the effect that

on the date it became effective and on the Refunding Date, the Refunding Registration Statement did not and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading, and the final prospectus did not and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading under the circumst[redacted] under which any such shall have been made.

(6) *Opinions of Counsel.* The Loan Participant and the Owner Participant shall have received favorable opinions of each of Cravath, Swaine & Moore, as special counsel for the Owner Participant, Csaplar & Bok, as counsel for the Owner Trustee, Snell & Wilmer, as special counsel for the Lessee, and Kemp, Smith, Duncan & Hammond, as counsel for the Lessee, each dated the Refunding Date and addressing such matters relating to the transactions in connection with the Refunding Note or Notes as the Loan Participant or the Owner Participant may reasonably request.

(e) *Conditions to Reoptimization.* The obligation of the Owner Participant and the Loan Participant to participate in a reoptimization of the Notes, as provided in Section 2(e), shall be subject to the fulfillment on or before the date thereof of the following conditions precedent (each instrument, document, certificate, opinion or other writing to be in form and substance satisfactory to the Loan Participant and the Owner Participant):

(1) *Note and Bond Transactions.* The conditions set forth in Section 3.12 of the Indenture and Section 1.04(c) of the Bond Supplemental Indenture (and the Refunding Supplemental Indenture, if any) shall have been complied with.

(2) *No Default.* No Event of Default or (in the case of the Loan Participant) Indenture Event of Default shall have occurred and be continuing and no Event of Loss shall have occurred and no Deemed Loss Event shall have been declared.

(3) *Representations and Warranties.* The representations and warranties of FNB and the Owner Trustee and the Lessee set forth in Sections 8(a) and 10(a), respectively, shall be tru[redacted] correct on and as of such date with the same effect as though made on and as of such date (w[redacted] references to the Closing Date in such representations and warranties being changed [redacted] reference to such date), and the Loan Participant and the Owner Participant shall have received appropriate certificates, dated such date, to such effect.

(4) *Opinions of Counsel.* The Loan Participant and the Owner Participant shall have received favorable opinions of each of Cravath, Swaine & Moore, as special counsel for the Owner Participant, and Kemp, Smith, Duncan & Hammond, as counsel for the Lessee, each dated such date and addressing such matters relating to the transactions in connection with the reoptimization as the Loan Participant or the Owner Participant may reasonably request.

SECTION 12. Consent to Assignment of the Facility Lease; Consent to Indenture.

(a) *Consent to Assignment of Facility Lease.* The Lessee hereby acknowledges, and consents in all respects to, the partial assignment of the Facility Lease by the Owner Trustee to the Indenture Trustee under and pursuant to the Indenture and agrees:

(i) to make each payment of Basic Rent and Supplemental Rent due or to become due thereunder to the extent constituting Assigned Payments (excluding, in any event, all Excepted Payments) directly to the Indenture Trustee as provided in Section 11(b) of the Facility Lease, so long as any of the Notes shall be Outstanding and unpaid; and

(ii) not to seek to recover any payment (other than a payment that both the Owner Trustee and the Lessee agree was made in mistake) made to the Indenture Trustee in accordance with the Indenture once said payment is made.

(b) *Consent to Indenture.* The Lessee hereby consents in all respects to the execution and delivery of the Indenture, and to all of the terms thereof, and the Lessee acknowledges receipt of an executed counterpart of the Indenture; it being understood that such consent shall not be construed to require the Lessee's consent to any future supplement to, or amendment, waiver or modification of the terms of, the Indenture or any Note.

(c) *Consent to Assignment by Loan Participant.* Each of the parties hereto acknowledges that the Loan Participant is assigning its right, title and interest in and to the Transaction Documents to the Collateral Trust Trustee as security for the Bonds to the extent set forth in the Collateral Trust Indenture, and each of the parties hereto consents to such assignment.

SECTION 13. Lessee's Indemnities.

(a) *General Indemnity.* The Lessee agrees, whether or not any of the transactions contemplated hereby shall be consummated and whether or not the Facility Lease, any other Transaction Document or any Financing Document shall have expired or have been terminated, to assume liability for, and the Lessee does hereby agree to indemnify, protect, defend, save and keep harmless each Indemnitee, on an After-Tax Basis, from and against, any and all Claims which may be imposed on, incurred by or asserted against any Indemnitee (whether because of an act or omission by such Indemnitee or otherwise and whether or not such Indemnitee shall also be indemnified as to any such Claim by any other Person) in any way relating to or arising out of (i) Unit 2, the Undivided Interest, the Real Property Interest, PVNGS or the PVNGS Site, or any part of any thereof, any ANPP Project Agreement, the issuance or payment of the Bonds or the Notes, this Participation Agreement or any other Transaction Document or any Financing Document (*including, without limitation*, the performance or enforcement of any of the obligations and terms hereunder or thereunder), (ii) a disposition of all or any part of the Undivided Interest, the Real Property Interest, Unit 2 or any other interest of the Owner Trustee in connection with any termination of the Facility Lease, or (iii) the design, construction, assembly, manufacture, financing, erection, purchase, acceptance, rejection, ownership, acquisition, delivery, redelivery, nondelivery, transportation, insuring, lease, sublease, preparation, installation, repair, rebuilding, improvement, modification, transfer of title, abandonment, possession, repossession, use, operation, maintenance, condition, sale, return, storage or disposition of the Undivided Interest, Unit 2, the Real Property Interest, any Capital Improvement, the PVNGS Site, any other facilities or property in or on the PVNGS Site or any other interest of the Owner Trustee in any thereof or any accident, nuclear incident or extraordinary nuclear occurrence in connection with any thereof (*including, without limitation*, (A) claims or penalties arising from any violation of law or liability in tort (strict or otherwise) or from the active or passive negligence of any Indemnitee, (B) loss of or damage to any property or the environment or death or injury to any Person, (C) latent and other defects, whether or not discoverable, (D) any claim for patent, trademark, service-mark or copyright infringement and (E) any claim of any Indemnitee incurred in the administration of this Participation Agreement, any other Transaction Document or any Financing Document and not paid as Transaction Expenses or included in Facility Cost and, if not included in Transaction Expenses, the reasonable fees and disbursements of counsel and other professionals incurred in connection therewith); *provided, however*, that the Lessee shall not be required to indemnify any Indemnitee pursuant to this Section 13(a), (1) for any Claim in respect of Unit 2, the Undivided Interest or the Real Property Interest arising from acts or events not attributable to Decommissioning or to any act or omission of the Lessee, whether as agent for such Indemnitee or otherwise, nor attributable to the period on or before the Lease Termination Date, which occur after satisfaction of the Lessee's redelivery obligations pursuant to Section 5 of the Facility Lease, except to the extent expressly provided in any Transaction Document, the ANPP Participation Agreement or any other agreement or undertaking of the Lessee, (2) for any Claim against such Indemnitee resulting solely from acts which would constitute the willful misconduct or gross negligence of such Indemnitee (*unless* imputed to such Indemnitee by reason of Unit 2, the Undivided Interest, the Real Property Interest, PVNGS, the PVNGS Site or any other facilities at the PVNGS Site or any occurrence in connection with any thereof or by reason of any act or omission of the Lessee, whether as agent for such Indemnitee or

otherwise), (3) for any Transaction Expense to be paid by the Owner Trustee pursuant to Section 14(a), (4) for any Claim resulting solely from a transfer by the Owner Trustee or the Owner Participant of all or part of its interest in the Facility Lease, Unit 2, the Real Property Interest or the Undivided Interest other than in connection with any early termination of the Facility Lease or exercise of remedies under Section 16 thereof or the transfer contemplated by Section 7(b)(4) or first transfer by the Owner Participant to an Affiliate of the Owner Participant or (5) in the case of the Loan Participant, the Indenture Trustee and the Collateral Trust Trustee, for any Claim based upon an untrue statement or alleged untrue statement or omission or alleged omission in the Registration Statement or the Refunding Registration Statement or any document or agreement in connection with the sale of the Bonds which is based upon information furnished to the Lessee or its agents by such Indemnitee expressly for use therein. To the extent that an Indemnitee in fact receives indemnification payments from the Lessee under the indemnification provisions of this Section 13(a), the Lessee shall be subrogated, to the extent of such indemnity paid, to such Indemnitee's rights with respect to the transaction or event requiring or giving rise to such indemnity, but only so long as such subrogation shall not materially adversely affect the rights of such Indemnitee or any other Indemnitee hereunder. Nothing herein or elsewhere contained shall be construed as constituting a guaranty by the Lessee of the principal of, premium, if any, or interest on the Notes or the Bonds or of the residual value or useful life of the Undivided Interest.

(b) General Tax Indemnity.

(1) *Indemnity.* All payments by the Lessee, BONY or any Issuing Bank in connection with the transactions contemplated by the Transaction Documents shall be free of withholdings of any nature whatsoever (and at the time that the Lessee, BONY or any Issuing Bank is required to make any payment upon which any withholding is required, the Lessee shall pay an additional amount such that the net amount actually received by the Person entitled to receive such payment will, after such withholding, equal the full amount of the payment then due) and shall be free of expense to each Indemnitee for collection or other charges. If, for any reason, the Lessee is required to make any payment to a taxing authority with respect to, or as a result of, withholding tax imposed on any Indemnitee in respect of the transactions contemplated by the Transaction Documents, which withholding tax is not the responsibility of the Lessee under this Section 13(b) as determined pursuant to this Section 13(b) but without regard to the immediately preceding sentence of this Section 13(b)(1), then such Indemnitee shall pay to the Lessee an amount which equals the amount paid by the Lessee with respect to, or as a result of, such withholding tax. Whether or not any of the transactions contemplated hereby are consummated, except as provided in Section 13(b)(2), the Lessee shall pay, and shall indemnify, defend and hold each Indemnitee harmless, on an After-Tax Basis, from and against, any and all Taxes howsoever imposed (whether imposed on or with respect to the Indemnitee, the Lessee, Unit 2, the Undivided Interest, the Real Property Interest, any Capital Improvement or the PVNGS Site or any part thereof or interest therein or otherwise) by any Federal, state or local government or subdivision thereof or taxing authority in the United States of America or by any foreign country or subdivision thereof or by any foreign or international taxing authority in connection with or relating to (A) the design, construction, financing, purchase, acquisition, acceptance, rejection, delivery, nondelivery, transportation, ownership, assembly, possession, repossession, operation, use, condition, maintenance, repair, improvement, sale, return, storage, abandonment, preparation, installation, replacement, redelivery, manufacture, insuring, leasing, subleasing, modification, transfer of title, rebuilding, rental, importation, exportation or other application or disposition of, or the imposition of any Lien other than Owner Participant's Liens and Lessor's Liens (or incurrence of any liability to refund or pay over any amount as a result of any Lien other than Owner Participant's Liens and Lessor's Liens) on, Unit 2, the Undivided Interest, the Real Property Interest, any Capital Improvement or the PVNGS Site, or any part thereof or interest therein, (B) the payment of Rent or the receipts or earnings arising from or received with respect to, and the indebtedness with respect to, Unit 2, the Undivided Interest, the Real Pro

Interest or any Capital Improvement, or any part of any thereof, interest therein or application or disposition thereof, (C) any amount paid or payable pursuant to this Participation Agreement, any other Transaction Document or any Financing Document or the transactions contemplated hereby or thereby, (D) Unit 2, the Undivided Interest, the Real Property Interest, any Capital Improvement or the PVNGS Site, or any part of any thereof or interest therein, or the applicability of the Facility Lease to the Undivided Interest, the Real Property Interest or any Capital Improvement, or any part of any thereof or interest therein, (E) this Participation Agreement, any other Transaction Document or any Financing Document or (F) otherwise with respect to or in connection with the transactions contemplated by this Participation Agreement, any other Transaction Document or any Financing Document.

(2) *Exclusions from General Tax Indemnity.* Section 13(b)(1) (except for the first two sentences thereof) shall not apply to:

(i) Taxes based on, or measured by, net income imposed by the United States Federal Government (including, without limitation, any minimum Taxes, capital gains Taxes, any Taxes on, or measured by, items of tax preference, surcharges, additions to tax, penalties, fines or other charges in respect thereof);

(ii) Taxes (other than sales, use or rental Taxes) imposed by any state or local government or subdivision thereof or other taxing authority in the United States or by any foreign country or subdivision thereof or by any foreign or international taxing authority that are based on, or measured by, the net income, items of tax preference, net worth or capital of an Indemnitee, except, with respect to the Owner Trustee, the Trust, the Trust Estate, the Owner Participant and any Affiliate of any thereof, any such Taxes imposed by a jurisdiction as a result of a relation or asserted relation of such jurisdiction to the transactions contemplated by the Transaction Documents or the Financing Documents or as a result of the activities of the Lessee, any ANPP Participant or any Affiliate of any thereof in such jurisdiction; *provided, however*, that the amount of any Taxes for which the Lessee is obligated to indemnify under the preceding exception shall be calculated on a pro forma basis as the amount by which:

(x) the incremental Taxes which the Indemnitee is obligated to pay in such jurisdiction, calculated as:

(1) the actual amount of Taxes which the Indemnitee is obligated to pay in such jurisdiction (except to the extent that any allocation or apportionment method used by such jurisdiction takes into account the income or activities of business entities organized outside the United States of America), taking into account any actual net operating loss carryovers, reduced by

(2) the amount of Taxes which the Indemnitee would be obligated to pay in such jurisdiction (except to the extent that any allocation or apportionment method used by such jurisdiction takes into account the income or activities of business entities organized outside the United States of America), assuming that the transactions contemplated by the Transaction Documents and the Financing Documents had not occurred, taking into account any net operating loss carryovers that would have been available if such transactions had not occurred,

exceeds

(y) any actual aggregate net reduction in Taxes in all other jurisdictions in which the Indemnitee is subject to tax (whether such reduction results from the operation of

allocation or apportionment formulas, from credits or otherwise), such aggregate net reduction calculated as:

(1) the aggregate amount of Taxes which the Indemnitee would be obligated to pay in all other jurisdictions in which such Indemnitee is subject to tax, assuming that the transactions contemplated by the Transaction Documents and the Financing Documents had not occurred, reduced by

(2) the actual aggregate amount of Taxes which the Indemnitee is obligated to pay in all other jurisdictions in which such Indemnitee is subject to tax;

provided further, however, that, with respect to any tax based on or measured by capital or net worth, the Lessee's indemnity obligation shall not exceed the incremental portion of such Tax attributable to the transactions contemplated by the Transaction Documents or the Financing Documents;

(iii) Taxes attributable to the Undivided Interest or the Real Property Interest that are imposed with respect to any period after the later of (a) the Lease Termination Date and (b) satisfaction of the Lessee's redelivery obligations pursuant to Section 5(a) of the Facility Lease, unless such Taxes relate to events occurring or matters arising prior to or simultaneously with such date or redelivery;

(iv) Taxes on or with respect to an Indemnitee arising from any voluntary transfer (it being understood that the term "voluntary transfer" does not include any transfer provided for in the Transaction Documents or the Financing Documents and does not include any transfer to the Lessee or any Affiliate thereof) by such Indemnitee of any interest in the Undivided Interest, the Real Property Interest, the Trust Estate, the Indenture Estate, the Notes or any other right or interest arising under the Transaction Documents or the Financing Documents, unless an Event of Default has occurred and is continuing, or Taxes arising from an involuntary transfer by such Indemnitee of any such interest arising from a bankruptcy or similar proceeding in which such Indemnitee is the debtor unless such bankruptcy or other proceeding was caused by the Lessee or any Affiliate thereof (except such bankruptcy or other proceeding was so caused solely in connection with activities of such Indemnitee unrelated to the transactions contemplated by the Transaction Documents or the Financing Documents);

(v) Taxes based on or measured by any fees, commission or compensation received by the Owner Trustee, the Indenture Trustee or the Collateral Trust Trustee for acting as trustee, or for other services rendered, in connection with any of the transactions contemplated by the Transaction Documents or the Financing Documents;

(vi) Taxes on or with respect to an Indemnitee arising by reason of such Indemnitee's failure to file proper and timely reports or returns (unless the filing of such reports or returns is the obligation of the Lessee under the Transaction Documents or the Financing Documents) and any penalties or additions to tax imposed by reason of such Indemnitee's failure to comply with the laws imposing such Tax or its material failure to comply with its obligations under Section 13(b)(6), in each case unless such failure results from any action of the Lessee or failure by the Lessee to comply with any provision of the Transaction Documents or the Financing Documents, including the failure to provide necessary information;

(vii) Taxes on or with respect to an Indemnitee arising as a result of a material failure of such Indemnitee to fulfill its obligations with respect to the contest of any claim in accordance with Section 13(b)(4) of this Participation Agreement or to provide the Lessee with information (other than tax returns) within the knowledge of such Indemnitee reasonably and timely requested by the Lessee, and not otherwise available to the Lessee, to enable the Lessee to complete and file or furnish any report, return or statement in accordance with Section 13(b)(5);

(viii) Any Taxes imposed on the Lessor or the Owner Participant resulting from, or which would not have occurred but for, Lessor's Liens or Owner Participant's Liens and any Taxes imposed on the Indenture Trustee which would not have occurred but for Indenture Trustee's Liens;

(ix) Any Tax on or with respect to any Indemnitee resulting from the gross negligence or willful misconduct of such Indemnitee (it being understood that no Indemnitee is responsible for determining whether a Tax is payable if such Tax is the responsibility of the Lessee under this Section 13(b)); and

(x) Taxes imposed on or with respect to a transferee (or a subsequent transferee) of an original Indemnitee (other than a transferee or a subsequent transferee if such transferee or subsequent transferee is an Affiliate of the original Indemnitee) to the extent that the amount of such Taxes exceeds the amount of Taxes that would have been imposed on or with respect to such original Indemnitee but for the transfer to such transferee or, if imposed, would not have been subject to indemnification under this Section 13(b); *provided, however*, that the exception in this paragraph (x) shall not apply to any transferee where such transfer shall have occurred during the continuance of an Event of Default;

provided, however, that the foregoing paragraphs (i) through (x) shall not apply to any Tax imposed on the Collateral Trust Trustee, the Loan Participant or the indenture estate under the Collateral Trust Indenture except that the foregoing paragraph (v) shall apply in the case of the Collateral Trust Trustee.

(3) *Calculation of General Tax Indemnity Payments:* If any Indemnitee realizes a net permanent tax benefit by reason of the payment of any indemnity under Section 13(b)(1), such Indemnitee shall pay the Lessee, but not before the Lessee shall have made all payments theretofore due to such Indemnitee pursuant to this Section 13(b), an amount equal to the lesser of (x) the sum of such tax benefit plus any other net tax benefit realized by such Indemnitee as the result of any payment made by such Indemnitee pursuant to this sentence (such latter benefit being determined in a manner consistent with the definition of After-Tax Basis and with the last sentence of Section 13(b)(6)) and (y) the amount of such payment by the Lessee to such Indemnitee and any other payment by the Lessee to such Indemnitee therefore made pursuant to Section 13(b)(1) less the aggregate amount of all prior payments by such Indemnitee to the Lessee pursuant to this Section 13(b)(3) with respect to amounts paid pursuant to Section 13(b)(1), it being intended that no Indemnitee should realize a net tax benefit pursuant to this Section 13(b) unless the Lessee shall first have been made whole for any payments by it to such Indemnitee pursuant to Section 13(b)(1); *provided, however*, that (A) in computing any permanent tax benefit, such Indemnitee shall be deemed first to have utilized all deductions and credits available to it otherwise than by reason of any payment by the Lessee pursuant to this Section 13(b) and (B) notwithstanding the provisions of this Section 13(b)(3), such Indemnitee shall not be obligated to make any payment to the Lessee pursuant to this Section 13(b)(3) if at the time such payment shall be due a Default or Event of Default shall have occurred and be continuing.

(4) *General Tax Indemnity-Contests.* If a written claim shall be made against any Indemnitee for any Tax for which the Lessee is obligated pursuant to this Section 13(b), such Indemnitee shall notify the Lessee promptly of such claim, but the failure so to notify the Lessee shall not affect any obligation of the Lessee pursuant to this Section 13(b) except as provided in Section 13(b)(2)(vii). If the Lessee shall request in writing within 30 days after receipt of such notice, such Indemnitee shall in good faith and at the Lessee's expense contest the imposition (including the amount) of such Taxes; *provided, however*, that such Indemnitee may in its sole discretion select the forum for such contest and determine whether any such contest shall be by (A) resisting payment of such Taxes, (B) paying such Taxes under protest or (C) paying such Taxes and seeking a refund thereof; *provided further, however*, that (X) such Indemnitee shall not be obligated to contest any claim in which the amount in question is less than $250,000, (Y) at such

Indemnitee's option, such contest shall be conducted by the Lessee in the name of such Indemnitee (subject to the preceding proviso) and (Z) in no event shall such Indemnitee be required or the Lessee permitted to contest the imposition of any Taxes for which the Lessee is obligated pursuant to this Section 13(b) unless (v) the Lessee shall have acknowledged its liab[redacted] to such Indemnitee for an indemnity payment pursuant to this Section 13(b) as a result of [redacted] claim if and to the extent such Indemnitee or the Lessee, as the case may be, shall not prevail in the contest of such claim, (w) such Indemnitee shall have received from the Lessee (i) satisfactory indemnity for any liability, expense or loss arising out of or relating to such contest including, but not limited to, (A) all reasonable legal, accountants' and investigatory fees and disbursements, (B) the amount of any interest, additions to tax or penalty that may be payable as a result of contesting such claim and (C) if such contest is to be initiated by the payment of, and the claiming of a refund for, such Tax, sufficient funds to make such payment on an After-Tax Basis and (ii) an opinion of independent tax counsel selected by the Lessee and approved by such Indemnitee (which approval shall not be unreasonably withheld) and furnished at the Lessee's sole expense to the effect that a Reasonable Basis exists for contesting such claim or, in the event of an appeal, that there exists a substantial possibility that an appellate court or an administrative agency with appellate jurisdiction, as the case may be, will reverse or substantially modify the adverse determination, (x) the Lessee shall have agreed to pay such Indemnitee on demand all reasonable costs and expenses that such Indemnitee may incur in connection with contesting such claim (including, without limitation, all costs, expenses, losses, reasonable legal and accounting fees, disbursements, penalties, interest and additions to tax), (y) such Indemnitee and the Owner Participant shall have reasonably determined that the action to be taken will not result in any danger of sale, forfeiture or loss of, or the creation of any Lien (except if the Lessee shall have adequately bonded such Lien or otherwise made provision to protect the interests of such Indemnitee in a manner satisfactory to such Indemnitee and the Owner Participant) on, Unit 2, the Undivided Interest, the Real Property Interest, or any part of or interest in any of the foregoing, and (z) if such contest shall be conducted in a manner requiring the payment of the claim, the Lessee shall have paid the amount required. The Lessee agrees to give such Indemn[redacted] reasonable notice of any contest prior to the commencement thereof. If any Indemnitee [redacted] obtain a refund of all or any part of any Taxes paid by the Lessee (or if any such refund would be payable to such Indemnitee in the absence of an offsetting liability for taxes payable to the taxing authority in question by such Indemnitee in respect of which the Lessee is not responsible pursuant to this Section 13(b)), such Indemnitee shall pay the Lessee, but not before the Lessee shall have made all payments theretofore due to such Indemnitee pursuant to this Section 13(b), an amount equal to the lesser of (xx) the amount of such refund, including interest received (or receivable in accordance with the foregoing parenthetical clause) and attributable thereto, plus any permanent net tax benefit realized by such Indemnitee (determined in a manner consistent with the definition of After-Tax Basis and with the last sentence of Section 13(b)(6)) as a result of any payment by such Indemnitee made pursuant to this sentence (after taking into account the tax consequences of the receipt of such refund and such interest) or (yy) such tax payment by the Lessee to such Indemnitee theretofore made pursuant to this Section 13(b) plus the amount of any interest actually received by such Indemnitee in connection with such refund to the extent not previously reflected in such tax payment by the Lessee, in either case net of any expenses of contest not already paid or incurred by the Lessee; *provided, however*, that (I) in computing any permanent tax benefit, such Indemnitee shall be deemed first to have utilized all deductions and credits available to it otherwise than by reason of any payment by the Lessee pursuant to this Section 13(b) and (II) notwithstanding the provisions of this Section 13(b)(4), such Indemnitee shall not be obligated to make any payment to the Lessee pursuant to this Section 13(b)(4) if at the time such payment shall be due a Default or an Event of Default shall have occurred and be continuing. An Indemnitee shall not be required to make any payment pursuant to this Section 13(b)(4) before such time as the Lessee shall have made all payments and indemnities then due under the Transaction Documents to such Indemnitee. Notwithstanding anything contained in this Section 13(b)(4) to the contrary, no Indemnitee shall be required to contest any claim i[redacted]

subject matter thereof shall be of a continuing nature and shall have previously been adversely decided pursuant to the contest provisions of this Section 13(b)(4) unless there shall have been a change in the law (including, without limitation, amendments to statutes or regulations, administrative rulings and court decisions) after such claim shall have been so previously decided, and such Indemnitee shall have received an opinion of independent tax counsel selected by the Lessee and approved by such Indemnitee (which approval shall not be unreasonably withheld) and furnished at the Lessee's sole expense to the effect that such change provides a Reasonable Basis for the position which such Indemnitee and the Lessee, as the case may be, had asserted in such previous contest or for an alternative position based upon such change that the Lessee now desires to assert. Nothing contained in this Section 13(b) shall require any Indemnitee to contest or permit the Lessee to contest a claim which such Indemnitee would otherwise be required to contest pursuant to this Section 13(b) if such Indemnitee shall waive payment by the Lessee of any amount that might otherwise be payable by the Lessee under this Section 13(b) by way of indemnity in respect of such claim.

(5) *General Tax Indemnity — Reports.* If any report, return or statement is required to be filed with respect to any obligations of the Lessee under or arising out of this Section 13(b), the Lessee shall timely file the same, except for any such report, return or statement which such Indemnitee has notified the Lessee that it intends to file. The Lessee shall either file such report, return or statement so as to show the ownership of the Undivided Interest or the Real Property Interest, as the case may be, in the Owner Trustee and send a copy of such report, return or statement to the Owner Trustee and such Indemnitee or, where not so permitted, notify the Owner Trustee and such Indemnitee of such requirement and prepare and deliver such report, return or statement to the Owner Trustee and such Indemnitee in a manner satisfactory to the Owner Trustee and such Indemnitee within a reasonable time prior to the time such report, return or statement is to be filed or, where such return, statement or report shall be required to reflect items in addition to any obligations of the Lessee under or arising out of this Section 13(b), timely provide the Owner Trustee and such Indemnitee with information sufficient to permit such report, return or statement properly to be made with respect to any obligations of the Lessee under or arising out of this Section 13(b) (and the Lessee shall hold each Indemnitee harmless from and against any liabilities, obligations, losses, damages, penalties, claims, actions, suits and reasonable costs arising out of any insufficiency or inaccuracy in any such report, return, statement or information). The Lessee shall not have any right to examine the tax returns of any Indemnitee. The Lessee shall have the right to conduct all negotiations with the State of Arizona Department of Revenue with respect to the computation of the value of Unit 2, the Undivided Interest and the Common Facilities for purposes of computing Arizona property taxes.

(6) *General Tax Indemnity — Payment.* All Taxes shall be paid when due and payable and, unless otherwise requested by the appropriate Indemnitee, the Lessee shall pay any Taxes for which it is liable pursuant to this Section 13(b) directly to the appropriate taxing authority and shall pay each Indemnitee promptly on demand in immediately available funds any amount due such Indemnitee pursuant to this Section 13(b) with respect to such Taxes. Any such demand shall specify in reasonable detail the payment and the facts upon which the right to payment is based. Each Indemnitee shall promptly forward to the Lessee any notice, bill or advice received by it concerning any Taxes. Within 30 days after the date of each payment by the Lessee of any Taxes, the Lessee shall furnish the appropriate Indemnitee the original or a certified copy of a receipt for the Lessee's payment of such Taxes or such other evidence of payment of such Taxes as is acceptable to such Indemnitee. The Lessee shall also furnish promptly upon request such data as any Indemnitee may require to enable such Indemnitee to comply with the requirements of any taxing jurisdiction. Whenever any payment is to be made by the Lessee under this Section 13(b) and it shall be necessary, in calculating the After-Tax Basis amount of such payment, to compute the amount of any liability for federal, state or local tax imposed on or measured by the net income of any Indemnitee, such computation shall be based on the assumption that such taxes shall be payable at the highest marginal statutory rates in effect for the relevant period.

taxes imposed by a particular state or local taxing jurisdiction, shall mean and include any consolidated or combined group of which such Indemnitee is or shall be a member that is treated as such by such state or local taxing jurisdiction.

(8) *Supporting Material.* Each Indemnitee shall provide to the Lessee such support material (other than tax returns) as the Lessee shall reasonably request in connection with matters set forth in this Section 13(b). The Lessee shall reimburse to any Indemnitee any expenses incurred in providing requested supporting material to the Lessee.

(9) *Cooperation.* The Owner Participant agrees (without committing itself to take any action), upon the written request and at the expense of the Lessee, to discuss and to give reasonable consideration to suggestions of the Lessee regarding the minimization of any Taxes for which the Lessee is responsible under this Section 13(b).

(c) *Special Tax Indemnity.*

(1) *Tax Assumptions.* The Facility Lease has been entered into, and the Owner Participant's Net Economic Return has been computed, on the basis of the following assumed Federal income tax benefits:

(i) The Facility Lease will be treated as a true lease under which the Owner Trustee will be the purchaser, owner and lessor of the Undivided Interest and the Real Property Interest and the Lessee will be treated as the lessee of the Undivided Interest and the Real Property Interest.

(ii) The Owner Participant will be entitled to take into account in computing its Federal income tax liability each item of income, gain, deduction, loss and credit of the Trust.

(iii) Not less than 90.30391 percent of the property constituting the Undivided Interest constitutes "section 38 property" as such term is used in Section 48(a) of the Code (as such Section is applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986), that was placed in service not earlier than May 20, 1986 (such percentage of the property constituting the Undivided Interest being hereinafter referred to as the *Clause (iii) Property*); and not less than 90.30391 percent of the Purchase Price is attributable to Clause (iii) Property.

(iv) Not more than 9.69609 percent of the property constituting the Undivided Interest constitutes property that was placed in service prior to May 20, 1986 (the Clause (iv) Property); and not more than 9.69609 percent of the Purchase Price is attributable to the Clause (iv) Property.

(v) The Owner Participant will be allowed deductions under the accelerated cost recovery system with respect to the Undivided Interest pursuant to Sections 168(a) and 168(b)(1) of the Code (as such Sections are applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986); the Owner Participant shall not make an election under Section 203(a)(1)(B) of the Tax Reform Act of 1986; the Owner Participant's taxable year in which the Closing Date occurs will be an 11-month taxable year; the Owner Participant's aggregate adjusted basis for purposes of computing such deductions will be equal to 100 percent of the Purchase Price; and the Owner Participant will be entitled (assuming that it does not make an affirmative election to take slower depreciation deductions pursuant to Section 168(b)(3) of the Code (as such Section is applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986), it being understood that any election imputed to, or deemed made by, the Owner Participant as a result of actions of another Person shall not be considered to be an affirmative election by the Owner Participant) to take such deductions (resulting in a write-off of the Purchase Price to a zero salvage value) at the following times in the following amounts:

deductions (resulting in a write-off of the Purchase Price to a zero salvage value) at the following times in the following amounts:

Year	Percentage (to be applied against 100 percent of the Purchase Price)
1986	8%
1987	14%
1988	12%
1989	10%
1990	10%
1991	10%
1992	9%
1993	9%
1994	9%
1995	9%

(the deductions described in this Section 13(c)(1)(v) being hereinafter referred to as the *ACRS Deductions)*.

(vi) The indebtedness evidenced by the Notes will constitute a loan made to the Owner Trustee; all amounts paid on the Notes other than payments of principal will be deductible by the Owner Participant, when paid or accrued, pursuant to Section 163(a) of the Code in accordance with the accrual method of accounting (it being understood that such deductions will not be affected by any other provisions of the Code such as Section 163(e)) (the deductions described in this Section 13(c)(1)(vi) being hereinafter referred to as the *Interest Deductions)*.

(vii) The Owner Participant will be allowed current deductions for amortization of an amount equal to the Transaction Expenses computed on a straight-line basis over the Basic Lease Term (the *Amortization Deductions)*.

(viii) The Owner Participant will have at all relevant times sufficient Federal taxable income against which to apply the ACRS Deductions, the Interest Deductions and the Amortization Deductions.

(ix) The Notes will bear interest pursuant to their terms at the rates applicable from time to time; the principal amount of the Notes will constitute no more than 80 percent of the Purchase Price; and the Notes will be amortized by certain payments of principal pursuant to the terms thereof.

(x) Basic Rent will be paid on the Basic Rent Payment Dates. Basic Rent will be payable in advance in semi-annual installments during the Basic Lease Term commencing on July 2, 1987, and the Renewal Term as set forth in the Facility Lease.

(xi) None of the Trust, the Owner Trustee and the Owner Participant will at any time be required to include any amount in gross income for Federal income tax purposes with respect to the transactions contemplated by the Transaction Documents or the Financing Documents other than (A) payments of Basic Rent in the amounts and no earlier than at the times such payments are required to be made in accordance with the Facility Lease, (B) payments of Casualty Value, Termination Value, Special Termination Value and Special Casualty Value and payments pursuant to the exercise of the Lessee's options to purchase the Undivided Interest as described in the Facility Lease at the time such payments are made and (C) any payments required to be made on an After-Tax Basis pursuant to the Transaction Documents at the time such payments are made.

(xii) The Owner Participant's marginal Federal rate of income tax is 46 percent for its taxable year ending December 31, 1986, 39.950685 percent for its taxable year ending December 31, 1987, and 34 percent for each taxable year thereafter, without giving effect to any credits against tax.

(xiii) The Owner Participant's cash investment in the Undivided Interest at the Closing Date will be an amount equal to the Investment Percentage of the Purchase Price.

(xiv) The Closing Date will be December 18, 1986.

(xv) The Owner Trustee and the Owner Participant will be entitled to treat each item of income, gain, deduction, loss and credit with respect to the transactions contemplated by the Transaction Documents and the Financing Documents as derived from or allocable to sources within the United States.

(2) *Tax Representations.* The Lessee represents and warrants to and covenants with the Owner Participant that:

(i) On the Closing Date and throughout the Lease Term the Undivided Interest will constitute "recovery property" and "10-year property" within the meaning of Sections 168(c)(1) and 168(c)(2)(C) of the Code (as such Sections are applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986) as in effect on the date hereof.

(ii) Assuming that the Owner Participant will be treated as the owner of the Undivided Interest for Federal income tax purposes, (x) on the Closing Date and throughout the Lease Term not less than 90.30391 percent of the property constituting the Undivided Interest will constitute "section 38 property" in the hands of the Owner Participant within the meaning of Section 48(a) of the Code (as such Section is applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986) as in effect on the date hereof that was placed in service not earlier than May 20, 1986, and (y) on the Closing Date and throughout the Lease Term not less than 90.30391 percent of the Purchase Price will be attributable, in the hands of the Owner Participant, to such property.

(iii) Unit 2 will be "placed in service" for the purposes of Section 168 of the Code (as such Section is applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986) no later than the Closing Date and each item of property constituting the Undivided Interest will be so placed in service no later than the Closing Date.

(iv) None of the property constituting the Undivided Interest and none of the Purchase Price shall be subject to the provisions of Section 168(f)(12) of the Code (as such Section is applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986).

(v) To the best of its knowledge, the Lessee and each Affiliate thereof have provided to the Appraiser all factual information in their possession which is relevant to such Appraiser's conclusions and such information is accurate and complete on the Closing Date. Neither the Lessee nor any Affiliate thereof has any reason to believe that the Appraiser's conclusions are inaccurate.

(vi) Assuming that the Owner Participant will be treated as the owner of the Undivided Interest for Federal income tax purposes, the Owner Participant will be entitled to the ACRS Deductions, the Interest Deductions and the Amortization Deductions.

(vii) None of the Trust, the Owner Trustee and the Owner Participant will at any time be required to include any amount in gross income for Federal income tax purposes with respect to the transactions contemplated by the Transaction Documents or the Financing Documents other than the amounts described in clauses (A), (B) and (C) of Section 13(c)(1)(xi) at the respective times referred to therein.

(viii) The Owner Trustee and the Owner Participant will be entitled to treat each item of income, gain, deduction, loss and credit with respect to the transactions contemplated by t

Transaction Documents or the Financing Documents as derived from or allocable to sources within the United States.

(ix) The provisions of Section 168(f)(10) of the Code (as such Section is applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986) as in effect on the Closing Date (including the amendment contained in Section 1809(a) of the Tax Reform Act) will not apply to the transactions contemplated by the Transaction Documents or the Financing Documents in a manner that could cause a Loss and the Lessee will not take any action pursuant to Section 168(b)(3) or 168(f)(2)(C) of the Code (as such Sections are applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986) that is inconsistent with the Owner Participant's entitlement to the ACRS Deductions.

(x) Neither Unit 2 (other than Common Facilities) nor any item of property constituting the Clause (iii) Property was placed in service for Federal income tax purposes prior to May 20, 1986.

(xi) At all times prior to the closing on the Closing Date the Undivided Interest was owned by the Lessee.

(xii) The provisions of Section 168(e) of the Code (as such Section is applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986) will not apply to the transactions contemplated by the Transaction Documents or the Financing Documents.

(xiii) Throughout the Lease Term the Undivided Interest will not constitute "tax-exempt use property" within the meaning of Section 168(j) of the Code (as such Section is applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986) as in effect on the Closing Date (including the amendment made by Section 1802 of the Tax Reform Act of 1986) and the provisions of Section 168(j) of the Code (as such Section is applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986) as in effect on the Closing Date (including the amendment made by Section 1802 of the Tax Reform Act of 1986) will not apply to the transactions contemplated by the Transaction Documents or the Financing Documents.

(xiv) No part of the Undivided Interest will be used predominantly outside the United States within the meaning of Section 168(f)(2) of the Code (as such Section is applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986).

(xv) On the Closing Date, no improvements, modifications or additions to the Undivided Interest are required to render the Undivided Interest complete for its intended use by the Lessee.

(xvi) On the Closing Date, no part of the cost of the Undivided Interest or the Real Property Interest paid for or incurred by the Lessee or any Affiliate thereof shall not have been reimbursed by the Owner Trustee.

(xvii) On the Closing Date the fair market value of the Undivided Interest was $95,500,000, the fair market value of the Clause (iii) Property was $86,240,232.08, the fair market value of the Clause (iv) Property was $9,259,767.92 and the fair market value of the Real Property Interest was $49,203.78.

(xviii) (A) It is reasonable to expect (x) that the Undivided Interest will be useful to and useable by a Person other than the Lessee or any Person related to the Lessee at the end of the Basic Lease Term and at the end of the Renewal Term and capable of continued leasing or transfer to such a Person at such times and (y) that it will be commercially feasible for the Owner

Trustee or the Owner Participant to enter into such a lease or transfer at such times in a transaction pursuant to which the Owner Participant would realize, with respect to the Undivided Interest, the residual value set forth in the report of the Appraiser apart from any amounts that such a Person would be required to expend pursuant to the Assignment and Assumption or otherwise in connection with the acquisition, use or possession of the Undivided Interest apart from any amounts that such a Person would be required to expend in connection with the acquisition, use or possession of the Real Property Interest and (B) the Undivided Interest does not constitute, and will not constitute during the Lease Term, "limited use property" within the meaning of Revenue Procedure 76-30; provided, however, that this representation is not a represenation that any residual value will in fact exist at the end of the Basic Lease Term and any Renewal Term.

(xix) The provisions of Section 467 of the Code (as such Section is applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986) will not apply to the transactions contemplated by the Transaction Documents or the Financing Documents.

(xx) Neither the Lessee nor any Affiliate thereof legally or beneficially or constructively owns or will own (within the meaning of Section 318 of the Code) any capital stock of the Loan Participant.

(3) ***Consistent Tax Returns.*** The Lessee agrees that neither it nor any of its Affiliates will at any time take any action, directly or indirectly, or file any returns or other documents inconsistent with the assumptions and representations set forth in Sections 13(c)(1) and (2), and that the Lessee and any such Affiliate will file such returns, maintain such records, take such actions and execute such documents as reasonably requested by the Owner Participant from time to time as may be appropriate to facilitate the realization of such assumptions by the Owner Participant. The Lessee covenants and agrees to maintain, or cause to be maintained, such other records as may be necessary in order to verify the factual basis for the matters referred to in this Section 13(c). Except for the Lessee's returns, the Lessee shall make the records referred to in the preceding sentences available, or cause such records to be made available, for inspection by the Owner Participant or its authorized agents, during normal business hours at the Lessee's office at 303 North Oregon Street, El Paso, Texas 79901, upon request by, and five days' prior notice from, the Owner Participant. The Lessee shall, at its expense, upon request by the Owner Participant, provide to the Owner Participant a copy of such records which shall be certified to be a true copy by an affidavit attached thereto and executed by an officer of the Lessee. Notwithstanding the preceding sentence, the Owner Participant or its authorized agents shall have the right to make copies and extracts of any such records at the Owner Participant's sole expense.

(4) ***Indemnification — Loss of Tax Benefits.*** The Lessee shall indemnify the Owner Participant on an After-Tax Basis for

(i) any loss, disallowance, delay in obtaining, or recapture of the Federal income tax benefits described in Section 13(c)(1) resulting in whole or in substantial part from any one or more of the following events or things:

(A) any representation or warranty of the Lessee in Section 13(c)(2) or elsewhere in this Participation Agreement, the other Transaction Documents or the Financing Documents shall prove inaccurate at any time or the Lessee shall breach any of its covenants in Section 13(c)(2) or any of its agreements, covenants, duties, undertakings or other obligations under this Participation Agreement or the other Transaction Documents or the Financing Documents, or

(B) any act or failure to act by the Lessee or by any Affiliate, transferee, sublessee, or assignee of the Lessee or by any user of the Undivided Interest or the Real Property Interest or by any person to whom the Lessee or any Affiliate thereof shall sell power or en

generated at PVNGS, or by any person having custody or possession of Unit 2 or the Undivided Interest or the Real Property Interest or by any ANPP Participant or by any manufacturer, vendor, supplier, contractor or subcontractor of Unit 2 or any part thereof or by any Affiliate of any of the foregoing or by any subsequent transferee, sublessee or assignee or by any trustee, receiver, liquidator or debtor in possession of any of the foregoing, other than, in the case of the Lessee, the execution and delivery of one or more of the Transaction Documents or the Financing Documents and acts specifically required or expressly permitted to be performed by the Lessee under the Facility Lease or any Transaction Document or any Financing Document; provided, however, that (w) any act of the Lessee performed to satisfy a general covenant to comply with Applicable Laws or Prudent Utility Practice or to cause the Undivided Interest to be operated and maintained or to carry out obligations under the ANPP Participation Agreement and related agreements, (x) any act that is permitted by implication or because it is not required or prohibited by such documents, (y) any act that implements a general requirement or right on the part of the Lessee in a manner that is not specifically required or expressly permitted under such documents and (z) the making of any Capital Improvement shall each be an act or failure to act for which the Lessee is responsible under this Section 13(c)(4)(i)(B), or

(C) the sale or other disposition of Unit 2, the Undivided Interest, the Real Property Interest, any item of property constituting the Undivided Interest or the Real Property Interest or any interest in the Trust or the Trust Estate upon the exercise by the Owner Participant or the Owner Trustee of its remedies under the Facility Lease upon the occurrence of an Event of Default thereunder, or

(D) the bankruptcy, or other proceedings for the protection of debtors, of or involving the Lessee or any transferee, sublessee or assignee of the Lessee or any subsequent transferee, sublessee or assignee or any Affiliate of any of the foregoing (in each case other than the Lessor and the Owner Participant), or any foreclosure on any property of any of the foregoing, or

(E) any damage to or destruction, loss of use, loss of generating capacity, theft, nongovernmental taking or requisition or repair of or any addition, improvement, modification, alteration, replacement or substitution of or to Unit 2 or the Undivided Interest or the Real Property Interest or any part of any thereof, or

(F) any governmental taking or requisition of title, use or otherwise of Unit 2, the Undivided Interest or the Real Property Interest or any part of any thereof if such taking or requisition does not immediately constitute an Event of Loss under the Facility Lease, or

(G) any payment by any manufacturer or any other vendor or supplier or contractor or subcontractor with respect to any part of Unit 2 or the Undivided Interest or the Real Property Interest, but in the event of any such payment made to the Owner Participant, any indemnity pursuant to this Section 13(c)(4)(i)(G) shall take into account any economic benefit realized by the Owner Participant from the receipt of such payment without double counting for any economic loss for which such payment provided compensation, or

(H) any issuance, defeasance, refinancing, refunding, redemption, purchase, repurchase, cancelation, retirement, reoptimization, substitution, releveraging, modification or remarketing of the Notes, or the Bonds, or any other debt securities issued or assumed pursuant to the Transaction Documents or the Financing Documents or any terms or provisions of any thereof or otherwise in connection with the financing, refinancing or any Supplemental Financing of Unit 2, any Capital Improvement, the Undivided Interest or the Real Property Interest or any part of any thereof or interest therein, including, without limitation, the purchase or deemed purchase by the Lessee or the Loan Participant of any such Notes, Bonds or securities, or

(I) the presence of the Loan Participant, or any successor or assign thereof, in the transactions contemplated by the Transaction Documents and the Financing Documents; or

(J) the existence or operation of the ANPP Participation Agreement, the ANPP Project Agreements or any amendment to any of the foregoing (including without limitation rights and remedies of the ANPP Participants) or any obligations of the Lessee or restriction of rights of the Owner Trustee or the Owner Participant or provisions of any of the Transaction Documents or the Financing Documents (including without limitation the provisions of the Assignment and Assumption) resulting from any of the foregoing, or

(K) the existence, provisions, operation or implementation of the License or the License Amendment, or

(L) the existence, provisions, operation or implementation of Title USA Company of Arizona Trust No. 530, or

(M) the existence, operation or implementation of the provisions set forth in Section 10(b)(3)(xi) hereof, or

(N) the existence, provisions, operation or implementation of Section 8(g), 15(iii) or 16(a)(vii) of the Facility Lease, or

(O) the existence or asserted existence of a partnership or association between or among the Owner Participant or the Owner Trustee and any other Person or Persons, or

(P) the existence, operation or implementation of the provisions of the Lease permitting the Lessee to elect the Renewal Term pursuant to Section 3(a)(iii) and Section 12 of the Facility Lease, and

(ii) any inclusion in the Owner Participant's gross income, for Federal income tax purposes, of any amount in respect of any replacement or substitution of, any alteration to or modification in, or any addition or improvement to, any item of property comprising the Undivided Interest or any part thereof or any expenditure made, or property furnished by the Lessee in respect of such item of property or pursuant to the Transaction Documents or Financing Documents (whether or not permitted or required under the Transaction Documents or the Financing Documents)

(any such loss, disallowance, delay in obtaining, recapture or inclusion described in Section 13(c)(4)(i) or Section 13(c)(4)(ii) being referred to as a Loss).

(5) ***Indemnity Payment — After-Tax Basis.*** (i) In the event of a Loss, the Owner Participant, unless pursuant to Section 13(c)(8) the Owner Participant is not entitled to payment with respect to such Loss, shall notify the Lessee of such Loss and the Lessee shall pay to the Owner Participant on an After-Tax Basis an amount (the *Indemnity Payment*) which shall be equal to the sum of the aggregate additional Federal income taxes payable by the Owner Participant as a result of such Loss and any interest, penalties or additions to tax payable as a result of such Loss (except to the extent such penalties result from the Owner Participant's failure to file returns that are timely and proper insofar as they relate to matters unrelated to the transactions contemplated by the Transaction Documents or the Financing Documents).

(ii) If the Owner Participant, as the result of a Loss occurring with respect to any year under circumstances that require the Lessee to indemnify the Owner Participant with respect to such Loss pursuant to Section 13(c)(4)(i), shall be entitled to claim (taking into account the assumptions set forth in Section 13(c)(6)) with respect to any subsequent year Federal income tax savings that would not have been realized but for such Loss, the Owner Participant shall promptly pay to the Lessee an amount equal to the sum of such Federal income tax savings plus the amount of any Federal, state or local income tax savings the Owner Participant shall realize (taking into account the assumptions set forth in Section 13(c)(6)) as the result of any payment made pursuant to this sentence; provided, however, that such sum shall not be payable (A) be

such time as the Lessee shall have made all payments or indemnities then due pursuant to the Transaction Documents and the Financing Documents and (B) while any Default or Event of Default shall have occurred and be continuing; provided further, however, that such sum shall not exceed the excess of the amounts previously paid by the Lessee to the Owner Participant pursuant to Section 13(c)(5)(i) with respect to the Loss that gave rise to such tax savings over the amounts previously paid by the Owner Participant to the Lessee pursuant to this Section 13(c)(5)(ii) with respect to such Loss.

(iii) If the amount that the Lessee would be required to pay pursuant to Section 13(c)(5)(i) with respect to a Loss shall exceed $250,000 and if (A) the Bonds (or, if the Bonds are not then rated, the preferred stock of the Lessee) shall be rated at least "investment grade" by Standard & Poor's Corporation and Moody's Investors Service, Inc. (or, if neither of such rating organizations shall rate the Bonds (or if applicable, the preferred stock of the Lessee) at the time, by any nationally recognized rating organization in the Unites States of America), or (B) the Lessee shall have provided to the Owner Participant a letter of credit or other security with respect to its obligations under this Section 13(c)(5)(iii), in each case adequate in the sole judgment of the Owner Participant, then the Lessee may elect, notice of which election shall be given by the Lessee to the Owner Participant not later than 15 days after the Owner Participant shall have requested a payment by the Lessee pursuant to this Section 13(c), to pay to the Owner Participant, in lieu of the application of Sections 13(c)(5)(i) and (ii), on an After-Tax Basis, on each succeeding Basic Rent Payment Date during the Basic Lease Term, an amount which, when added to the Basic Rent payable on such Basic Rent Payment Date, shall preserve to the Owner Participant the same Net Economic Return (after taking into account any past, present or future tax benefits reasonably expected by the Owner Participant to be available to it) that the Owner Participant would have realized if it had not suffered such Loss. The Lessee shall not be permitted to make the election set forth in this Section 13(c)(5)(iii) if the Lease Termination Date or an Event of Loss shall have occurred, a Deemed Loss Event shall have been declared or a Default or Event of Default shall have occurred and be continuing. If the Lease Termination Date shall occur after the Lessee shall have commenced making payments pursuant to this Section 13(c)(5)(iii), on the Lease Termination Date the Lessee shall pay to the Owner Participant on an After-Tax Basis in a lump sum an amount which shall preserve to the Owner Participant the same Net Economic Return (after taking into account previous payments pursuant to this Section 13(c)(5)(iii) with respect to such Loss) that the Owner Participant would have realized if it had not suffered such Loss.

(6) ***Determination of Payments.*** Whenever it may be necessary for purposes of this Section 13(c) to determine (a) whether a Loss has occurred, (b) the amount of taxes resulting from any Loss suffered by the Owner Participant or (c) the amount of any Federal income tax savings referred to in Section 13(c)(5), such determination shall be made on the assumptions that (a) the Federal income taxes of the Owner Participant are payable at the highest marginal statutory tax rates in effect for corporate taxpayers for the respective years to which any Loss or Losses relate (the *Effective Rate*), (b) in computing its Federal income tax liability, the Owner Participant could have currently fully utilized the tax benefits that are the subject of such Loss against taxes payable at the Effective Rate and (c) the Owner Participant can currently fully utilize any tax savings resulting from a Loss against Federal income taxes payable at the Effective Rate (it being understood, in connection with any Loss with respect to the benefits described in Section 13(c)(1)(xv), that nothing set forth in this sentence shall require the Owner Participant to assume that it can utilize any foreign tax credits that it cannot in fact utilize). For purposes of determining the amount of taxes payable by the Owner Participant upon receipt of any payment required to be made by the Lessee to the Owner Participant pursuant to this Section 13(c) and the amount of any tax savings realized by the Owner Participant as a result of any payment made by the Owner Participant pursuant to Section 13(c)(5) it shall be assumed that Federal, state, local and foreign taxes are payable by the Owner Participant at the highest marginal statutory rates in effect for the relevant period. The determination of the amount payable to or by the Owner Participant pursuant to this Section 13(c) shall be made in the first instance by the Owner

Participant, who shall furnish the Lessee with a notice setting forth in reasonable detail the computations and methods used in computing such amount; and if requested by the Lessee, such determination shall be verified in writing by a firm of nationally recognized independent public accountants selected by the Owner Participant and acceptable to the Lessee. The costs of verification shall be borne by the Lessee unless an error (to the disadvantage of the Lessee) [redacted] percent or more shall be discovered in which case such costs shall be shared equally. Any statements furnished to the Lessee pursuant to this Section 13(c)(6) shall (a) be signed by a Responsible Officer of the Owner Participant and (b) state in reasonable detail the basis upon which such amount or adjustment has been determined. The Lessee agrees that it will not have the right to inspect the tax returns, books, records or any other documents of the Owner Participant or any Affiliate thereof in order to verify the basis or the accuracy of the calculations so made or of the amounts set forth in any such statement and that the determinations made by the independent accountants in accordance with this Section 13(c)(6) shall be conclusive and binding.

(7) *Effective Date.* An Indemnity Payment shall be payable not later than 10 days after demand by the Owner Participant, except as provided in Section 13(c)(8).

(8) *Excluded Events.* The Owner Participant shall be responsible for, and shall not be entitled to any payment in respect of, any Loss occurring primarily (or, in the case of Section 13(c)(8)(ii), solely) as a direct result of one or more of the following events:

(i) a failure of the Owner Participant to claim in a proper or timely manner the ACRS Deductions, the Interest Deductions or the Amortization Deductions for the appropriate years (any disclosure or failure to make a disclosure pursuant to Section 6661 of the Code shall not cause a claim to be considered improper), unless (A) the claiming of any such deductions would be inconsistent with any prior audit adjustment by the IRS with respect to which the Lessee is required to indemnify the Owner Participant pursuant to this Section 13(c) (except to the extent such prior audit adjustment is being contested in accordance with the provisions of Section 13(c)(9)), (B) the Owner Participant shall have furnished the Lessee with an opinio[redacted] independent tax counsel, selected by the Owner Participant and reasonably satisfactory to Lessee, to the effect that as a result of a tax law change, Event of Loss, Deemed Loss Event, Termination Event or an act, omission or misrepresentation of the Lessee (or any other Person referred to in Section 13(c)(4)(i)(B)) such claim would not be proper pursuant to the standards of ABA Formal Opinion 85-352 or (C) such failure to claim any such deductions for the appropriate year is caused by a failure of the Lessee to take any action or provide the Owner Participant with any information or document that the Lessee is required to take or provide pursuant to the Transaction Documents or the Financing Documents;

(ii) the failure of the Owner Participant to have sufficient Federal taxable income to benefit from the ACRS Deductions, the Interest Deductions or the Amortization Deductions;

(iii) any voluntary sale by the Owner Participant or any involuntary sale or other disposition resulting from the bankruptcy of, the foreclosure against, or any similar proceeding against, the Owner Participant or the Owner Trustee, of the Undivided Interest, the Trust Estate, or any beneficial interest therein, unless a Default or an Event of Default shall have occurred and be continuing;

(iv) any Event of Loss or Deemed Loss Event whereby the Lessee is required under the Facility Lease to pay, and shall have paid in full, Casualty Value or Special Casualty Value, as the case may be, for all the Undivided Interest, or any termination of the Facility Lease whereby the Lessee is required under the Facility Lease to pay, and shall have paid in full, Termination Value or Special Termination Value for all the Undivided Interest, except to the extent the payment made with respect to such Event of Loss or termination did not properly reflect the time of the occurrence of (or the time of the tax effect resulting from) such Event of Loss or terminati[redacted]

(v) the failure of the Owner Trustee to be taxed as a conduit entity unless such failure arises as a result in whole or in substantial part from one or more of the events or things set forth in Section 13(c)(4);

(vi) the inability of the Owner Participant to claim the ACRS Deductions, the Interest Deductions or the Amortization Deductions due to the Owner Participant or any Affiliate of any thereof or any predecessor of any thereof being or becoming an entity subject to the provisions set forth in Section 168(f)(11), 168(j), 465, 469, 501, 593, 851, 856, 871, 881, 1361, 1381 or 1391 of the Code as in effect on the date hereof, in each case unless such inability or becoming subject results in whole or in substantial part from the transactions contemplated by the Transaction Documents or the Financing Documents;

(vii) failure of the transaction to qualify as a "true lease" for Federal income tax purposes, resulting in the Owner Participant not being treated as the owner of the Undivided Interest for Federal income tax purposes, except if such failure shall result in whole or in substantial part from any one or more of the events or things set forth in Section 13(c)(4);

(viii) the Owner Participant or the Owner Trustee being treated as engaged in a partnership or association with any other Person, if such partnership or association arises primarily out of any relationship among the Owner Participant or the Owner Trustee and such other Person other than a relationship arising as a result in whole or in substantial part of the existence, provisions, operation or implementation of the transaction contemplated by the Transaction Documents, the Financing Documents or the ANPP Project Agreements or as a result in whole or in substantial part from any one or more of the events or things set forth in Section 13(c)(4);

(ix) the taxable year of the Owner Participant or the Owner Trustee during which the Closing Date occurs being shorter than a taxable year containing 12 months unless the existence of such taxable year containing fewer than 12 months shall result from any aspect of the transactions contemplated by the Transaction Documents or the Financing Documents; and

(x) the failure of the Owner Participant to fulfill its material obligations to contest a proposed adjustment or adverse determination as provided in Section 13(c)(9).

(9) *Contests.* (i) If the IRS proposes in writing an adjustment in the Federal income tax liability of the Owner Participant, which adjustment if sustained would result in a Loss, the Owner Participant shall notify the Lessee promptly of such adjustment and of all action taken or proposed to be taken by the IRS and the Owner Participant shall for at least 30 days after giving such notice forbear, if such forbearance is permitted by law, payment of any tax (including interest, penalties and additions to tax thereon) asserted to be payable as a result of such proposed adjustment. The Lessee agrees that the Owner Participant's failure to provide any notice referred to in the preceding sentence shall not affect the Lessee's obligations under this Section 13(c) unless such failure shall preclude the Lessee from pursuing its rights under this Section 13(c)(9).

(ii) If the Lessee requests within 30 days after the Owner Participant's notice pursuant to Section 13(c)(9)(i) that the proposed adjustment be contested, the Owner Participant shall contest the proposed adjustment in good faith at the trial court level upon receipt of an opinion of independent tax counsel of nationally recognized standing selected by the Lessee and reasonably satisfactory to the Owner Participant to the effect that there exists a basis in law and fact under the standard imposed by ABA Formal Opinion 85-352 for such contest and at each appellate level upon receipt of an opinion of independent tax counsel of nationally recognized standing selected by the Lessee and reasonably satisfactory to the Owner Participant to the effect that there exists a substantial possibility that an appellate court will reverse or substantially modify the lower court decision; provided, however, that (A) the Owner Participant shall be entitled to pursue or forego any administrative appeals, proceedings, hearings and conferences, shall be required to contest any proposed adjustment beyond the level of administrative proceedings only if timely requested by the Lessee and shall not be required to pursue any appeal to the United States Supreme Court,

(B) the Owner Participant shall determine the court of competent jurisdiction in which to contest the proposed adjustment either before or after payment of the tax asserted to be payable as a result thereof, and (C) the Owner Participant shall keep the Lessee informed as to the progress of any litigation and, if requested by the Lessee, shall consult with the Lessee's counsel (pro[redacted] that the conduct of all administrative proceedings and litigation shall nevertheless remain [redacted] the sole control and discretion of the Owner Participant and its tax counsel). The Owner Participant shall not be required to take any action pursuant to this Section 13(c)(9)(ii) unless (A) the amount of the Indemnity Payment (or equivalent amount payable under Section 13(c)(5)(iii)) arising from all proposed adjustments with respect to a taxable year, plus all indemnities that would arise by reason of the fact that the subject matter of any such adjustments is of a continuing nature, shall be in excess of $250,000; (B) the Lessee shall have acknowledged its liability to the Owner Participant for an indemnity payment pursuant to this Section 13(c)(9)(ii) as a result of any proposed adjustment if and to the extent the Owner Participant shall not prevail in the contest of such proposed adjustment and the Lessee shall have agreed to indemnify the Owner Participant in a manner satisfactory to the Owner Participant for any liability or loss that the Owner Participant may incur as a result of contesting such proposed adjustment; (C) the Lessee shall have agreed to pay, and shall pay, the Owner Participant on demand all reasonable costs and expenses that the Owner Participant may incur in connection with contesting such proposed adjustment (including, without limitation, reasonable legal, accounting and investigatory fees, disbursements, penalties, interest and additions to tax); (D) no Event of Default shall have occurred and be continuing; and (E) the Owner Participant shall have determined that the action to be taken will not result in any danger of sale, forfeiture or loss of, or the creation of any Lien (except for Liens permitted under the Transaction Documents and except if the Lessee shall have adequately bonded such Lien or otherwise made provision to protect the interests of the Owner Participant in a manner satisfactory to the Owner Participant) on the Undivided Interest, the Real Property Interest, Unit 2 or any part thereof or interest therein. The Owner Participant shall also not be required to contest any proposed adjustment if the subject matter thereof shall be of a continuing nature and shall have previously been decided pursuant to the co[redacted] provisions of this Section 13(c)(9), unless there shall have been a change in the law (inclu[redacted] without limitation, amendments to statutes or regulations, administrative rulings and court decisions) after such previous contest shall have been so decided, and the Owner Participant shall have received an opinion of independent tax counsel selected as provided in this Section 13(c)(9)(ii) and furnished at the Lessee's sole expense to the effect that the prior authorities are no longer determinative of the issue and that under such new law there exists a basis in law and fact under the standard imposed by ABA Formal Opinion 85-352 to contest such proposed adjustment.

(iii) If the Owner Participant shall elect to contest a proposed adjustment by paying the tax claimed (including such other amounts payable as interest, penalties or additions to tax) and seeking a refund, and if the proposed adjustment would be a Loss with respect to which the Lessee could be required to indemnify the Owner Participant pursuant to this Section 13(c), then the Lessee shall advance to the Owner Participant on an interest-free basis and with no additional net after-tax cost to the Owner Participant the aggregate amount of such taxes, interest, penalties and additions to tax that the Owner Participant shall have elected to pay. If the Owner Participant subsequently receives a refund, in whole or in part, of such taxes, interest, penalties or additions to tax (or if the Owner Participant would have received such a refund but for the fact that funds advanced by the Lessee were applied in payment of a tax liability of the Owner Participant for which the Lessee is not responsible under this Section 13(c)), or if the Loss is not one for which the Lessee is required to make an Indemnity Payment (or payment pursuant to Section 13(c)(5)(iii)), the Owner Participant shall promptly pay to the Lessee the amount of such refunded or credited (or refundable or creditable) taxes, money advanced, interest, penalties or additions to tax plus the amount of any related interest received (or receivable) by the Owner Participant from the taxing authority; provided, however, that the Owner Participant may [redacted]

the amount of such refunded taxes, interest, penalties or additions to tax against any amount due and owing by the Lessee to the Owner Participant pursuant to this Section 13(c): provided further, however, that the Owner Participant shall not be required to make any payment to the Lessee pursuant to this Section 13(c)(9)(iii) to the extent such payment (minus any such interest attributable thereto not previously paid by the Lessee) would exceed the amount previously paid by the Lessee to the Owner Participant with respect to the Loss giving rise to such refund.

(iv) Notwithstanding anything to the contrary contained in this Section 13(c)(9), the Owner Participant may at any time decline to take any action or any further action with respect to a proposed adjustment that it would otherwise be required to take pursuant to this Section 13(c)(9) or may settle any contest without the consent of the Lessee; provided, however, that if the Lessee shall have properly requested such action or contest pursuant to Section 13(c)(9)(ii) and shall have duly complied with all the terms of this Section 13(c)(9), the Owner Participant shall notify the Lessee that the Owner Participant waives its right to any Indemnity Payment by the Lessee that would otherwise be payable by the Lessee pursuant to this Section 13(c) in respect of such adjustment, including any indemnities arising solely from such adjustment in subsequent years or which would arise by reason of the fact that the subject matter of such adjustment is of a continuing nature. In such event, the Owner Participant shall, within 30 days of such notice, reimburse the Lessee for the amount of all taxes, interest, penalties and additions to tax previously advanced by the Lessee to the Owner Participant pursuant to Section 13(c)(9)(iii).

(v) If the Lessee shall have appropriately requested the Owner Participant to contest any proposed adjustment as above provided and shall have duly complied with all the terms of this Section 13(c)(9), the fact of the Lessee's liability for indemnification to the extent required pursuant to this Section 13(c) shall become fixed upon a Final Determination of the liability of the Owner Participant for the tax and any interest, penalties and additions to tax asserted to be payable as a result of such proposed adjustment. A "Final Determination" with respect to a Loss shall mean (A) a decision, judgment, decree or other order by any court of competent jurisdiction, which decision, judgment, decree or other order has become final (i.e., when all allowable appeals have been exhausted by either party to the action to the extent required by this Section 13(c)(9)) or, in any case where judicial review shall at the time be unavailable by reason of the proposed adjustment involving a decrease in a net operating loss carryforward, a decision, judgment, decree or other order of an administrative official or agency of competent jurisdiction, which has become final (i.e., all administrative appeals have been exhausted by either party to the extent required by this Section 13(c)(9)), (B) a closing agreement entered into under Section 7121 of the Code or any other settlement agreement entered into in connection with an administrative or judicial proceeding, or (C) the expiration of the time for instituting a claim for refund, or if such a claim was filed, the expiration of the time for instituting suit with respect thereto. Notwithstanding anything in this Section 13(c)(9) to the contrary, the Owner Participant shall not be required to make any payments to the Lessee under this Section 13(c)(9) while there shall be an amount due and owing by the Lessee to the Owner Participant under any of the Transaction Documents or the Financing Documents, or if and for so long as an Event of Default shall have occurred and be continuing. The amount payable to the Owner Participant pursuant to this Section 13(c)(9) shall be paid upon receipt by the Lessee of a written demand therefor from the Owner Participant accompanied by a written statement describing in detail such Loss and the computation of the amount so payable.

(vi) The provisions of this Section 13(c)(9) shall apply mutatis mutandis with respect to claims for interest, penalties and additions to tax referred to in Section 13(c)(iv) of the Facility Lease unless the Owner Participant shall have received an opinion from independent tax counsel selected by it to the effect that it is more likely than not that such interest, penalties or additions to tax are payable.

(10) *Adjustments.* The assumed Federal income tax benefits set forth in Section 13(c)(1) shall be adjusted to reflect any adjustments provided for in Section 3(d) of the Facility Lease. In the event any payments shall be due to the Owner Participant under this Section 13(c), the schedules of Casualty Values, Termination Values, Enhanced Casualty Values, Special Casualty Values and Sp[redacted] Termination Values shall be appropriately adjusted. If an event giving rise to the payment o[redacted] amount determined by reference to a schedule of Casualty Values, Enhanced Casualty Values. Termination Values, Special Casualty Values or Special Termination Values shall occur and the date as of which the Owner Participant shall be affected shall be earlier than the date taken into account in computing such schedule, such Values shall be appropriately increased based otherwise on the same assumptions previously used by the Owner Participant in calculating such schedule.

(11) *Affiliated Group.* For purposes of this Section 13(c), the term "Owner Participant" shall include any member of an affiliated group of corporations of which the Owner Participant is, or may become, a member if consolidated or combined returns are or shall be filed for such affiliated group for Federal, state or local income tax purposes.

(12) *Payments.* All payments to be made to the Owner Participant or the Lessee pursuant to this Section 13(c) shall be made in immediately available funds to such bank and/or account in the continental United States for the account of the Owner Participant or the Lessee as from time to time the Owner Participant shall have directed the Lessee or the Lessee shall have directed the Owner Participant, as the case may be, in writing. If the date on which any payment to be made pursuant to this Section 13(c) shall not be a Business Day, such payment shall be made on the next succeeding Business Day.

(13) *Interest.* Interest at the Penalty Rate shall be payable on any amount not paid when due under this Section 13(c) until such amount shall be paid.

SECTION 14. Transaction Expenses.

(a) *Transaction Expenses.* Subject to the provisions of Section 14(c), with funds provided by [redacted] Owner Participant, the Owner Trustee hereby agrees that it will pay when due the following costs [redacted] expenses (Transaction Expenses):

(i) the reasonable legal fees and disbursements of Mudge Rose Guthrie Alexander & Ferdon (as counsel for the Loan Participant), Cravath, Swaine & Moore, Csaplar & Bok, Shaw, Pittman, Potts & Trowbridge, Meyer, Hendricks, Victor, Osborn & Maledon, Rodey, Dickason, Sloan, Akin & Robb, Baker & Botts, Sullivan & Cromwell and Willkie Farr & Gallagher (as counsel for the Indenture Trustee), for their services rendered in connection with the execution and delivery of this Participation Agreement and the other Transaction Documents and Financing Documents and all fees, expenses and disbursements incurred by any of such law firms, the Owner Participant or the Loan Participant in connection with such transactions;

(ii) the initial (but not the ongoing) fees and expenses of the Owner Trustee, the Paying Agent and the Indenture Trustee;

(iii) all stenographic, printing, reproduction, and other reasonable out-of-pocket expenses (other than investment banking or brokerage fees) incurred in connection with the execution and delivery of this Participation Agreement and the other Transaction Documents and Financing Documents and all other agreements, documents or instruments prepared in connection therewith (including all computer analysis and travel related costs);

(iv) the fees of the appraisers for services rendered as contemplated by Section 11(a)(15) and the fees of the consultants for services rendered as contemplated by Section 11(a)(19);

(v) all costs of issue of the Initial Series Bonds, including, without limitation, the costs of preparing the Financing Documents, filing fees relating to the Registration Statement and the fees, expenses and disbursements of Willkie Farr & Gallagher, as counsel for the Collateral [redacted]

Trustee, Mudge Rose Guthrie Alexander & Ferdon, as counsel for the Loan Participant, Willkie Farr & Gallagher, as counsel for the underwriters of the Bonds, the initial fees of the Collateral Trust Trustee and its out-of-pocket expenses through the Closing Date, rating agency fees and the fees and commissions of the underwriters of the Bonds; and

(vi) the fees and out-of-pocket expenses of Babcock & Brown Financial Corporation and Systems Marketing, Inc. in connection with the placement of the beneficial interest in the Trust.

Subject to the provisions of Section 14(c) below, funds for the payment of Transaction Expenses will be provided by the Owner Participant to the Owner Trustee and the Owner Trustee will promptly disburse such funds.

(b) *Post-Closing Expenses and Letter of Credit Costs.* The Lessee will pay, as Supplemental Rent, (i) the ongoing fees, expenses, disbursements and costs (*including* legal and other professional fees and expenses) of or incurred by the Owner Trustee, the Indenture Trustee, the Paying Agent and the Collateral Trust Trustee, including in connection with the issue, sale and purchase of Notes and Bonds after the Closing Date, (ii) all fees, expenses, disbursements and costs (including legal and other professional fees and expenses) incurred by the Loan Participant, the Owner Participant, the Owner Trustee, the Indenture Trustee, the Paying Agent and the Collateral Trust Trustee in connection with (a) any Default, Event of Default, Indenture Default or Indenture Event of Default, (b) the entering into or giving or withholding of any amendment, modification, supplement, waiver or consent with respect to any Transaction Document or Financing Document, (c) any Event of Loss or Deemed Loss Event, (d) any transfer of all or any part of the right, title and interest of the Indenture Trustee in, to and under the Transaction Documents, (e) any transfer of all or any part of the Trust Estate, (f) any transfer contemplated by Section 7(b)(4) and (g) any releveraging, refunding or reoptimization referred to in Section 2(c), 2(d) or 2(e), and (iii) all costs and expenses with respect to the Letter of Credit and the Letter of Credit Agreement.

(c) *Lessee's Obligation.* Notwithstanding Section 14(a), in the event the transactions contemplated by this Participation Agreement shall not be consummated, the Lessee shall pay or cause to be paid, and shall indemnify and hold harmless the Loan Participant, the Indenture Trustee, the Owner Trustee and the Owner Participant in respect of, all Transaction Expenses, unless such failure to consummate shall result solely from the Owner Participant's default in making its Investment.

SECTION 15. Owner Participant's Transfers.

(a) *Transfers.* After the Closing Date, except as contemplated by the Facility Lease, the Owner Participant shall not assign, convey or otherwise transfer all or any part of (*including, without limitation,* an undivided interest in) its right, title or interest in and to this Participation Agreement, any of the other Transaction Documents or the Trust Estate (except its right to receive Excepted Payments) to any Person (a Transferee) except on the following conditions:

(i) the Transferee shall enter into an agreement or agreements whereby such Transferee confirms that (1) it shall be bound by the terms of this Participation Agreement and each other Transaction Document, to the extent of the interest transferred, as if it had been originally named as the Owner Participant hereunder and thereunder and (2) if such Transferee is a public utility company, it shall have waived its right to claim Special Casualty Value upon the occurrence of a Deemed Loss Event of the type specified in clause (1) of the definition thereof;

(ii) the Transferee shall be a financial institution, a corporation or a partnership; and

(iii) such transfer shall not violate the Securities Act or any provision of, or create a relationship which would be in violation of, any Applicable Law or agreement to which the transferring Owner Participant or the Transferee is a party or by which its property is bound.

Upon any such transfer, the transferring Owner Participant shall be released from its obligations under this Participation Agreement and the other Transaction Documents to the extent of the interest

transferred. An agreement to transfer shall not in and of itself constitute a transfer for purposes of this Section 15.

(b) *Procedure.* If the Owner Participant transfers all or any part of its interest hereunder pursuant to this Section 15, it shall give written notice thereof to the Lessee, the Owner Trustee, Indenture Trustee and the Loan Participant, specifying the name and address for notices to the Transferee, such other information and evidence as shall be necessary to establish compliance with this Section 15 and the extent of the interest transferred to such Transferee. If, as a result of any such transfer, the original "Owner Participant" is not to continue to receive all payments to be made by the Indenture Trustee to the "Owner Participant" under the Indenture, the original "Owner Participant" shall from time to time, by notice to the Indenture Trustee, with copies to the Lessee, the Owner Trustee and the Collateral Trust Trustee, designate the manner in which any such payments to such "Owner Participant" are to be allocated, and the Indenture Trustee and the Lessee shall be entitled to rely on such notice for all purposes. This Section 15 shall not apply to the Special Transfer. This Section 15 is for the benefit of the Lessee, the Owner Trustee and the Owner Participant and may not be enforced by any other party hereto.

SECTION 16. Brokerage and Finders' Fees and Commissions.

Except to the extent of amounts payable by the Owner Participant pursuant to Section 14, the Lessee will indemnify and hold harmless the Loan Participant, the Indenture Trustee, the Owner Trustee and the Owner Participant in respect of any commissions, fees, judgments or other expenses of any nature and kind which any of them may become liable to pay by reason of any claims by or on behalf of brokers, finders, agents, advisors or investment bankers in connection with the transactions contemplated by this Participation Agreement, any other Transaction Document or any Financing Document, or any litigation or similar proceeding arising from any such claim, *other* than those claims arising out of written undertakings of the party claiming indemnification under this Section 16 or any Affiliate or shareholder (or Affiliate of such shareholder) of such Person with any such broker, finder, agent, advisor or investment banker.

SECTION 17. Survival of Representations and Warranties; Binding Effect.

(a) *Survival.* All indemnities, representations and warranties contained in this Participation Agreement, in any other Transaction Document, in any Financing Document and in any agreement, document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith, shall survive, and shall continue in effect following, the execution and delivery of this Participation Agreement, the making of the investments and the loan referred to herein, any disposition of any interest in the Undivided Interest, Unit 2 or any other property referred to in this Participation Agreement and the expiration or other termination of any of the Transaction Documents or Financing Documents and shall be and continue in effect *notwithstanding* (i) any investigation made by the Owner Participant or the Loan Participant or (ii) the fact that any of the Indenture Trustee, the Owner Trustee, the Loan Participant or the Owner Participant may waive compliance with any of the other terms, provisions or conditions of any of the Transaction Documents or Financing Documents. The obligations of the Lessee under Sections 10(b)(1)(vi), 10(b)(1)(vii), 10(b)(2), 10(b)(3)(vii), 10(b)(3)(x), 10(b)(3)(xi), 10(b)(3)(xiv), 10(b)(3)(xv), 10(b)(3)(xvi), 10(b)(3)(xvii), 13, 14, 16 and 19(f) shall survive the expiration or other termination of this Participation Agreement or any other Transaction Document or Financing Document. The modification by law of any statute of limitations or the waiver or extension of any statute of limitations by the Owner Trustee, the Indenture Trustee, the Lessee, the Owner Participant, the Loan Participant or any Indemnitee shall not affect such survival.

(b) *Binding Effect.* All agreements, representations and warranties in this Participation Agreement, the other Transaction Documents and the Financing Documents and in any agreement, document or certificate delivered concurrently with the execution of this Participation Agreement or from time to time thereafter, shall bind the party making the same and its successors and permi

assigns and shall inure to the benefit of each party for whom made and their respective successors and permitted assigns, and, to the extent provided in the next sentence, each Indemnitee and its successors and assigns. The obligations of the Lessee under Sections 10(b)(3)(xi) and 13 and under Section 20 of the Facility Lease are expressly made for the benefit of, and shall be enforceable by, any Indemnitee, separately or together, without declaring the Facility Lease to be in default and notwithstanding any assignment by the Lessor of the Facility Lease or any of its rights thereunder or any disposition of all or any part of any interest in the Undivided Interest, the Real Property Interest, Unit 2 or any other property referred to in this Participation Agreement, or in this Participation Agreement or any Transaction Document or any Financing Document. All payments required to be made pursuant to Sections 10(b)(3)(xi) and 13 shall be made directly to, or as otherwise requested by, the Indemnitee entitled thereto upon written demand by such Indemnitee. Except to the extent permitted by Sections 10(b)(3)(ii) and (iii), the Lessee shall not assign any of its rights or obligations hereunder without the prior written consent of the Owner Participant and the Owner Trustee. Except as otherwise indicated, all references herein to any party to this Participation Agreement and the other Transaction Documents shall include the permitted successors and assigns of such party.

SECTION 18. Notices.

All communications, notices and consents provided for herein shall be in writing, including telex, telecopy or other wire transmission containing a request for assurance of receipt in a manner typical with respect to communications of that type, or mailed by registered or certified mail, and shall be addressed (i) if to the Owner Participant, at Greenwich Office Park I, Greenwich, Connecticut 06836, Attention: Leasing and Investment Services; (ii) if to the Loan Participant, at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, Attention: President; (iii) if to FNB or the Owner Trustee, at 100 Federal Street, Boston, Massachusetts 02110, Attention: Corporate Trust Division (TWX No. 940581);(iv) if to the Indenture Trustee, at First City Financial Center, 1301 Fannin Street, 21st Floor, Houston, Texas 77002, Attention: Corporate Trust Department; and (v) if to the Lessee, at 303 North Oregon Street, El Paso, Texas 79901, Attention: Secretary; or at such other address as any party hereto may from time to time designate by notice duly given in accordance with the provisions of this Section to the other parties hereto. All such communications, notices and consents given in the manner provided above shall be effective on the date of receipt of such communication or notice.

SECTION 19. Miscellaneous.

(a) *Execution.* This Participation Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument. Although this Participation Agreement is dated as of the date first above written for convenience, the actual dates of execution hereof by the parties hereto are respectively the dates set forth under the signatures hereto, and this Participation Agreement shall be effective on the latest of such dates.

(b) *Intention of the Owner Trustee and the Owner Participant.* Each of the Owner Trustee and the Owner Participant intends to exercise its rights and carry out its obligations hereunder and under the other Transaction Documents solely with a view to furthering its own best interests and does not have, and does not expect to have, any form of joint profit motive with any other Person. The Owner Trustee and the Owner Participant shall not be required to share any Rent to which they are entitled under the Facility Lease, or the residual value of the Undivided Interest or the Real Property Interest, with any other Person. The Owner Trustee and the Owner Participant are not under the control of nor shall they be deemed to be under the control of any other Person having any interest in Unit 2, and shall not be the agent of or have a right or power to bind any such Person (other than the Owner Participant as regards the Owner Trustee) without its express written consent. The Owner Trustee (on behalf of the Owner Participant) and the Owner Participant (on its own behalf) have and at all times shall retain

the right separately to take or dispose of the Undivided Interest and the Real Property Interest. *subject only* to the rights of the Lessee and the Loan Participant under the Transaction Documents. The Owner Trustee and the Owner Participant accordingly do not intend to create any form of partnership or joint venture with any other Person by virtue of the transactions contemplated hereby or by any of the Transaction Documents. In the event that it is determined, contrary to the intent of the Owner Trustee and the Owner Participant, that, for purposes of the Code or any other income tax law, a form of partnership or joint venture exists between the Owner Trustee or the Owner Participant and any other Person, the Owner Trustee and the Owner Participant hereby elect to the extent permitted by law (i) not to have the partnership provisions of the Code or such other income tax law apply to any of the transactions contemplated hereby or by any of the Transaction Documents and (ii) to be treated solely as owning the Undivided Interest and the Real Property Interest.

(c) *Governing Law.* This Participation Agreement has been negotiated and delivered in the State of New York and shall be governed by, and be construed in accordance with, the laws of the State of New York.

(d) *Amendments, Supplements, etc.* Neither this Participation Agreement nor any of the terms hereof may be amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the party against which enforcement of such change is sought.

(e) *Headings.* The headings of the sections and paragraphs of this Participation Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof.

(f) *Bankruptcy of Owner Participant.* If (a) the Owner Participant or the Owner Trustee becomes a debtor subject to the reorganization provisions of the Bankruptcy Code, or any successor provision, (b) pursuant to such reorganization provisions the Owner Participant or the Owner Trustee is required, by reason of the Owner Participant being held to have recourse liability directly or indirectly to the Holder of any Note or the Indenture Trustee, to make payment on account of any amount payable as principal or interest on such Note and (c) such Holder or the Indenture Trustee actually receives any Excess Amount which reflects any payment by the Owner Participant on account of clause (b) of this Section, then such Holder or the Indenture Trustee, as the case may be, shall promptly refund to the Owner Participant such Excess Amount. For purposes of this Section, "Excess Amount" means the amount by which such payment exceeds the amount which would have been received on or prior to the date of such payment by such Holder or the Indenture Trustee if the Owner Participant or the Owner Trustee had not become subject to the recourse liability referred to in clause (b) of this Section. Nothing contained in this Section shall prevent such Holder or the Indenture Trustee from enforcing any personal recourse obligation (and retaining the proceeds thereof) of the Owner Participant expressly provided for under this Participation Agreement.

(g) *Entire Agreement.* This Participation Agreement and Exhibits, the other Transaction Documents and the Financing Documents supersede all prior agreements, written or oral, between or among any of the parties hereto relating to the transactions contemplated hereby and thereby and each of the parties hereto represents and warrants to the others that this Participation Agreement and the other Transaction Documents and the Financing Documents constitute the entire agreement among the parties relating to the transactions contemplated hereby and thereby.

(h) *Publicity.* Each party hereto agrees that it will not issue or release for external publication any article or advertising or publicity matter relating to the transactions contemplated hereby or any similar transaction and mentioning or implying the identity of the Owner Participant without the prior written consent of the Owner Participant; provided, however, that the Owner Participant agrees that such written consent shall not be required if such issue or release is required by Applicable Law.

IN WITNESS WHEREOF, the parties hereto have each caused this Participation Agreement to be duly executed by their respective officers thereunto duly authorized as of the dates set forth below.

CHRYSLER FINANCIAL CORPORATION

By: _____
~~Senior Vice President~~ ATTORNEY IN FACT

Date: 12-16-86

EL PASO FUNDING CORPORATION

By: C. A. Hemingway
Vice President

Date: 12/16/86

EL PASO ELECTRIC COMPANY

By: _____
Vice President

Date: 12-16-86

THE FIRST NATIONAL BANK OF BOSTON, in its individual capacity and as Owner Trustee

By: _____
~~Assistant Vice President~~

Date: 12/16/86

FIRST CITY NATIONAL BANK OF HOUSTON, in its individual capacity and as Indenture Trustee

By: _____
Assistant Vice President

Date: 12-11-86

Schedule 1

EL PASO ELECTRIC COMPANY

PALO VERDE NUCLEAR GENERATING
STATION UNIT 2

NOTICE OF CLOSING

Pursuant to Section 5(a) of the Participation Agreement, dated as of December 1, 1986 (the Participation Agreement), among Chrysler Financial Corporation, as Owner Participant, El Paso Funding Corporation, as Loan Participant, The First National Bank of Boston, as Owner Trustee, First City National Bank of Houston, as Indenture Trustee, and El Paso Electric Company (El Paso), El Paso hereby gives notice of a Closing to occur at 10:00 a.m. on December . 1986. The Closing will be held at the offices of .

(i) Purchase Price is the amount specified in Schedule 2 as the "Purchase Price."

(ii) Real Estate Investment is the amount set forth in Schedule 2 as the "Real Estate Investment."

(iii) Based upon information supplied to El Paso, Estimated Transaction Expenses are an aggregate of $. Instructions with respect to payment of such Estimated Transaction Expenses are attached hereto.

(iv) Payment of the Purchase Price and the acquisition price of the Real Property Interest shall be made as provided in the Participation Agreement.

Capitalized terms used herein and not otherwise specifically defined herein shall have the meanings set forth in Appendix A to the Participation Agreement.

IN WITNESS WHEREOF, El Paso has executed this Notice of Closing this day of December, 1986.

EL PASO ELECTRIC COMPANY

By: _____
Vice President

Schedule 2

PRICING ASSUMPTIONS

Basic Rent, Casualty Value, Special Casualty Value, Enhanced Casualty Value, Termination Value and Special Termination Value, as to be set forth in the Facility Lease as it will be originally executed, will be computed on the basis of the following pricing assumptions:

Closing Date	December 18, 1986
Loan Percentage	80.00%
Investment Percentage	20.00%
Lessor Note Rate	Notes due 1992 = 8.20%; Notes due 1997 = 9.20%; and Notes due 2010 = 10.50%
Basic Lease Term (years)	26.79 years
Initial Series Note Amortization Schedule	See Schedule 2A attached hereto
Interim Rent	Zero (0.0) (i.e., None)
Rent Structure	Semi-annual payments in advance
First Basic Rent Payment	July 2, 1987
Owner Participant's Tax Rate	46% for year ending December 1, 1986; 39.950685% for year ending December 31, 1987; and 34% thereafter
Transaction Expenses (funded by the Owner Participant and expressed as a % of Purchase Price)	2.5%
Purchase Price	$95,500,000
Real Estate Investment	$49,203.78

Schecule 2A

STATEMENT OF LOAN 1: BASE TERM AVERAGE LIFE 14.56741 YEARS
DISPLAYED IN PERCENTAGES OF TOTAL ASSET COST

Date	Debt Service	Interest	Principal	Balance	Rate
7/2/1987	4.3344197	4.3344197	0.0000000	80.0000000	
1/2/1988	4.7112779	4.0216266	0.6896513	79.3103487	8.20000
7/2/1988	4.7112779	3.9933509	0.7179270	78.5924217	8.20000
1/2/1989	4.7112779	3.9639159	0.7473620	77.8450597	8.20000
7/2/1989	4.7112779	3.9332740	0.7780038	77.0670559	8.20000
1/2/1990	4.7112779	3.9013759	0.8099020	76.2571539	8.20000
7/2/1990	4.7112779	3.8681699	0.8431080	75.4140459	8.20000
1/2/1991	4.7112779	3.8336024	0.8776754	74.5363705	8.20000
7/2/1991	4.7112779	3.7976178	0.9136601	73.6227104	8.20000
1/2/1992	4.7112779	3.7601577	0.9511202	72.6715902	8.20000
7/2/1992	4.7112779	3.7211618	0.9901161	71.6814741	8.20000
1/2/1993	4.7112779	3.6805670	1.0307109	70.6507633	9.20000
7/2/1993	4.7112779	3.6331543	1.0781235	69.5726397	9.20000
1/2/1994	4.7112779	3.5835606	1.1277172	68.4449225	9.20000
7/2/1994	4.7112779	3.5316856	1.1795922	67.2653303	9.20000
1/2/1995	4.7112779	3.4774244	1.2338535	66.0314768	9.20000
7/2/1995	4.7112779	3.4206671	1.2906107	64.7408661	9.20000
1/2/1996	4.7112779	3.3612990	1.3499788	63.3908873	9.20000
7/2/1996	4.7112779	3.2992000	1.4120778	61.9788094	9.20000
1/2/1997	4.7112779	3.2342444	1.4770334	60.5017760	9.20000
7/2/1997	4.7112779	3.1663009	1.5449770	58.9567990	9.20000
1/2/1998	4.7112779	3.0952319	1.6160459	57.3407531	10.50000
7/2/1998	4.7112779	3.0103895	1.7008883	55.6398648	10.50000
1/2/1999	4.5546301	2.9210929	1.6335372	54.0063276	10.50000
7/2/1999	4.0121715	2.8353322	1.1768393	52.8294883	10.50000
1/2/2000	4.1292456	2.7735481	1.3556975	51.4737908	10.50000
7/2/2000	3.9587159	2.7023740	1.2563419	50.2174489	10.50000
1/2/2001	4.0869729	2.6364161	1.4505568	48.7668921	10.50000
7/2/2001	3.9042132	2.5602618	1.3439513	47.4229407	10.50000
1/2/2002	4.0417861	2.4897044	1.5520817	45.8708590	10.50000
7/2/2002	3.8459111	2.4082201	1.4376910	44.4331680	10.50000
1/2/2003	3.9934419	2.3327413	1.6607006	42.7724674	10.50000
7/2/2003	3.7835352	2.2455545	1.5379807	41.2344867	10.50000
1/2/2004	3.9417198	2.1648106	1.7769092	39.4575775	10.50000
7/2/2004	3.7168008	2.0715228	1.6452780	37.8122995	10.50000
1/2/2005	3.8863836	1.9851457	1.9012379	35.9110616	10.50000
7/2/2005	4.0331598	1.8853307	2.1478291	33.7632325	10.50000
1/2/2006	4.7112779	1.7725697	2.9387081	30.8245244	10.50000
7/2/2006	4.7112779	1.6182875	3.0929903	27.7315341	10.50000
1/2/2007	4.7112779	1.4559055	3.2553723	24.4761617	10.50000
7/2/2007	4.7112779	1.2849985	3.4262794	21.0498824	10.50000
1/2/2008	4.7112779	1.1051188	3.6061590	17.4437234	10.50000
7/2/2008	4.7112779	0.9157955	3.7954824	13.6482410	10.50000
1/2/2009	4.7112779	0.7165327	3.9947452	9.6534958	10.50000
7/2/2009	4.7112779	0.5068085	4.2044693	5.4490264	10.50000
1/2/2010	4.7112779	0.2860739	4.4252040	1.0238225	10.50000
7/2/2010	1.0775732	0.0537507	1.0238225	0.0000000	10.50000
1/2/2011	0.0000000	0.0000000	0.0000000	0.0000000	10.50000
7/2/2011	0.0000000	0.0000000	0.0000000	0.0000000	10.50000
1/2/2012	0.0000000	0.0000000	0.0000000	0.0000000	10.50000
7/2/2012	0.0000000	0.0000000	0.0000000	0.0000000	10.50000
1/2/2013	0.0000000	0.0000000	0.0000000	0.0000000	10.50000
Totals	207.3502940	127.3502940	80.0000000		

Debt Rate	Base Term Average Loan Life	Duration	Maturity	Cumulative Principal
8.20000	2.91530	2.58470	5.00000	8.3185259
9.20000	7.93489	5.75410	10.00000	12.7246751
10.50000	18.05005	8.32330	23.00000	58.9567990

Weighted Average Debt Rate = 10.34275
Blended Debt Rate (IRR) = 10.26217

Schedule 3

RECORDATIONS AND FILINGS

Part I. Recordations in Respect of the Sale of, and the Owner Trustee's Title to, the Undivided Interest and the Real Property Interest.

A. County Recorder, Maricopa County, Arizona:

(i) Deed;
(ii) Bill of Sale;
(iii) Assignment and Assumption;
(iv) Facility Lease;
(v) Indenture;
(vi) Mortgage Releases; and
(vii) Financing Statement Change Forms UCC-2.

B. Secretary of State, Arizona:

(i) Financing Statement Change Forms UCC-2.

Part II. UCC-1 Financing Statements.

A. County Recorder, Maricopa County, Arizona:

(i) A financing statement on form UCC-1 naming El Paso, as lessee, the Owner Trustee, as lessor, and the Indenture Trustee, as assignee of the Owner Trustee, in respect of the Facility Lease;

(ii) A financing statement on form UCC-1 naming the Owner Trustee, as debtor, and the Indenture Trustee, as secured party, in respect of the Lease Indenture Estate; and

(iii) A financing statement on form UCC-1 naming the Loan Participant, as debtor, and the Collateral Trust Trustee, as secured party, in respect of the Pledged Property (as defined in the Collateral Trust Indenture).

B. Secretary of State, Arizona:

(i) Two financing statements on form UCC-1, each naming El Paso, as lessee, the Owner Trustee, as lessor, and the Indenture Trustee, as assignee of the Owner Trustee, in respect of the rents under the Facility Lease;

(ii) A financing statement on form UCC-1 naming the Owner Trustee, as debtor, and the Indenture Trustee, as secured party, in respect of the Lease Indenture Estate;

(iii) A financing statement on form UCC-1 naming the Loan Participant, as debtor, and the Collateral Trust Trustee, as secured party, in respect of the Pledged Property (as defined in the Collateral Trust Indenture); and

C. Secretary of State, Texas:

(i) A financing statement on form UCC-1 naming El Paso, as lessee, the Owner Trustee, as lessor, in respect of the Facility Lease;

(ii) A financing statement on form UCC-1 naming the Indenture Trustee, as assignee of the Owner Trustee, in respect of the Facility Lease; and

(iii) A financing statement on form UCC-1 naming the Owner Trustee, as debtor, and the Indenture Trustee, as secured party, in respect of the Lease Indenture Estate.

D. Massachusetts/state and local:

A financing statement on form UCC-1 naming the Owner Trustee, as debtor, and Indenture Trustee, as secured party, in respect to the Lease Indenture Estate.

Part III. Utility Filings — Texas Secretary of State Filing of the Facility Leases as protective filings and the Mortgage Releases.

Exhibit A
to
Participation Agreement

BILL OF SALE AND ASSIGNMENT

dated as of

from

[ ]

to

EL PASO ELECTRIC COMPANY

BILL OF SALE AND ASSIGNMENT, dated as of , . from , a corporation (the Owner Participant), to EL PASO ELECTRIC COMPANY, a Texas corporation (El Paso).

WITNESSETH:

WHEREAS, pursuant to Section 7(b)(4) of the Participation Agreement dated as of December 1, 1986 among [a predecessor of] the Owner Participant, El Paso Funding Corporation, as Loan Participant, The First National Bank of Boston, in its individual capacity and as Owner Trustee, First City National Bank of Houston, in its individual capacity and as Indenture Trustee and El Paso, as Lessee (the Participation Agreement), the Owner Participant desires to sell and El Paso desires to buy the Assigned Property (as hereinafter defined);

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. For purposes hereof, capitalized terms used herein shall have the meanings assigned to such terms in the Participation Agreement.

ARTICLE II

ASSIGNMENT OF TRUST ESTATE

SECTION 2.01. *Assignment.* Owner Participant does hereby grant, bargain, convey, sell, assign, transfer and set over to El Paso, on an as is, where is basis, free and clear of Owner Participant's Lien but otherwise without recourse, representation or warranty, express or implied, of any nature whatsoever, all Owner Participant's right, title and interest in, to and under the Trust Estate except Owner Participant's right to receive Excepted Payments (the Assigned Property) [, subject to Owner Participant's security interest in, and general lien upon, all the right, title and interest of El Paso, as successor Owner Participant, in, to and under the Assigned Property*]. The disclaimer of representations and warranties set forth in the second sentence of Section 6(b) of the Facility Lease is hereby incorporated herein as fully as if set forth at this place. [Notwithstanding the foregoing transfer and assignment of the Assigned Property to El Paso, the obligation of El Paso to make the payments provided in Section [insert applicable section: 9(c), 9(d), 13(c) or 16] of the Facility Lease [Section 10(b)(3)(xvii) of the Participation Agreement] (together with interest thereon in accordance with Section 3(b) of the Facility Lease) (or to make other payments in a like amount) shall not be deemed to be canceled or discharged but shall continue until all such amounts are so received by Owner Participant pursuant to the provisions of Section 7(b)(4) of the Participation Agreement.*] [The Owner Participant hereby acknowledges receipt of $ representing payment in full of all amounts due to the Owner Participant under Section [insert applicable section: 9(c), 9(d), 13(c) or 16] of the Facility Lease [Section 10(b)(3)(xvii) of the Participation Agreement.**]

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*To be inserted if on the date of the transfer the Owner Participant has not received under Section 5.2 of the Indenture the payments provided for in Section 9(c), 9(d), 13(c) or 16 of the Facility Lease or Section 10(b)(3)(xvii) of the Participation Agreement, as the case may be.

**To be inserted if on the date of the transfer the Owner Participant has received the payments provided for in Section 9(c), 9(d), 13(c) or 16 of the Facility Lease or Section 10(b)(3)(xvii) of the Participation Agreement, as the case may be.

ARTICLE III

EFFECTIVENESS OF TRANSFER

SECTION 3.01. *Effectiveness of Transfer.* The transfer of the Assigned Property shall become effective without further action upon the execution and delivery by the Owner Participant to El Paso of this Bill of Sale and Assignment and the furnishing of a counterpart of this Bill of Sale and Assignment to the Owner Trustee.

ARTICLE IV

MISCELLANEOUS

SECTION 4.01. *Successors and Assigns.* This Bill of Sale and Assignment shall be binding upon the Owner Participant and its successors and shall inure to the benefit of El Paso and its successors and assigns.

SECTION 4.02. *Governing Law.* This Bill of Sale and Assignment shall be governed by and construed and enforced in accordance with the law of the State of New York.

IN WITNESS WHEREOF, the undersigned has caused this Bill of Sale and Assignment to be duly executed as of the day and year written above.

[ ]

By: _____

Title: _____

Exhibit B
to
Participation Agreement

AFFIDAVIT OF TRUSTEE

THE FIRST NATIONAL BANK OF BOSTON,
as Owner Trustee under that certain
Trust Agreement dated as of
December 1, 1986 with
CHRYSLER FINANCIAL CORPORATION

The undersigned, being a duly authorized representative of The First National Bank of Boston, a national banking association, as Trustee under the above-captioned Trust Agreement (the Trust Agreement), does hereby affirm and acknowledge that The First National Bank of Boston, as Trustee, holds legal title to certain real (and other) property on behalf of a certain beneficiary, such property and beneficiary being more particularly described in that certain Deed recorded December , 1986, as instrument No. 86- , records of Maricopa County, Arizona; being further described in that certain Deed and Bill of Sale recorded December , 1986, as instrument No. 86- , records of Maricopa County, Arizona; being further described in that certain Assignment, Assumption and Further Agreement recorded December , 1986, as instrument No. 86- , records of Maricopa County, Arizona; and being further described in that certain Deed and Assignment of Beneficial Interest dated as of December 1, 1986, and that certain related Amended Affidavit of Trustee executed by Title USA Company of Arizona as Trustee of its Trust No. 530 and recorded December , 1986, as instrument No. 86- , records of Maricopa County, Arizona; the property descriptions and beneficiary disclosures contained in or incorporated into each of said instruments being incorporated herein by this reference as if fully set forth herein.

A certain change in ownership of the beneficial interest in the Trust Agreement has occurred since the recordation of the above-described instruments. As now reflected in the records of The First National Bank of Boston, the sole beneficiary of the Trust Agreement is:

El Paso Electric Company
303 North Oregon Street
El Paso, Texas 79901

A copy of the Trust Agreement is available for inspection at the offices of The First National Bank of Boston, 100 Federal Street, Boston, Massachusetts 02110.

DATED THIS day of [ ].

THE FIRST NATIONAL BANK OF BOSTON,
not in its individual capacity, but
solely as Owner Trustee under the
Trust Agreement dated as of
December 1, 1986, with

_____

By: _____

DEFINITION OF TERMS

The terms defined herein relate to the Participation Agreement (as defined below) and certain transaction documents executed, or to be executed, in connection with the Participation Agreement. Such terms include the plural as well as the singular. Any agreement defined or referred to below shall include each amendment, modification and supplement thereto and waiver thereof as may become effective from time to time, except where otherwise indicated. Any term defined below by reference to any agreement shall have such meaning whether or not such document is in effect. The terms *"hereof," "herein," "hereunder"* and comparable terms refer to the entire agreement with respect to which such terms are used and not to any particular article, section or other subdivision thereof.

If, and to the extent that, either the Participation Agreement or any other Transaction Document which incorporates this Appendix shall be amended from time to time pursuant to the respective terms thereof, this Appendix shall be, or be deemed to have been, amended concurrently with the execution and delivery of each such amendment in order to conform the definitions herein to the new or amended definitions set forth in or required by such amendment.

Additional Bonds shall mean Bonds in addition to the Initial Series Bonds.

Additional Equity Investment shall have the meaning set forth in Section 8 (f) of the Facility Lease.

Additional Notes shall have the meaning set forth in the recitals to the Indenture, which Additional Notes shall be issued, if at all, pursuant to Section 3.5 of the Indenture.

Affiliate, with respect to any Person, shall mean any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such Person. For purposes of this definition, the term *"control"* (including the correlative meanings of the terms *"controlled by"* and *"under common control with"*), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

After-Tax Basis shall mean, with respect to any payment received or deemed to have been received or accrued by any Person, the amount of such payment supplemented by a further payment to that Person so that the sum of the two payments shall, after deduction of all taxes and other charges (taking into account any current credits or current deductions arising therefrom and computed at the highest marginal statutory tax rates) resulting from the receipt (actual or constructive) or accrual of such two payments imposed under any Applicable Law or by any Governmental Authority, be equal to such payment received or deemed to have been received or accrued.

Agency Period shall have the meaning set forth in Section 7.01 of the Assignment and Assumption.

Aggregate Liability shall have the meaning assigned in the Price-Anderson Act, as in effect as of the Closing Date; *provided* that if the Price-Anderson Act shall be amended to expand the meaning of the term "aggregate liability," the term "Aggregate Liability" shall be similarly expanded.

ANPP Administrative Committee shall mean the committee established pursuant to Section 6.1.1 of the ANPP Participation Agreement (or any comparable successor provision).

ANPP Operating Committee shall mean the committee established pursuant to Section 6.1.2 of the ANPP Participation Agreement (or any comparable successor provision).

ANPP Participants shall have the meaning assigned to the word "Participant" under the ANPP Participation Agreement.

ANPP Participation Agreement shall mean the Arizona Nuclear Power Project Participation Agreement, dated as of August 23, 1973, among APS, Salt River, Southern California, PNM, El Paso, SCPPA and LADWP.

ANPP Project Agreements shall mean the ANPP Participation Agreement and the other Project Agreements (as such term is defined in the ANPP Participation Agreement).

ANPP Switchyard shall mean the ANPP High Voltage Switchyard located at the PVNGS Site, the ownership, construction, operation and maintenance of which are governed by the ANPP High Voltage Switchyard Participation Agreement executed as of August 20, 1981 (APS Contract No. 2252-419.00), the parties to which are APS, PNM, Salt River, El Paso, LADWP and Southern California.

Applicable Law shall mean all applicable laws, statutes, treaties, rules, codes, ordinances, regulations, permits, certificates, orders, interpretations, licenses and permits of any Governmental Authority and judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other judicial or quasi judicial tribunal (including those pertaining to health, safety, the environment or otherwise).

Applicable Unit 2 Percentage shall mean 2.183647% with respect to property in Unit 2 not constituting Common Facilities and 0.727881% with respect to Common Facilities.

Appraisal Procedure shall mean a procedure whereby two independent appraisers, one chosen by the Lessee and one by the Lessor, shall mutually agree upon the value, period, amount or determination then the subject of an appraisal. If either the Lessor or the Lessee, as the case may be, shall determine that a value, period, amount or determination to be determined under the Facility Lease or any other Transaction Document cannot be timely established by mutual agreement, such party shall appoint its appraiser and deliver a written notice thereof to the other party. Such other party shall appoint its appraiser within 15 days after receipt from the other party of the foregoing written notice. If within 20 days after appointment of the two appraisers, as described above, the two appraisers are unable to agree upon the value, period, amount or determination in question, a third independent appraiser shall be chosen within ten days thereafter by the mutual consent of such first two appraisers or, if such first two appraisers fail to agree upon the appointment of a third appraiser within such period, such appointment shall be made by the American Arbitration Association, or any organization successor thereto, from a panel of arbitrators having experience in the business of operating a nuclear electric generating plant and a familiarity with equipment used or operated in such business. The decision of the third appraiser so appointed and chosen shall be given within ten days after the selection of such third appraiser. If three appraisers shall be so appointed and the determination of one appraiser is more disparate from the middle determination by more than twice the amount by which the third determination is disparate from the middle determination, then the determination of such appraiser shall be excluded, the remaining two determinations shall be averaged and such average shall be binding and conclusive on the Lessor and the Lessee; otherwise the average of all three determinations shall be binding and conclusive on the Lessor and the Lessee. The fees and expenses of appraisers incurred in connection with any Appraisal Procedure relating to any transaction contemplated by any provision of any Transaction Document shall be divided equally between the Lessor and the Lessee *(except* pursuant to Section 13(c), 14 (a) or 16 of the Facility Lease or Section 10(b)(3)(xvii) of the Participation Agreement, which shall be paid solely by the Lessee).

APS shall mean Arizona Public Service Company, an Arizona corporation.

Arizona Public Utility Act shall mean Chapter 2, Title 40, Arizona Revised Statutes.

Assigned Payments shall have the meaning set forth in Section 2.1 (1) of the Indenture.

Assignment and Assumption shall mean the Assignment, Assumption and Further Agreement, dated as of December 1, 1986, between El Paso and the Owner Trustee.

Assignment of Beneficial Interest shall mean the Deed and Assignment of Beneficial Interest under Title USA Company of Arizona Trust No. 530, dated as of the Closing Date, from El Paso to the Owner Trustee.

Assumption Agreement shall mean the Assumption Agreement of El Paso substantially in the form of Exhibit B to the Indenture.

Assumptions shall mean the Pricing Assumptions and the Tax Assumptions.

Atomic Energy Act shall mean the Atomic Energy Act of 1954, as amended.

Authorized Officer shall mean, with respect to the Indenture Trustee, any officer of the Indenture Trustee or any other Person who shall be duly authorized by appropriate corporate action on the part of the Indenture Trustee to authenticate a Note and shall mean, with respect to the Owner Trustee, any officer of the Owner Trustee who shall be duly authorized by appropriate corporate action to execute any Transaction Document.

Bankruptcy Code shall mean the Bankruptcy Reform Act of 1978, as amended, and any law with respect to bankruptcy, insolvency or reorganization successor thereto.

Basic Lease Term shall mean the initial term of the Facility Lease, which shall begin on the Closing Date and end on October 1, 2013, unless earlier terminated as provided in the Facility Lease.

Basic Rent shall have the meaning set forth in Section 3 (a) of the Facility Lease.

Basic Rent Payment Dates shall mean and include July 2, 1987, and each January 2 and July 2 of each year thereafter, ending July 2, 2013, and, if the Lessee shall elect the Renewal Term, each October 1 and April 1 of each year during such Renewal Term, commencing October 1, 2013 and ending six months before the last day of the Renewal Term.

Bill of Sale shall mean the Deed and Bill of Sale, dated as of the Closing Date, between El Paso and the Owner Trustee.

Bonds shall mean all bonds, notes and other evidences of indebtedness from time to time issued and outstanding under the Collateral Trust Indenture, *including, without limitation*, the Initial Series Bonds, the Releveraging Bonds, the Refunding Bonds and any other Additional Bonds.

Bond Supplemental Indenture shall mean the Series 1986A Bond Supplemental Indenture dated as of December 1, 1986, among El Paso, the Loan Participant and the Collateral Trust Trustee, supplementing the Collateral Trust Indenture and providing, among other things, for the issuance of the Initial Series Bonds.

BONY shall mean The Bank of New York and its successors and assigns.

Business Day shall mean any day other than a Saturday or Sunday or other day on which banks in El Paso or Houston, Texas, New York, New York or Boston, Massachusetts, are authorized or obligated to be closed.

Capital Improvement shall mean (a) the addition, betterment or enlargement of any property constituting part of Unit 2 or the replacement of any such property with other property, irrespective of whether (i) such replacement property constitutes an enlargement or betterment of the property which it replaces, (ii) the cost of such addition, betterment, enlargement or replacement is or may be capitalized, or not charged to maintenance or repairs, in accordance with the Uniform System of Accounts or (iii) such addition, betterment or enlargement, is or is not included or reflected in the plans and specifications for Unit 2, as built, and (b) any alteration, modification, addition or improvement to Unit 2, other than original, substitute or replacement parts incorporated into Unit 2.

Cash Available for Investment shall mean (i) until December 31, 1987, the excess of cash and temporary cash investments not segregated for other purposes (including redemption of Debt) over cash construction requirements needed for the ensuing 12-month period and (ii) thereafter, zero.

Casualty Value, as of any date of determination thereof, shall mean (i) during the Basic Lease Term, the percentage of Facility Cost set forth opposite the date in Schedule 1 to the Facility Lease immediately succeeding such date of determination (or, if such date is specified in Schedule 1 to the Facility Lease, such date), and (ii) during the Renewal Term, the amount determined by amortizing ratably the Fair Market Sales Value of the Undivided Interest as of the day following the last day of the Basic Lease Term in monthly steps over the period from such date to the License Expiration Date. Anything contained in the Participation Agreement or the Facility Lease to the contrary notwithstanding, Casualty Value shall be, when added to all other amounts which the Lessee is required to pay under Section 9(c) of the Facility Lease, under any circumstances and in any event, in an amount at least sufficient to pay in full, as of any date of payment, the aggregate unpaid principal amount of all Notes Outstanding at the close of business on such date, together with accrued and unpaid interest on such Notes.

Change in Tax Law shall have the meaning set forth in Section 3 (d) of the Facility Lease.

Chrysler Financial Corporation shall mean Chrysler Financial Corporation, a Michigan corporation.

Chief Financial Officer shall mean the person designated by the Board of Directors of El Paso as the chief financial officer of El Paso.

Claims shall mean liabilities, obligations, losses, damages, Taxes (other than Taxes on income), penalties, claims (including, without limitation, claims involving liability in tort, strict or otherwise), actions, suits, judgments, costs, interest, expenses and disbursements, whether or not any of the foregoing shall be founded or unfounded (*including, without limitation*, legal fees and expenses and costs of investigation) of any kind and nature whatsoever without any limitation as to amount.

Closing shall mean the proceedings which occur on the Closing Date, as contemplated by the Participation Agreement.

Closing Date shall mean December 18, 1986.

Code shall mean the Internal Revenue Code of 1986, as amended, or any successor law.

Collateral Trust Indenture shall mean the Collateral Trust Indenture, dated as of August 1, 1986, among El Paso, the Loan Participant and the Collateral Trust Trustee.

Collateral Trust Indenture Supplement shall mean a supplement to the Collateral Trust Indenture.

Collateral Trust Trustee shall mean First City National Bank of Houston, not in its individual capacity, but solely as Collateral Trust Trustee under the Collateral Trust Indenture, and each successor trustee thereunder.

Common Facilities shall mean all PVNGS common facilities, as set forth in Section B of Exhibit B to the Bill of Sale, *other than* excluded common facilities as set forth in Section B of Exhibit B to the Bill of Sale.

Consolidated Capitalization shall mean the total of capital and surplus plus the principal amount of indebtedness for borrowed money which matures more than one year after the date as of which Consolidated Capitalization is being determined, all as shown on a consolidated balance sheet of the Lessee.

Coverage Ratio shall mean the ratio of (x) consolidated net earnings before income taxes (excluding 100% (50% until July 1, 1989) of the allowance for funds used during construction (net of deferred taxes)) increased by the pro forma earnings on Cash Available for Investment (calculated the prevailing 90-day treasury bill rate) for the twelve-month period ending on a date no later than days prior to the date as of which Coverage Ratio is being determined to (y) total interest and lease payments that will be payable by the Lessee and its subsidiaries (whether consolidated or unconsolidated) during the twelve-month period following the date as of which Coverage Ratio is being

determined, excluding (i) lease payments to the Rio Grande Resources Trust, (ii) lease payments under any short-term operating lease of computers, office equipment or the like, (iii) interest on Debt which has been legally defeased or for the payment of which funds have been segregated in escrow and (iv) interest on Debt maturing one year or less from the date of incurrence thereof.

Cure Option shall have the meaning set forth in Section 16(e) of the Facility Lease.

Debt shall mean (a) secured or unsecured indebtedness for borrowed money or for the deferred purchase price of property or evidenced by notes, bonds or other instruments, (b) obligations as lessee under capital leases, (c) the present value of obligations as lessee under other leases the remaining term of which (including options to renew) is more than one year, in each case discounted to present value as of the respective dates on which such obligations are due at the rate per annum borne by the debt placed in conjunction with such lease or, if no such debt was placed, at the Lessee's marginal cost of debt at the time such lease was entered into, (d) obligations secured by any Lien existing on any property owned or held by a Person, whether or not such Person has assumed or become liable for the obligations secured thereby, and (e) obligations under direct or indirect guarantees of (including obligations (contingent or otherwise) to assure a creditor against loss in respect of) indebtedness or obligations of others of the kinds referred to in clauses (a), (b), (c) and (d) above. For purposes of the foregoing, there shall be excluded, except as used in Section 15 of the Facility Lease, obligations under any operating lease of computers, office equipment or the like, the original term of which (including options to renew) is less than five years, and obligations under any lease from the Rio Grande Resources Trust.

Decommissioning shall mean the decommissioning and retirement from service of Unit 2, and the related possession, maintenance and disposal of material, radioactive or otherwise, used in or produced by or relating to Unit 2, including, without limitation, (i) placement and maintenance in a state of protective storage, (ii) in-place entombment and maintenance, (iii) dismantlement, (iv) removal, decontamination and disposition of equipment and fixtures, (v) razing, (vi) removal and disposition of debris related to Unit 2 from the PVNGS Site, (vii) restoration of the PVNGS Site related to Unit 2 for unrestricted use, (viii) any other actions relating to decommissioning and retirement from service required by the NRC and (ix) all activities undertaken incident to the implementation thereof.

Decommissioning Cost shall mean the Applicable Unit 2 Percentage of costs, liabilities and expenses relating or allocable to, or incurred in connection with, Decommissioning, including compliance with the Lessee's obligations under Section 10(b)(3)(xi) of the Participation Agreement.

Decommissioning Trust Agreement shall mean the Decommissioning Trust Agreement to be entered into among the Owner Trustee, El Paso and the Decommissioning Trustee.

Decommissioning Trustee shall mean First City National Bank of El Paso, a national banking association, as trustee under the Decommissioning Trust Agreement, and each successor trustee under such Agreement.

Decommissioning Trust Fund shall mean the trust fund established and maintained under and pursuant to the Decommissioning Trust Agreement.

Deed shall mean the Deed, dated as of the Closing Date, from El Paso to the Owner Trustee.

Deemed Loss Event shall mean any of the following events (*unless and until* waived in writing by the Owner Participant):

(1) *Utility Regulation.* If at any time from and including the Closing Date and before the Lease Termination Date, the Lessor or the Owner Participant, by reason of the acquisition or ownership of the Undivided Interest or the Real Property Interest or any part thereof by the Lessor (or any beneficial interest therein by the Owner Participant) or the lease of the Undivided Interest to the Lessee or any of the other transactions contemplated by the Transaction Documents, shall be deemed by any Governmental Authority having jurisdiction to be, or shall become subject to regulation (other than Non-Burdensome Regulation) as, an electric utility, a

public utility or a holding company under any Applicable Law or as a consequence of any Governmental Action, and the effect thereof on the Lessor or the Owner Participant would be, in the sole judgment of the Owner Participant, acting on the advice of counsel, adverse, *except that* if the Lessee, at its sole cost and expense, is contesting diligently and in good faith any Governmental Action which would otherwise constitute a Deemed Loss Event under this clause (1), such Deemed Loss Event shall be deemed not to have occurred so long as in the sole judgment of the Owner Participant (i) such contest does not involve any danger of the foreclosure, sale, forfeiture or loss of, or the creation of any Lien on, the Undivided Interest, the Real Property Interest or any part thereof or any interest therein, (ii) such contest does not adversely affect the Undivided Interest or the Real Property Interest or any part thereof or any other property, assets or rights of the Lessor or the Owner Participant or the Lien of the Indenture thereon, (iii) the Lessee shall have furnished the Owner Participant with an opinion of independent counsel satisfactory to the Owner Participant to the effect that (a) there exists a reasonable basis for contesting such determination and (b) in the case of any action arising from or related to the Lessor or the Owner Participant under the Holding Company Act, it is more likely than not that the Lessee will successfully contest such determination without the need for any appeal, (iv) such determination shall be effectively stayed or withdrawn during such contest (and shall not in the sole judgment of the Owner Participant be subject to retroactive application at the conclusion of such contest) in a manner satisfactory to the Owner Participant, and the Owner Participant shall have determined in its sole judgment that such contest and the Lessor's continued ownership of the Undivided Interest and the Real Property Interest during the pendency of such contest will not adversely affect its business or the business of any of its Affiliates, and (v) the Lessee shall have indemnified the Lessor and the Owner Participant in a manner satisfactory to the Owner Participant for any liability or loss which either may incur; *it being understood, however*, that the term Ow[redacted] Participant as used in this clause (1) does not include any Transferee who at the time of trans[redacted] an entity which is subject to regulation as an electric utility, public utility or a holding company under Applicable Law or Governmental Action.

(2) ***Change in Applicable Law.*** Any change in, or new interpretation by a Governmental Authority having jurisdiction relating to, Applicable Law, *including, without limitation*, the Price-Anderson Act, the Atomic Energy Act, the Nuclear Waste Act or the regulations of the NRC, in each case as in effect on the Closing Date, or any other significant development, as a result of which, in the opinion of independent counsel to the Owner Participant (i) the Aggregate Liability for a single Nuclear Incident of all Persons Indemnified is increased; (ii) the Aggregate Liability for a single Nuclear Incident of all Persons Indemnified exceeds the amount of Financial Protection required with respect to a single Nuclear Facility under Applicable Law and available at the time of such Nuclear Incident; (iii) (a) the amount of Primary Financial Protection required with respect to a single Nuclear Facility under Applicable Law is increased, whether or not the total amount of Financial Protection required with respect to a single Nuclear Facility is increased, (b) the amount of Financial Protection required with respect to a single Nuclear Facility under Applicable Law is increased (*including, but not limited to*, an increase in the amount of retrospective premiums payable under the Retrospective Rating Plan), or (c) the amount of retrospective premiums payable under the Retrospective Rating Plan in any one year with respect to two or more Nuclear Incidents is increased; (iv) the provisions of the penultimate sentence of Section 170b. of the Atomic Energy Act, 10 C.F.R. Section 140.22 or 10 C.F.R. Section 140.92 shall be modified or changed in any material respect; (v) the Lessor or the Owner Participant may become liable or responsible in any capacity (*including, without limitation*, through assessments imposed by a Governmental Authority) for payments owed in respect of the Nuclear Waste Fund (as such term is used in Section 302 of the Nuclear Waste Act) or in respect of the handling or disposal of nuclear waste, decontamination, storage, transportation or safek[redacted] ing of radioactive or hazardous materials or any other obligation in the nature of the foreg[redacted] (vi) the Lessor, the Owner Participant or the Lessee may be prohibited from asserting any right, protection or defense available under Applicable Law as of the Closing Date with respect to civil

or criminal actions brought in connection with a Nuclear Incident (*including, without limitation,* through an expansion of the waiver of defenses provision under subsection 170n. of the Atomic Energy Act): (vii) there shall be expressly created a new cause of action whereby any Person who pays or will pay retrospective premiums under the Retrospective Rating Plan or other assessments required under Applicable Law may recover the amount of such payments from the facility in which a Nuclear Incident occurs or from any Person associated with such facility; (viii) there shall be a third tier or additional level of potential or real liability (*including* assessments imposed by a Governmental Authority) with respect to a Nuclear Facility; (ix) there shall be any type of claim, liability or expense (*other than* the costs of investigating and settling claims and defending suits for damage) excluded from the limitation of liability established by the Price-Anderson Act (through modification of the definitions of "aggregate liability," "persons indemnified," "nuclear incident" or otherwise) or excluded (or the funding or payment thereof deferred) under insurance or other Financial Protection required under Applicable Law as in effect on the Closing Date, *except* to the extent and in the amount expressly excluded or deferred pursuant to Applicable Law as in effect on the Closing Date; or (x) the Lessor or the Owner Participant may be exposed, during the Lease Term or after the Lease Termination Date to any other increased real or potential liability (*including, without limitation,* through assessments imposed by a Governmental Authority) with respect to a Nuclear Incident or otherwise relating to the operation of PVNGS or the transactions contemplated by the Participation Agreement; *provided, however,* that no such change, interpretation or significant development shall constitute a Deemed Loss Event if and for so long as such change, interpretation or significant development meets all the conditions constituting a Safe Harbor Change. For purposes of this clause (2), the requirement or existence of insurance, retrospective premiums, indemnities (whether by the Lessee or any other Person) or other forms of Financial Protection (similar or dissimilar to the foregoing) shall not be deemed to eliminate or negate any exposure of the Lessor or the Owner Participant to real or potential increased liability.

(3) *Insurance.* The Lessee shall not be in compliance with Section 10 of the Facility Lease.

(4) *License.* Any expiration, revocation, suspension, amendment or interpretation by any Governmental Authority of the License or any other change in Applicable Law or Governmental Action, as a result of which, prior to the Lease Termination Date, either the Lessor or the Owner Participant is or might (i) be required to be or become a licensee under the Atomic Energy Act with respect to Unit 2 or (ii) be subject to the obligations or liabilities imposed as of the Closing Date (or thereafter) on licensees under the Atomic Energy Act with respect to Unit 2 or (iii) be otherwise subject to significant regulation.

(5) ***Multiple Incidents.*** The occurrence (i) of two or more incidents (including incidents occurring outside the United States of America), in each case at any Nuclear Facility or Facilities using a Combustion Engineering pressurized water reactor nuclear steam supply system, or another nuclear steam supply system of comparable design or comparable components, the failure of which Combustion Engineering pressurized water reactor nuclear steam supply system or other nuclear steam supply system of comparable design or comparable components results in (x) a discharge or dispersal of radioactive material off-site when, as a result of an event comprised of one or more related happenings, radioactive material is released from its intended place of confinement, in amounts off-site, or causing radiation levels off-site, which result in off-site surface radiation levels measured over a contiguous or non-contiguous area of 100 square meters of (A) alpha particles from transuranic isotopes in excess of .35 microcuries per square meter, (B) alpha particles from all other isotopes in excess of 3.5 microcuries per square meter or (C) either beta or gamma particles in excess of 4 millirads per hour as measured at a height of one centimeter (measured through not more than 7 milligrams per square centimeter of total absorber), *provided, however,* that (I) if the level of radiation constituting an Extraordinary Nuclear Occurrence is reduced by the NRC from those set forth herein, then the levels set forth herein shall be reduced equivalently or (II) if alternative criteria for determining an Extraordinary Nuclear Occurrence are adopted by the NRC, then the criteria set forth herein shall be modified to be consistent with

the criteria established by the NRC, or (y) (A) the radiation level in the containment vessel as measured by the average of two high range radiation monitors in the top half of such containment vessel (or if only one such monitor is operating at such time, such monitor) averaged over one hour equals or exceeds 1,000 rad per hour; or (B) any measure of radioactivity in the primary coolant system shall exceed by 1,000 times the limiting conditions for operation specified in the technical specifications for Unit 2 (as in effect on the Closing Date); or (z) damage to off-site property, *including, without limitation*, costs for decontamination, in amounts in excess of $15,000,000; (ii) within a five-year period of three or more incidents, of the type and severity described in subclause (i)(x), (y) or (z) above, at any Nuclear Facility or Facilities (*including* incidents occurring outside the United States of America).

(6) ***Illegality; Exercise of Rights and Remedies.*** Any change in Applicable Law or any Governmental Action the effect of which is or might be (i) to make any of the transactions contemplated by the Transaction Documents unauthorized, illegal or otherwise contrary to Applicable Law, (ii) to impede the exercise by the Lessor or the Owner Participant of any right or remedy under any Transaction Document relating to the assertion of claims for Rent or monetary damages, (iii) to cause the Lessor or the Owner Participant to be or become liable in any capacity in respect of Decommissioning, *including, without limitation*, all or any portion of the Termination Obligation (as defined in the ANPP Participation Agreement), or (iv) to constitute an assertion to the effect that (a) the exercise by the Lessor or the Owner Participant of any right (irrespective of the event giving rise to such right) under any Transaction Document would constitute impermissible control over Unit 2 or the licensees of Unit 2, *other than* an assertion consistent with the second sentence of Section 184 of the Atomic Energy Act and the NRC's regulations thereunder, *including, without limitation*, 10 C.F.R. Section 50.81, as now in effect or (b) the acquisition or transfer of the Undivided Interest was in violation of, or otherwise contrary to, Applicable

(7) ***Radiation Level.*** Except as a result of controlled movement of spent fuel into or w the spent fuel storage facility for Unit 1 or 3, the radiation level in the fuel building above either such storage facility, as measured by a valid radiation measuring instrument located in such building above either such storage facility, shall be more than 1,000 times the average of the previous five readings of such measuring instruments over a period of not less than 24 hours.

Default shall mean an event or condition which, with the giving of notice or lapse of time, or both, would constitute an Event of Default.

Directive shall mean an instrument in writing executed in accordance with the terms and provisions of the Indenture by the Holders, or their duly authorized agents or attorneys-in-fact, representing a Majority in Interest of Holders of Notes, directing the Indenture Trustee to take or refrain from taking the action specified in such instrument.

Early Payment Obligation shall mean the obligation of the Lessee to pay to the Lessor the amount specified in the first sentence of Section 9(c) or the third sentence of Section 9(d) of the Facility Lease.

Economic Useful Life shall mean that period commencing on the date as of which the determination of Economic Useful Life is to be made as provided in Section 8(g) of the Facility Lease and ending on the date upon which it can reasonably be anticipated that Unit 2 will no longer be useful to, and usable by, the ANPP Participants as a facility for the generation of electric power or Unit 2 is no longer an economic and commercially practical and feasible facility for the generation of electric power capable of producing (after taking into account costs of capital) a reasonable economic return to the owner thereof, whichever is expected to occur earlier. For the purpose of determining Economic Useful Life, all relevant factors shall be taken into account (as such factors obtain on the date of determination and as such factors are reasonably anticipated to obtain in the future), including all relevant contractual and other arrangements, Governmental Actions, physical and other aspects of Unit 2, market conditions and technological developments.

El Paso shall mean El Paso Electric Company, a Texas corporation.

El Paso Net Worth shall mean the consolidated common stockholders equity of El Paso and any successor, as shown in its audited financial statement as of December 31 of the most recent year.

Eligible Bank shall mean a commercial bank or trust company in the nature of a bank (a *Letter of Credit Bank*) not related to the Owner Participant or the Lessee at the time of issuance of any Letter of Credit which shall be (i) Bank of New York, so long as its long-term unsecured debt securities or deposits are rated at least Baa1 by Moody's, (ii) any domestic Letter of Credit Bank (w) whose long-term unsecured debt securities at the time of issuance of any Letter of Credit are rated Aa3 by Moody's, (x) whose stockholders' equity is at least $1.5 billion in 1986 U.S. dollars, (y) whose total assets are at least $30 billion in 1986 U.S. dollars, and (z) which is approved by the Owner Participant (such approval not to be unreasonably withheld), and such bank shall continue to be an Eligible Bank so long as its long-term unsecured debt securities or deposits are rated at least Baa1 by Moody's, or (iii) a United States branch or agency of a foreign bank approved by the Owner Participant, in its sole and absolute discretion.

Enhanced Casualty Value, as of any date of determination thereof, shall mean the percentage of Facility Cost set forth opposite the date in Schedule 5 to the Facility Lease immediately succeeding such date of determination (or, if such date of determination is specified in such Schedule 5, such date). Anything contained in the Participation Agreement or the Facility Lease to the contrary notwithstanding, Enhanced Casualty Value shall be, when added to all other amounts which the Lessee is required to pay under Section 10(b)(3)(xvii) of the Participation Agreement, under any circumstances and in any event, in an amount at least sufficient to pay in full, as of any date of payment, the aggregate unpaid principal amount of all Notes Outstanding at the close of business on such date, together with accrued and unpaid interest on such Notes.

Equity Portion of Rent shall mean (i) in the case of any payment of Basic Rent, the amount of Basic Rent payable under the Facility Lease reduced by the principal and interest then due and payable on the Notes, (ii) in the case of any payment of Casualty Value, Special Casualty Value, Enhanced Casualty Value, Termination Value or Special Termination Value, the amount thereof reduced by the principal amount of and accrued and unpaid interest (since the Basic Rent Payment Date immediately preceding the date of payment) on the Outstanding Notes or (iii) in the case of any payment of Supplemental Rent not described in (ii) above, the amount thereof payable to the Owner Participant.

ERISA shall mean the Employee Retirement Income Security Act of 1974, as amended.

Estimated Transaction Expenses shall have the meaning set forth in Section 5(a) of the Participation Agreement.

Event of Default shall have the meaning set forth in Section 15 of the Facility Lease.

Event of Loss shall mean any of the following events: (a) a Final Shutdown, (b) a Requisition of Title or (c) a Requisition of Use for a period which exceeds five years or ends on or after the last day of the Lease Term (including any elected Renewal Term).

Excepted Payments shall mean (i) all payments of Supplemental Rent, *other than* payments by the Lessee (x) of Casualty Value paid pursuant to Section 16 of the Facility Lease or Termination Value or (y) of indemnity payments to which either the Loan Participant or any Indemnitee other than the Owner Trustee or the Owner Participant (or the respective successors, assigns, agents, officers, directors or employees of the Owner Trustee or the Owner Participant) is entitled, (ii) any amounts payable under any Transaction Document to reimburse the Lessor or the Owner Participant (*including* the reasonable expenses of the Lessor or the Owner Participant incurred in connection with any such payment) for performing or complying with any of the obligations of the Lessee under and as permitted by any Transaction Document, (iii) any amount payable to the Owner Participant by any Transferee as the purchase price of the Owner Participant's interest in the Trust Estate or by the Lessee in the case of the Special Transfer, (iv) so long as no Indenture Event of Default shall have occurred and be continuing, all payments of Basic Rent, Casualty Value, Termination Value, Enhanced Casualty Value, Special Termination Value or Special Casualty Value in excess of amounts then due

and owing in respect of the principal of and premium, if any, and interest on all Notes Outstanding, (v) any insurance proceeds with respect to an Event of Loss in excess of amounts then due and owing in respect of the principal of and premium, if any, and interest on all Notes Outstanding, (vi) any insurance proceeds (or payments with respect to risks self-insured) under liability policies, (vii) any amount payable pursuant to the Letter of Credit or the Letter of Credit Agreement and (viii) any payments in respect of interest to the extent attributable to payments referred to in clauses (i) through (vii) above.

Excess Amount shall have the meaning set forth in Section 19(f) of the Participation Agreement.

Existing Mortgages shall mean the Indenture of Mortgage dated as of October 1, 1946, between El Paso and State Street Trust Company (now State Street Bank and Trust Company), as Trustee, and the Indenture of Mortgage dated as of June 1, 1981, between El Paso and First City National Bank of El Paso, as Trustee.

Extension Letter shall mean the Extension Letter dated December 18, 1986 and addressed to the Collateral Trust Trustee by the parties to the Participation Agreement.

Extraordinary Nuclear Occurrence shall have the meaning assigned in Section 11 of the Atomic Energy Act and the related NRC regulations (10 C.F.R. §§ 140.84 and 140.85) as in effect as of the Closing Date.

Facility Cost shall mean the Purchase Price *plus* the sum of (x) all Supplemental Financing Amounts and (y) all Additional Equity Investment amounts.

Facility Lease shall mean the Facility Lease, dated as of December 1, 1986, between El P[redacted]s Lessee, and the Owner Trustee, as Lessor.

Fair Market Rental Value or *Fair Market Sales Value* of any property or service shall mean the value, which shall not in any event be less than zero, of such property or service for lease or sale determined on the basis of an arm's-length transaction for cash between an informed and willing lessee or purchaser (under no compulsion to lease or purchase) and an informed and willing lessor or seller (under no compulsion to lease or sell), and shall take into account (except when used in Section 16(a) of the Facility Lease) the existence of the Decommissioning Trust Fund, the Second Fund, if any, and the Lessee's obligations under Section 10(b)(3)(xi) of the Participation Agreement and shall take into account the Lessor's rights and obligations under the Assignment and Assumption and the Assignment of Beneficial Interest and rights under the Deed and the Bill of Sale (or the ground lease referred to in Section 10(b)(3)(xiv) of the Participation Agreement, as appropriate), but shall be without regard to any rights of the Lessee (including any renewal options) under the Facility Lease. *Except* pursuant to Section 16(a) of the Facility Lease or Section 6.01 of the Assignment and Assumption, *Fair Market Rental Value* and *Fair Market Sales Value* of the Undivided Interest and the Real Property Interest shall be determined on the assumption that (i) Unit 2 has been maintained in accordance with, and the Lessee has complied with, the requirements of the Facility Lease and the other Transaction Documents and the ANPP Participation Agreement, and (ii) the Lessee or El Paso, as possessor of the Undivided Interest and the Real Property Interest, is otherwise in compliance with the requirements of all Transaction Documents. Fair Market Rental Value shall be determined on the assumption that rent will be payable in equal semi-annual installments in advance.

FCNB shall mean First City National Bank of Houston, a national banking association.

Federal Power Act shall mean the Federal Power Act, as amended.

Federal Securities shall have the meaning set forth in Section 2.3(c) of the Indenture.

FERC shall mean the Federal Energy Regulatory Commission of the United States of America or any successor agency.

FERC Order shall mean the Order issued by the FERC on July 16, 1986 (Docket No. EC86-18-000) as supplemented by the letter dated November 14, 1986 from the Chief Accountant of the FERC (in Docket No. ES87-8-000).

Final Shutdown shall mean the earliest to occur of:

(1) the expiration or revocation of the License or that portion of the License that permits the operation of Unit 2 or the expiration, suspension or revocation of the License or that portion of the License that permits the possession by the Lessee of the Undivided Interest and the Real Property Interest;

(2) (x) the suspension of the License or that portion of the License which permits operation of Unit 2, which suspension remains in effect for three consecutive calendar months; (y) any order of or direction (or series of orders or directions) by the NRC or any other Governmental Authority that Unit 2 suspend operations for reasons of radiological health and safety for a Period exceeding 24 months; or (z) any cessation of operation of Unit 2 for a period of 24 months if the resumption of operations requires the concurrence of, the NRC or any other Governmental Authority;

(3) the permanent or temporary cessation of operation of Unit 1, 2 or 3 as a result of a Nuclear Incident at Unit 1, 2 or 3 (or if such Unit is not in operation immediately prior to the occurrence of such Nuclear Incident, the failure to resume operation thereof as a result of such Nuclear Incident) if (A) the Period of such cessation or failure equals or exceeds twenty-four consecutive calendar months, or (B) such Nuclear Incident causes the radiation level in the containment vessel of such Unit, as measured by the average of two high range radiation monitors in such containment vessel of such Unit (or if only one such monitor is operating at such time, such monitor) over one hour to equal or exceed 200 rad per hour; *provided, however*, that this subsection (B) shall not apply in respect of a Nuclear Incident arising solely from a fuel handling accident;

(4) (i) the occurrence of a Nuclear Incident at Unit 1, 2 or 3 causing (A) substantial injury or death to any person on or off the PVNGS Site or (B) a discharge or dispersal of "source," "special nuclear material" or "byproduct material" (as defined in the Atomic Energy Act) from its intended place of confinement in amounts off the PVNGS Site or causing radiation levels off the PVNGS Site such that, in the case of (B) above, (x) the NRC declares the occurrence of an Extraordinary Nuclear Occurrence or declares any other event connoting an equivalent level of accident or (y) the surface contamination dose rate measured off the PVNGS Site by a radiation monitor at 1 meter above the surface level equals or is greater at any time than 10 millirads/hour (0.10 milligray/hour) or, in the case of noble gas plume passage, 10 rads (0.10 gray) integrated over 24 hours, or if the NRC shall at any time lower the radiation levels required for the occurrence of an Extraordinary Nuclear Occurrence, such lower levels as shall be consistent with such change by the NRC, or (ii) the occurrence at PVNGS of a discharge or dispersal of radioactive material when, as a result of an event comprised of one or more related happenings, radioactive material is released from its intended place of confinement in amounts off-site resulting in an aggregate cost of decontamination estimated to be in excess of $10,000,000;

(5) the declaration by the Operating Agent of a site area emergency set forth in the PVNGS Emergency Plan for any reason other than a drill or false alarm;

(6) except as a result of controlled movement of spent fuel into or within the spent fuel storage facility for Unit 2, the radiation level in the fuel building above such storage facility, as measured by a radiation measuring instrument located in such building above such storage facility, shall be more than 1,000 times the average of the previous five readings of such measuring instrument over a period of not less than 24 hours;

(7) destruction of Unit 2, or damage to any portion of Unit 2 and, unless the Lessee theretofore shall have exercised its purchase option under Section 13(b) of the Facility Lease, the

failure of the Lessee, or of the Lessee and one or more other ANPP Participants, (A) to agree within eighteen calendar months of such damage or destruction (or prior to such earlier date as of which one or more other ANPP Participants shall agree to restore or reconstruct any damaged portion of Unit 2 in accordance with Section 16.2 of the ANPP Participation Agreement) to restore or reconstruct Unit 2 to completion prior to the day sixty calendar months after the date of such agreement and (B) thereafter to complete the restoration and reconstruction of Unit 2 within a period of sixty calendar months after the date of such agreement, but in no event later than the end of the Lease Term, *provided* that no Final Shutdown shall be deemed to have occurred pursuant to this clause (7) if and so long as Unit 2 is in operation at a rated core power level of a least 1900 megawatts thermal; or

(8) the operation of Unit 2 at a net rated capacity below 630 megawatts electric, or the non-operation of Unit 2, by reason of the fact that its net rated capacity is below 630 megawatts electric, or any combination thereof, for any reason *other than* as a result of damage to Unit 2.

For purposes of this definition, a Final Shutdown in consequence of the occurrence of an event described in clause (4) shall be deemed to have occurred immediately upon the occurrence of any of the following: (i) the water level within the primary coolant vessel shall decline to a level which is three feet above the nuclear core, (ii) the water level within the spent fuel storage facility shall decline to a level which is three feet above the top of any fuel which has been in the reactor core within the prior 12 months, (iii) the pressure within the primary coolant system shall decrease by in excess of 1000 pounds per square inch in a period of less than 5 minutes or (iv) the departure from nucleate boiling ratio shall be less than 0.9; and a final shutdown in consequence of the occurrence of an event described in clause (6) shall be deemed to have occurred immediately if the water level is three feet above any fuel which has been in the reactor within the prior 12 months.

Financing Documents shall mean the Collateral Trust Indenture, the Bond Supplemental Indenture, the Extension Letter and the Underwriting Agreement.

Financial Protection shall have the meaning assigned in the Price-Anderson Act, as in effect as of the Closing Date; provided that if the Price-Anderson Act shall be amended to expand the meaning of the term "financial protection," the term "Financial Protection" shall be similarly expanded.

FNB shall mean The First National Bank of Boston, in its individual capacity, and its successors and assigns.

Form U-7D shall mean the certificate to be filed pursuant to Rule 7(d) of the Holding Company Act for the purpose of exempting the Owner Participant and the Owner Trustee from registration under the Holding Company Act.

Generating Unit shall mean Unit 1, 2 or 3 or any of the other Generating Units (as such term is defined in the ANPP Participation Agreement) constituting PVNGS.

Generation Entitlement Share shall have the meaning assigned thereto in the ANPP Participation Agreement and (i) when used in reference to Unit 2, shall mean the Generation Entitlement Share of El Paso as the ANPP Participant with respect to its 15.8% interest in Unit 2, (ii) when used in reference to the Undivided Interest, shall mean the Generation Entitlement Share attributable to a 2.183647% undivided interest in Unit 2, and (iii) when used in Section 19 of the Facility Lease, shall refer to all Generating Units at PVNGS.

Governmental Action shall mean all authorizations, consents, approvals, waivers, exceptions, variances, orders, licenses, exemptions, publications, filings, notices to and declarations of or with any Governmental Authority (other than routine reporting requirements the failure to comply with which will not affect the validity or enforceability of any of the Transaction Documents or have a material adverse effect on the transactions contemplated by any Transaction Document or any Financing Document) or any other action in respect of any Governmental Authority and shall include, without

limitation, all siting, environmental and operating permits and licenses which are required for the use and operation of Unit 2, including the Undivided Interest and the Real Property Interest.

Governmental Authority shall mean any Federal, state, county, municipal, foreign, international, regional or other governmental authority, agency, board, body, instrumentality or court.

Holders shall mean the holders of the Notes or the Bonds, as the context may require.

Holding Company Act shall mean the Public Utility Holding Company Act of 1935, as amended.

Indemnitee shall mean the Owner Participant, the Owner Trustee, FNB, the Loan Participant, First City National Bank of Houston, the Indenture Trustee, the Paying Agent, the Banks, each Holder of a Note from time to time Outstanding, the Collateral Trust Trustee, the Trust, the Trust Estate, the Lease Indenture Estate, the indenture estate under the Collateral Trust Indenture, any Affiliate of any of the foregoing and the respective successors, assigns, agents, officers, directors or employees of the foregoing, excluding, however, any ANPP Participant other than the Owner Trustee or the Owner Participant.

Indenture shall mean the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents, dated as of December 1, 1986, between the Owner Trustee and First City National Bank of Houston.

Indenture Default shall mean an event which, after giving of notice or lapse of time, or both, would become an Indenture Event of Default.

Indenture Event of Default shall mean any of the events specified in Section 6.2 of the Indenture.

Indenture Trustee shall mean First City National Bank of Houston, a national banking association, not in its individual capacity, but solely as Indenture Trustee under the Indenture and each successor trustee and co-trustee thereunder.

Indenture Trustee's Liens shall mean Liens against the Lease Indenture Estate which result from acts of, or any failure to act by, or as a result of claims against, the Indenture Trustee, in its individual capacity, unrelated to the transactions contemplated by the Transaction Documents or the Financing Documents.

Indenture Trustee's Office shall mean the office of the Indenture Trustee located at First City Financial Center, 1301 Fannin Street, 2lst Floor, Houston, Texas 77002, or such other office as may be designated by the Indenture Trustee to the Owner Trustee and each Holder of a Note Outstanding under the Indenture.

Inflation Index shall mean such annual percentage adjustment in the aggregate amount payable with respect to all Nuclear Facilities under the Retrospective Rating Plan based upon a percentage change in the consumer price index or such other measure as may be provided from time to time in the Price-Anderson Act, as amended from time to time.

Initial Series Bonds shall mean the Lease Obligation Bonds, Series 1986A of the Loan Participant issued, authenticated and delivered under the Collateral Trust Indenture, as heretofore supplemented and amended and as supplemented by the Bond Supplemental Indenture.

Initial Series Notes shall mean the nonrecourse promissory notes, substantially in the form of Exhibits A-1, A-2 and A-3 to the Indenture, to be issued by the Owner Trustee and authenticated by the Indenture Trustee on the Closing Date to finance a portion of the Purchase Price.

Investment shall have the meaning set forth in Section 3(a) of the Participation Agreement.

Investment Company Act shall mean the Investment Company Act of 1940, as amended.

Investment Percentage shall mean the percentage identified as such in Schedule 2 to the Participation Agreement.

IRS shall mean the Internal Revenue Service of the United States Department of the Treasury or any successor agency.

Issuing Bank shall have the meaning set forth in Section 10(b)(3)(xvii) of the Participation Agreement.

LADWP shall mean the Department of Water and Power of The City of Los Angeles, a department organized and existing under the charter of the City of Los Angeles, a municipal corporation of the State of California.

Lease Indenture Estate shall have the meaning set forth in Section 2.1 of the Indenture.

Lease Term shall mean the aggregate of the Basic Lease Term and the Renewal Term, if any.

Lease Termination Date shall mean the last day of the Lease Term (whether occurring by reason of a termination or expiration of the Lease Term).

Lessee shall mean El Paso Electric Company, a Texas corporation, and its successors and assigns, as Lessee under the Facility Lease and as party to the other Transaction Documents and Financing Documents to which it is a signatory.

Lessee Request shall mean a request of the Lessee delivered pursuant to Section 6.03 of the Collateral Trust Indenture.

Lessor shall mean the Owner Trustee, as lessor under the Facility Lease, and its successors and assigns.

Lessor's Interest shall have the meaning set forth in Section 8(c)(3) of the Participation Agreement.

Lessor's Liens or *Owner Trustee's Liens* shall mean Liens against the Trust Estate or the Indenture Estate (*other than* Permitted Liens, *except* "Lessor's Liens" and "Owner Participant's Liens" referred to in clause (vi) of the definition thereof) for which the Lessee is not responsible and which result from acts of, or any failure to act by, or as a result of claims against, FNB or the Lessor, unrelated to the ownership of the Undivided Interest or the Real Property Interest, the administration of the Trust Estate or the transactions contemplated by the Transaction Documents or the Financing Documents.

Letter of Credit shall have the meaning set forth in Section 10(b)(3)(xvii) of the Participation Agreement.

Letter of Credit Agreement shall mean the Letter of Credit and Security Agreement dated as of December 1, 1986 between El Paso and BONY.

License shall mean NRC Facility Operating License No. NPF-51, issued April 24, 1986 (superseding NRC Facility Operating License No. NPF-46, issued on December 9, 1985), as the same may be amended, modified, extended, renewed or superseded from time to time.

License Amendment shall mean the Amendment, dated on or about December 10, 1986, amending the License and approving the transactions contemplated by the Participation Agreement and the Facility Lease.

License Expiration Date shall mean December 9, 2025, or such later or earlier date as the License shall expire or be terminated.

Lien shall mean any mortgage, pledge, security interest, encumbrance, lien, easement, servitude or charge of any kind, including, without limitation, any conditional sale or other title retention agreement, any lease in the nature thereof or the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction.

Loan shall have the meaning set forth in Section 2(a) of the Participation Agreement.

Loan Participant shall mean El Paso Funding Corporation, a Delaware corporation.

Loan Percentage shall mean the percentage identified as such in Schedule 2 to the Participation Agreement.

Majority in Interest of Holders of Notes shall mean Holders of a majority in principal amount of all Notes Outstanding under the Indenture at the time of any such determination.

Material Project Agreements shall mean (i) Arizona Nuclear Power Project (ANPP) Participation Agreement among APS, Salt River Project Agricultural Improvement and Power District, Public Service Company of New Mexico, El Paso Electric Company, Southern California Edison Company, Southern California Public Power Authority, and Los Angles Department of Water and Power, dated August 23, 1973, as amended, (ii) Nuclear Fuel Contract between ANPP and Combustion Engineering, Inc. (CE), dated as of August 20, 1973, (iii) Nuclear Steam Supply Contract between APS and CE, dated as of August 20, 1973, (iv) Turbine Generator Contract between APS and General Electric Company, dated as of March 21, 1974, as amended, (v) Uranium Enrichment Services Contract between the United States of America (USA) and APS, dated November 15, 1984, as amended, and the Associated Supplemental Agreement of Settlement between USA and APS, dated November 15, 1984, (vi) Contract between APS and Westinghouse Electric Corporation for fuel fabrication services for reload of batches of nuclear fuel, dated August 7, 1974, as amended, (vii) Agreement for the Sale and Purchase of Waste Water Effluent between the City of Tolleson, APS, and Salt River, dated June 12, 1981, as amended, (viii) Agreement for Construction of ANPP between Bechtel Power Corporation (Bechtel) and APS dated January 15, 1973, (ix) Agreement for Engineering and Procurement Services between APS and Bechtel, dated January 15, 1973, (x) Option and Purchase of Effluent among the Cities of Phoenix, Glendale, Mesa, Tempe, and Scottsdale, the Town of Youngtown, APS, and Salt River, dated April 23, 1973, (xi) Agreement for Conversion Services between Allied Chemical Corporation and APS, dated November 17, 1975, as amended, (xii) Uranium Concentrate Sales Agreement between Energy Fuels Exploration Company and APS, dated as of December 1, 1983, (xiii) Uranium Concentrate Sales Agreement between Energy Fuels Exploration Company and APS, dated as of October 23, 1981, as amended, (xiv) Agreement for Sale of Uranium Concentrates between Pathfinder Mines Corporation and APS, dated December 1, 1983, and (xv) Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste between USA and APS, dated July 21, 1984.

Maximum Aggregate Loss shall be computed and applied in respect of Unit 2, including all interests therein, and with respect to each calendar year shall mean the sum of retrospective premiums, if any, payable during such year under the Retrospective Rating Plan with respect to any Nuclear Incident which shall have occurred prior to the date of such calculation.

Maximum Option Period shall mean the period, in no event ending after the earlier to occur of the License Expiration Date and October 1, 2026, (i) at the end of which the residual value of the Undivided Interest (without regard to inflation or deflation from the Closing Date and taking into account the existence and effect of the Assignment and Assumption, the ANPP Project Agreements and the License) shall be at least equal to 20% of Facility Cost, (ii) which, when added to the Basic Lease Term, does not exceed 80% of the economic useful life of the Undivided Interest from the Closing Date and (iii) at the end of which, taking into account the existence and effect of the Assignment and Assumption, the ANPP Project Agreements and the License, the use of the Undivided Interest by any User (in a transaction pursuant to which the Owner Participant could realize the amount referred to in clause (i) above) is feasible from an engineering and economic point of view and is commercially reasonable. Unless the period, as computed in accordance with the preceding sentence, shall end on an April 1 or October 1 of any year, the final date of the Maximum Option Period shall be the final April 1 or October 1 in the period, as so computed.

Moody's shall mean Moody's Investors Service, Inc.

Mortgage Releases shall mean the releases of liens dated December 15, 1986, under and with respect to the Existing Mortgages.

Net Economic Return shall mean (i) the after-tax book yield, (ii) the total after-tax book earnings over the Lease Term, (iii) ninety percent of the after-tax book earnings for each of the first eight years of the Lease Term and (iv) the total after-tax book earnings over the first eight years of the Lease Term, in each case originally expected by the Owner Participant with respect to the Undivided Interest, utilizing the assumptions, including without limitation, the Pricing Assumptions and Tax Assumptions, originally used by the Owner Participant in the initial computation of Basic Rent, Casualty Value, Special Casualty Value, Enhanced Casualty Value, Special Termination Value and Termination Value, it being understood that when there is an adjustment to preserve Net Economic Return each of the elements described in the foregoing clauses (i) through (iv) must be preserved at a level at least as great as that originally anticipated.

Net Worth shall mean the total of common stock, nonredeemable preferred stock and capital surplus and retained earnings, as shown on a consolidated balance sheet of the Lessee or pro forma consolidated balance sheet of the Surviving Lessee, as the case may be, prepared on the basis of generally accepted accounting principles consistently applied.

New Mexico Order shall mean the order issued by the NMPSC on July 16, 1986, in Case No. 2032, as amended by the Amended Order issued on November 14, 1986 in Case No. 2032.

New Mexico Public Utility Act shall mean the New Mexico Public Utility Act, as amended.

NMPSC shall mean the New Mexico Public Service Commission, established pursuant to Section 62-5-1 of New Mexico Statutes Annotated, 1978.

Non-Burdensome Regulation shall mean (i) regulation to which the Owner Participant or the Owner Trustee is otherwise subject by reason of its lease financing or other activities unrelated to the transactions contemplated by the Transaction Documents, (ii) ministerial regulatory requirements which do not impose limitations or regulatory requirements on the business or activities of the Owner Participant and which are deemed, in the reasonable discretion of the Owner Participant, not to be burdensome, (iii) regulation resulting from any possession of the Undivided Interest or the Real Property Interest on or after the Lease Termination Date or (iv) regulation of the Owner Trustee which would be terminated by the appointment of a successor Owner Trustee or a co-Owner Trustee pursuant to the terms of the Trust Agreement.

Nonseverable, when used with respect to any Capital Improvement, shall mean any Capital Improvement which is not a Severable Capital Improvement.

Noteholder shall mean any Holder from time to time of a Note Outstanding under the Indenture.

Notes shall mean the Initial Series Notes and each Releveraging Note, any Refunding Notes and any other Additional Notes.

Notice of Closing shall have the meaning set forth in Section 5(a) of the Participation Agreement.

NRC shall mean the Nuclear Regulatory Commission of the United States of America or any successor agency.

Nuclear Aggregate Liability shall mean the amount of Aggregate Liability for a single Nuclear Incident of all Persons Indemnified, as determined in accordance with the Price-Anderson Act, as amended from time to time.

Nuclear Facility shall mean a facility designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more.

Nuclear Incident shall have the meaning assigned in the Price-Anderson Act, as in effect as of the Closing Date; provided that if the Price-Anderson Act shall be amended to expand the definition of "nuclear incident," the term "Nuclear Incident" shall be similarly expanded.

Nuclear Waste Act shall mean the Nuclear Waste Policy Act of 1982, as amended, or any comparable successor law.

Officers' Certificate shall mean a certificate signed by the President or any Vice President and by the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Person with respect to which such term is used.

Operating Agent shall have the meaning assigned thereto in the ANPP Participation Agreement.

Outstanding, when used with respect to the Notes, shall mean, as of the date of determination, all such Notes theretofore issued, authenticated and delivered under the Indenture, except (a) Notes theretofore cancelled by the Indenture Trustee or delivered to the Indenture Trustee for cancellation, (b) Notes or portions thereof for the payment of which the Indenture Trustee holds (and has notified the holders thereof that it holds) in trust for that purpose an amount sufficient to make full payment thereof when due, (c) Notes or portions thereof which have been pledged as collateral for any obligations of the obligor thereof to the extent that an amount sufficient to make full payment of such obligations when due has been deposited with the pledgee of such Notes for the purpose of holding such amount in trust for the payment of such obligations in accordance with the indenture or agreement under which such obligations are secured and (d) Notes in exchange for, or in lieu of, which other Notes have been issued, authenticated and delivered pursuant to the Indenture: *provided, however*, that any Note owned by the Lessee or any Affiliate thereof shall be disregarded and deemed not to be Outstanding for the purpose of any Directive.

Overdue Interest Rate shall mean the weighted average rate per annum of interest payable with respect to overdue payments of principal on the Notes Outstanding, computed as set forth in such Notes.

Owner Participant shall mean Chrysler Financial Corporation, and its successors and assigns in accordance with the Trust Agreement and the Participation Agreement.

Owner Participant's Liens shall mean Liens against the Trust Estate or the Lease Indenture Estate (other than Permitted Liens, except "Lessor's Liens" and "Owner Participant's Liens" referred to in clause (vi) of the definition thereof) for which the Lessee is not responsible and which result from acts of, or any failure to act by, or as a result of claims against, the Owner Participant unrelated to the transactions contemplated by the Transaction Documents or the Financing Documents.

Owner Trustee shall mean The First National Bank of Boston, a national banking association, not in its individual capacity, but solely as Owner Trustee under the Trust Agreement, and each successor as trustee, separate trustee and co-trustee thereunder.

Participation Agreement shall mean the Participation Agreement, dated as of December 1, 1986, among the Owner Trustee, the Indenture Trustee, the Loan Participant, the Owner Participant and El Paso.

Paying Agent shall mean Mellon Trust Company, and any successor Paying Agent under the Indenture.

Paying Agent's Office shall mean the address in New York, N.Y. of any Paying Agent under the Indenture, or the address in New York, N.Y., of any successor Paying Agent under the Indenture.

Penalty Rate shall mean 2% per annum in excess of the Prime Rate.

Period shall mean the length of time for which an action or event is stated or otherwise known at its inception to be in existence (determined by the terms of such action or event or the surrounding circumstances), or is expected at its inception to be in existence as determined by an independent nuclear engineering consultant or firm having expertise in the area of nuclear electric generating plants designated by Lessor and Lessee within 10 days after either shall request such designation (which Lessor or Lessee may do at any time after such action or event occurs) or, if Lessor and Lessee are unable to agree on such consultant or firm within such 10-day period, designated by the American Arbitration Association, or any organization successor thereto, within 7 days after either Lessor or Lessee shall request such organization so to do (which Lessor or Lessee may do at any time after the

expiration of such 10-day period). Such consultant or firm shall render its determination within 14 days after its designation, which determination shall be final, binding and conclusive on Lessor and Lessee. The fees and expenses of such consultant or firm shall be shared equally by Lessor and Lessee.

Permitted Liens shall mean (i) the respective rights and interests of the Lessee, the Owner Participant, the Lessor, the Loan Participant and the Indenture Trustee, as provided in the Transaction Documents; (ii) the rights of any sublessee or assignee under a sublease or an assignment permitted by the terms of the Facility Lease; (iii) the lien of the Existing Mortgages on the leasehold estate under the Facility Lease; (iv) Liens for taxes on the Undivided Interest or the PVNGS Site either not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, so long as such proceedings shall not (x) involve any danger of the sale, forfeiture or loss of the Undivided Interest, any part thereof or interest therein, (y) interfere with the use, possession or disposition of the Undivided Interest, or any part thereof or interest therein, or (z) impair payment of Rent; (v) inchoate materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's, or other like Liens arising in the ordinary course of business for PVNGS, and not delinquent; (vi) Lessor's Liens, Owner Participant's Liens and Indenture Trustee's Liens; (vii) choate Liens that have been bonded for the full amount in dispute or as to which other security arrangements satisfactory to the Lessor shall have been made and which are being contested diligently by the appropriate party in good faith and by appropriate proceedings so long as such proceedings shall not violate clause (x), (y) or (z) of clause (iv) above; (viii) choate Liens of any of the types described in clause (v) above that have been bonded for the full amount in dispute or as to which other security arrangements satisfactory to the Lessor shall have been made and which arise out of judgments or awards and with respect to which (A) an appeal or proceeding for review is being prosecuted in good faith and for the payment of which adequate reserves shall have been provided as required by good accounting practice and (B) there shall have been secured a stay of execution pending such appeal or proceeding for review, so long as such appeal or proceeding shall not violate clause (x), (y) or (z) of clause (iv) above; (ix) the rights and interests of the Lessee under the Assignment and Assumption; (x) the rights of the NRC under the License; (xi) the rights of the ANPP Participants (other than (i) the Lessee and (ii) any Person who shall become an ANPP Participant in respect of the Undivided Interest) under the ANPP Participation Agreement or any other ANPP Project Agreement and (xii) Liens on the undivided ownership interests in Unit 2 owned by the ANPP Participants and other Persons (other than the Lessee).

Person shall mean any individual, partnership, corporation, trust, unincorporated association or joint venture, government or any department or agency thereof, or any other entity.

Persons Indemnified shall have the meaning assigned in the Price-Anderson Act, as in effect as of the Closing Date, provided that if the Price-Anderson Act shall be amended to expand the meaning of the term "persons indemnified," the term "Persons Indemnified" shall be similarly expanded.

PNM shall mean Public Service Company of New Mexico, a New Mexico corporation.

Price-Anderson Act shall mean the Price-Anderson Act, Pub. L. No. 85-256, 71 Stat. 576 (1957), as amended to the Closing Date (except as expressly otherwise provided).

Price-Anderson Change shall mean any change in, or new interpretation by a Governmental Authority relating to, Applicable Law, including, without limitation, the Price-Anderson Act or the Atomic Energy Act, the Nuclear Waste Act or the regulations of the NRC, in each case as in effect on the Closing Date.

Pricing Assumptions shall mean the pricing assumptions set forth in Schedule 2 to the Participation Agreement.

Primary Financial Protection shall mean Financial Protection required to be maintained by a Nuclear Facility under Applicable Law, except for such amounts required to be maintained under a Retrospective Rating Plan.

Prime Rate shall mean the rate of interest publicly announced from time to time by Chemical Bank, a New York banking corporation, at its principal office in New York City as its prime or base lending rate. Any change in the Prime Rate shall be effective on the date such change in the Prime Rate is announced.

Project Manager shall have the meaning assigned thereto in the ANPP Participation Agreement.

Prudent Utility Practice shall mean, at a particular time, those practices, methods and acts as are in accordance with standards of prudence applicable to the electric utility industry which would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition.

Purchase Documents shall mean the Bill of Sale, the Deed, the Assignment of Beneficial Interest and such other documents as the Owner Participant, the Owner Trustee, the Indenture Trustee, the Loan Participant or their respective counsel shall deem desirable to convey good and marketable title to the Undivided Interest and the Real Property Interest to the Trust.

Purchase Price shall have the meaning set forth in Section 4(a) of the Participation Agreement.

PVNGS shall mean the Arizona Nuclear Power Project, as that term is defined in the ANPP Participation Agreement.

PVNGS Site shall mean the interest in Title USA Trust No. 530 and the real property described in Exhibit A to the Bill of Sale.

Real Estate Investment shall have the meaning set forth in Section 3(a) of the Participation Agreement.

Real Property Interest shall mean the interest of the Lessor in the PVNGS Site created by the Assignment of Beneficial Interest and the Deed or, if applicable, created by the ground lease referred to in Section 10(b)(3)(xiv) of the Participation Agreement.

Reasonable Basis for a position shall exist if tax counsel may properly advise reporting such position on a tax return in accordance with Formal Opinion 85-352 issued by the Standing Committee on Ethics and Professional Responsibility of the American Bar Association.

Refunding Bonds shall mean the Loan Participant's lease obligation bonds, if any, to be issued, authenticated and delivered under the Collateral Trust Indenture, as supplemented by the Refunding Supplemental Indenture, as referred to in Section 2(d) of the Participation Agreement.

Refunding Date shall mean the date of issuance of the Refunding Bonds.

Refunding Loan shall have the meaning set forth in Section 2(d) of the Participation Agreement.

Refunding Notes shall mean the nonrecourse promissory notes, if any, to be issued by the Owner Trustee and authenticated by the Indenture Trustee on the Refunding Date to refund the Initial Series Notes and each Releveraging Note theretofore issued.

Refunding Registration Statement shall mean the registration statement on Form S-3, including all exhibits and all documents incorporated in the Refunding Registration Statement by reference, to be filed with the SEC under the Securities Act in connection with the offer, issue and sale of the Refunding Bonds.

Refunding Supplemental Indenture shall mean the Refunding Bond Supplemental Indenture, if any, among El Paso, the Loan Participant and the Collateral Trust Trustee, supplementing the Collateral Trust Indenture and providing, among other things, for the issuance of the Refunding Bonds.

Registration Statement shall mean the registration statement on Form S-3, including all exhibits and all documents incorporated in the Registration Statement by reference, filed with the SEC (Registration No. 33-10317) under the Securities Act in connection with the offer, issue and sale of the Initial Series Bonds.

Releveraging Amount shall mean (i) the initial principal amount of each series of Releveraging Bonds, or (ii) the initial principal amount of the Refunding Bonds to the extent such amount is in excess of the Initial Series Bonds being refunded, but only in an amount equal to the amount that the related Refunding Note exceeds the aggregate amount of the Initial Series Notes and any Releveraging Notes theretofore issued.

Releveraging Bonds shall mean a series of securities issued, authenticated and delivered under the Collateral Trust Indenture, part of the proceeds of which is used to refund to the Owner Participant a portion of its Investment.

Releveraging Date shall mean the date of issuance of Releveraging Bonds.

Releveraging Loan shall have the meaning set forth in Section 2(c) of the Participation Agreement.

Releveraging Note shall mean a non-recourse promissory note or notes, substantially in the form of the Initial Series Notes or, if the Refunding Date shall have occurred, the Refunding Note or Notes, to be issued by the Owner Trustee and authenticated by the Indenture Trustee on the Releveraging Date to refund to the Owner Participant a portion of the Investment.

Renewal Term shall have the meaning set forth in Section 12 of the Facility Lease.

Rent shall mean Basic Rent and Supplemental Rent.

Requisition of Title shall mean any circumstance or event in consequence of which Unit 2 or the Undivided Interest (or all or any portion of the Real Property Interest the loss of which would significantly interfere with the use of Unit 2 or the Undivided Interest) shall be condemned or seized or title thereto shall be requisitioned or taken by any Governmental Authority under power of eminent domain or otherwise and all administrative or judicial appeals opposing such condemn[illegible] seizure or taking shall have been exhausted or the period for such appeal shall have expired, so lo[illegible] such appeals are undertaken in good faith and are being diligently pursued.

Requisition of Use shall mean any circumstance or event (other than a Requisition of Title) in consequence of which the use of Unit 2 or the Undivided Interest (or all or any portion of the Real Property Interest the loss of which would significantly interfere with the use of Unit 2 or the Undivided Interest) shall be requisitioned or taken by any Governmental Authority under power of eminent domain or otherwise.

Responsible Officer shall mean, with respect to the subject matter of any covenant, agreement or obligation of any party contained in any Transaction Document, the President, or any Vice President, Assistant Vice President, Treasurer, Assistant Treasurer or other officer who in the normal performance of his operational responsibility would have knowledge of such matter and the requirements with respect thereto.

Retained Assets shall mean (i) the Lessee's interest in PVNGS other than the Undivided Interest and the Real Property Interest, (ii) Severable Capital Improvements title to an undivided interest in which is retained by the Lessee in accordance with Section 8(e), of the Facility Lease, and (iii) any additional interest in and to PVNGS (other than the Undivided Interest and the Real Property Interest) to which the Lessee becomes entitled in consequence of Section 16.2 or 23.5 of the ANPP Participation Agreement (*except* as otherwise provided in Section 5(a) or 19 of the Facility Lease).

Retrospective Rating Plan shall mean the industry retrospective rating plan established pursuant to the Price-Anderson Act, or any successor or similar plan established under Applicable Law.

Safe Harbor Change shall mean the first Substantial Amendment enacted after the Closing Date, if, upon the effective date of such Substantial Amendment and at all times thereafter (as shall be determined from time to time), as a result of such Substantial Amendment, in the opinio[illegible] independent counsel to the Owner Participant, (i) Nuclear Aggregate Liability shall not exceed e[illegible] (a) the amount of Financial Protection required to be maintained by each Nuclear Facility with respect to a single Nuclear Incident or (b) (x) on the date of enactment $7 billion, regardless of the

number of Nuclear Facilities then in service, and (y) at all times thereafter $7 billion as adjusted for the number of Nuclear Facilities then in service multiplied by the Inflation Index, if any; (ii) commencing as of December 31 of any year in which Nuclear Aggregate Liability is equal to or exceeds $7 billion, El Paso Net Worth shall be equal to or greater than .075 times Nuclear Aggregate Liability; *provided, however*, that if El Paso Net Worth shall be less than .075 times Nuclear Aggregate Liability, then the Substantial Amendment shall no longer constitute a Safe Harbor Change only if, in the year following the year for which the computation was made, El Paso Net Worth shall not equal or exceed .075 times Nuclear Aggregate Liability computed for such following year; (iii) the amount of Primary Financial Protection available from commercial insurance underwriters on terms substantially equivalent (in the reasonable opinion of the Owner Participant) to the terms in effect on the Closing Date under Applicable Law and required to be maintained by licensees with respect to any single Nuclear Facility shall be at least equal to the amount required under Applicable Law (which amount shall not exceed $500 million); (iv) Maximum Aggregate Loss per year shall not exceed (x) $25 million or (y) commencing as of December 31 of any year in which Nuclear Aggregate Liability is equal to or greater than $7 billion, $25 million multiplied by the Inflation Index, if any; (v) the provisions of the penultimate sentence of Section 170b, of the Atomic Energy Act, 10 C.F.R.§ 140.22, and 10 C.F.R. § 140.92 (as such regulation and form of indemnity agreement relate to the guarantee of the NRC of defaults by licensees under the Retrospective Rating Plan) as in effect on the Closing Date, shall not have been amended or modified in any material respect; (vi) the NRC shall be required to fulfill payment obligations when due from a licensee liable for damage arising out of or related to a Nuclear Incident in the event that the payment obligations of such licensee in any calendar year exceed the amount payable by such licensee in respect of such Nuclear Facility in such year under the Retrospective Rating Plan; *provided, however*, that the NRC shall be entitled to reimbursement through the Retrospective Rating Plan as such payments are made over time; (vii) neither the Lessee nor any other Persons Indemnified will be required to waive the defense of the statute of limitations (existing under any Applicable Law) with respect to a Nuclear Incident *(except* an Extraordinary Nuclear Occurrence); with respect to an Extraordinary Nuclear Occurrence such defense shall be waived only as to suits instituted within 30 years after the date the Extraordinary Nuclear Occurrence which is the subject of the suit takes place or within a prescribed number of years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof; (viii) neither the Lessor nor the Owner Participant shall be exposed to any increased real or potential liability (*including* assessments imposed by a Governmental Authority) with respect to activities authorized by the Nuclear Waste Act; (ix) none of the results contemplated in subclauses (vii) and (ix) of clause (2) in the definition of Deemed Loss Event shall have occurred; and (x) (a) neither the Lessor nor the Owner Participant shall, in the opinion of independent counsel to the Owner Participant delivered within six months of such Substantial Amendment, be exposed to any other material increase in its real or potential liability with respect to a Nuclear Incident, either before, on or after the Lease Termination Date, *except* for liability arising with respect to a Nuclear Incident which takes place after the Lessor or the Owner Participant, as the case may be, becomes a licensee of the NRC, and (b) neither the Lessor, the Owner Participant nor the Lessee shall be prohibited from asserting any other right, protection or defense available under Applicable Law as in effect on the Closing Date other than those rights, protections and defenses which are waived pursuant to this definition of Safe Harbor Change; provided, however, that an expansion of the waiver of defenses provision of subsection 170n.(1) of the Atomic Energy Act so that such waivers are applicable with respect to an Extraordinary Nuclear Occurrence arising out of or resulting from or occurring in the course of (a) transportation of source material, byproduct material, or special nuclear material to or from any facility licensed under Section 53, 63 or 81 of the Atomic Energy Act, (b) activities undertaken by the Secretary, *including, but not limited to*, activities related to the storage or disposal of high-level radioactive waste or (c) the construction, possession or operation of any facility licensed under Section 53, 63 or 81 of the Atomic Energy Act, shall not be deemed to expose the Lessor, the Owner Participant or the Lessee to any increased real or potential liability.

Sale Proceeds shall mean, with respect to any sale of the Undivided Interest and the Real Property Interest by the Lessor to any Person other than the Lessee, the gross proceeds of such sale payable in cash, less all costs and expenses whatsoever incurred by the Lessor and the Owner Participant in connection therewith.

Salt River shall mean Salt River Project Agricultural Improvement and Power District, an Arizona agricultural improvement district.

SCPPA shall mean Southern California Public Power Authority, a California joint powers agency (doing business in Arizona as Southern California Public Power Authority Association).

SEC shall mean the Securities and Exchange Commission of the United States of America, or any successor agency.

Second Fund shall have the meaning set forth in Section 10(b)(3)(xi) of the Participation Agreement.

Secretary shall mean the Secretary of Energy.

Section 6(c) Application shall mean the Loan Participant's Application for an Order under Section 6(c) of the Investment Company Act of 1940 Exempting El Paso Funding Corporation from All Provisions of such Act, as filed with the SEC on April 11, 1986, and as amended by Amendment No. 1 thereto dated July 11, 1986.

Securities Act shall mean the Securities Act of 1933, as amended.

Securities Exchange Act shall mean the Securities Exchange Act of 1934, as amended.

Severable, when used with respect to any Capital Improvement, shall mean any Capital Improvement which can be readily removed from Unit 2 without materially damaging Unit 2 or materially diminishing or impairing the value, utility or condition of Unit 2.

Southern California shall mean Southern California Edison Company, a California corporation.

Special Casualty Value, as of any date of determination thereof, shall mean (i) during the Basic Lease Term, the percentage of Facility Cost set forth opposite the date in Schedule 2 to the Facility Lease immediately succeeding such date of determination (or, if such date of determination is specified in Schedule 2 to the Facility Lease, such date), and (ii) during the Renewal Term, the amount determined by amortizing ratably the Fair Market Sales Value of the Undivided Interest as of the day following the last day of the Basic Lease Term in monthly steps over the period from such date to the License Expiration Date. Anything contained in the Participation Agreement or the Facility Lease to the contrary notwithstanding, Special Casualty Value shall be, when added to all other amounts which the Lessee is required to pay under Section 9(d) of the Facility Lease, under any circumstances and in any event, in an amount at least sufficient to pay in full, as of any date of payment, the aggregate unpaid principal amount of all Notes Outstanding at the close of business on such date, together with accrued and unpaid interest on such Notes.

Special Termination Value, as of any date, shall mean the percentage of Facility Cost set forth opposite such date in Schedule 4 to the Facility Lease. Anything contained in the Participation Agreement or the Facility Lease to the contrary notwithstanding, Special Termination Value shall be, when added to all other amounts which the Lessee is required to pay under Section 13(c) of the Facility Lease, under any circumstances and in any event, in an amount at least sufficient to pay in full, as of any date specified on Schedule 4 to the Facility Lease, the aggregate unpaid principal amount of all Notes Outstanding at the close of business on such date, together with accrued and unpaid interest on such Notes.

Special Transfer shall have the meaning set forth in Section 7(b)(4) of the Participation Agreement.

Substantial Amendment shall mean any amendment to the Price-Anderson Act or the Atomic Energy Act which would constitute a Deemed Loss Event under clause (2) of the definition of Deemed Loss Event.

Supplemental Financing shall mean a financing of the Supplemental Financing Amount of Capital Improvements made pursuant to Section 8(f) of the Facility Lease.

Supplemental Financing Amount shall mean the Applicable Unit 2 Percentage of the cost of a Capital Improvement which equals (i) the amount of the increase, if any, in the Owner Participant's basis in the Undivided Interest for purposes of section 1012 or 1016 of the Code as a result of such Capital Improvement less (ii) the amount of the related Additional Equity Investment of the Lessor, if any.

Supplemental Rent shall have the meaning set forth in Section 3(b) of the Facility Lease.

Surviving Lessee shall have the meaning set forth in Section 10(b)(3)(ii) of the Participation Agreement.

Taxes shall mean any and all fees (including, without limitation, documentation, recording, license and registration fees), taxes (including, without limitation, net income, franchise, value added, ad valorem, excise, gross income, gross receipts, sales, use, property, personal and real, tangible and intangible, and stamp taxes), levies, imposts, duties, charges, assessments, or withholdings of any nature whatsoever, general or specific, ordinary or extraordinary, together with any and all penalties, fines, additions to tax and interest thereon.

Tax Assumptions shall mean the assumptions set forth in Section 13(c) of the Participation Agreement with respect to the Federal income tax consequences of the transactions contemplated by the Participation Agreement.

Tax Reform Act of 1986 shall mean Pub. L. No. 99-514, the Tax Reform Act of 1986.

Termination Date shall have the meaning set forth in Section 14(a) of the Facility Lease.

Termination Event shall mean any early termination of the Facility Lease in accordance with Section 14 thereof.

Termination Notice shall have the meaning set forth in Section 14(a) of the Facility Lease.

Termination Obligation shall have the meaning set forth in Section 15.10.2 of the ANPP Participation Agreement (or any comparable successor provision).

Termination Value, as of any Basic Rent Payment Date, shall mean the percentage of Facility Cost set forth opposite such date in Schedule 3 to the Facility Lease. Anything contained in the Participation Agreement or the Facility Lease to the contrary notwithstanding, Termination Value shall be, when added to all other amounts which the Lessee is required to pay under Section 14 of the Facility Lease, under any circumstances and in any event, in an amount at least sufficient to pay in full, as of any Basic Rent Payment Date, the aggregate unpaid principal amount of all Notes Outstanding at the close of business on such date, together with accrued and unpaid interest on such Notes.

Texas Public Utility Regulatory Act shall mean the Texas Public Utility Regulatory Act of 1975, as amended, or any comparable successor law.

Transaction Documents shall mean the Participation Agreement, the Facility Lease, the Trust Agreement, the Indenture, the Extension Letter, the Decommissioning Trust Agreement, the Mortgage Releases, the Assignment and Assumption, the Purchase Documents, the Letter of Credit, the Letter of Credit Agreement and the Notes.

Transaction Expenses shall have the meaning set forth in Section 14(a) of the Participation Agreement.

Transfer shall mean the transfer, by bill of sale or otherwise, by the Lessor of all the Lessor's right, title and interest in and to the Undivided Interest, the Real Property Interest, and the Assignment and Assumption on an "*as is, where is*" basis, free and clear of all Lessor's Liens and Owner Participant's Liens, but otherwise without recourse, representation or warranty (*including* an express disclaimer of

representations and warranties in a manner comparable to that set forth in the second sentence of Section 6(b) of the Facility Lease), together with the due assumption by the transferee of, and the due release of the Lessor from, all of the Lessor's obligations under the Assignment and Assumption and the Deed (or the ground lease referred to in Section 10(b)(3)(xiv) of the Participation Agreement, as the case may be) by an instrument or instruments satisfactory in form and substance to the Lessor and the Owner Participant.

Transferee shall have the meaning assigned thereto in Section 15 of the Participation Agreement.

Trust shall mean the trust created by the Trust Agreement.

Trust Agreement shall mean the Trust Agreement, dated as of December 1, 1986, between Chrysler Financial Corporation and FNB.

Trust Estate shall have the meaning set forth in Section 2.03 of the Trust Agreement.

Trust Indenture Act shall mean the Trust Indenture Act of 1939, as amended.

Trustee's Expenses shall mean any and all liabilities, obligations, costs, compensation, fees, expenses and disbursements (including, without limitation, legal fees and expenses) of any kind and nature whatsoever (*other than* such amounts as are included in Transaction Expenses) which may be imposed on, incurred by or asserted against the Indenture Trustee or any of its agents, servants or representatives, in any way relating to or arising out of the Indenture, the Lease Indenture Estate, the Participation Agreement or the Facility Lease, or any document contemplated thereby, or the performance or enforcement of any of the terms thereof, or in any way relating to or arising out of the administration of the Lease Indenture Estate or the action or inaction of the Indenture Trustee under the Indenture; *provided, however,* that such amounts shall not include any Taxes or any amount expressly excluded from the Lessee's indemnity obligations pursuant to Section 13(a) or 13(b) of the Participation Agreement.

UCC or Uniform Commercial Code shall mean the Uniform Commercial Code as in effect in any applicable jurisdiction.

Underwriting Agreement shall mean the agreement executed by the Loan Participant, El Paso, Smith Barney, Harris Upham & Co. Incorporated and PaineWebber Incorporated (acting either as underwriters or representatives of the underwriters named therein) relating to the purchase, sale and delivery of the Initial Series Bonds.

Undivided Interest shall mean a 2.183647% undivided interest in Unit 2 (other than the Retained Assets described in clauses (ii) and (iii) of the definition of such term and other than the portion of Unit 2 described as excluded from the transfer pursuant to the Bill of Sale in Section A of Exhibit B thereto), including, except where expressly stated to the contrary, the related Generation Entitlement Share attributable to a 2.183647% undivided interest in Unit 2.

Undivided Interest Indenture Supplement shall mean the supplement to the Indenture, substantially in the form of Exhibit C thereto.

Uniform System of Accounts shall mean the Uniform System of Accounts prescribed for Public Utilities and Licensees subject to the provisions of the Federal Power Act (Class A and Class B), 18 C.F.R. 101, as in effect on the date of execution of the Participation Agreement, as amended or modified from time to time after such date.

Unit 1 shall mean the 1,270 megawatt unit, commonly known as Unit 1, and one-third of the Common Facilities at the Palo Verde Nuclear Generating Station.

Unit 2 shall mean the 1,270 megawatt unit, commonly known as Unit 2, and one-third of the Common Facilities at the Palo Verde Nuclear Generating Station, all as more fully described in Exhibit B to the Bill of Sale, together with all Capital Improvements thereto.

Unit 3 shall mean the 1,270 megawatt unit, commonly known as Unit 3, and one-third of the Common Facilities at the Palo Verde Nuclear Generating Station.

Unit 2 Retained Assets shall mean (i) all resident fuel assemblies, equipment and personal property constituting part of the Generating Unit (as defined in the ANPP Participation Agreement) designated as Palo Verde Nuclear Generating Station (other than common facilities) owned by the Lessee but excluded from Unit 2 as set forth in Section A of Exhibit B to the Bill of Sale and (ii) a one-third interest in all equipment and personal and real property constituting PVNGS common facilities under the ANPP Participation Agreement owned by the Lessee but excluded from the Common Facilities as set forth in Section B of Exhibit B to the Bill of Sale.

User shall mean a Person unrelated to El Paso (within the meaning of section 318 of the Code) possessing the Undivided Interest after the Lease Termination Date.

TRUST AGREEMENT

dated as of December 1, 1986

between

CHRYSLER FINANCIAL CORPORATION,

as Owner Participant

and

THE FIRST NATIONAL BANK OF BOSTON,

as Owner Trustee

Sale and Leaseback of an Undivided Interest in
Palo Verde Nuclear Generating Station Unit 2
and Certain Common Facilities

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TRUST AGREEMENT

TRUST AGREEMENT, dated as of December 1, 1986, between CHRYSLER FINANCIAL CORPORATION (the "Owner Participant") and THE FIRST NATIONAL BANK OF BOSTON, a national banking association (the "Owner Trustee").

WITNESSETH:

WHEREAS, the Owner Participant desires to acquire the Undivided Interest and the Real Property Interest through the Trust created hereby; and

WHEREAS, The First National Bank of Boston is willing to act as Owner Trustee and to accept the Trust created hereby;

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. *Definitions.* All capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in Appendix A to the Participation Agreement dated as of December 1, 1986, among the parties hereto and others. References in this Agreement to articles, sections, paragraphs and clauses are to articles, sections, paragraphs and clauses of this Agreement unless otherwise indicated.

ARTICLE II

AUTHORITY TO EXECUTE AND PERFORM VARIOUS DOCUMENTS; RATIFICATION AND CONFIRMATION; DECLARATION OF TRUST BY THE OWNER TRUSTEE

SECTION 2.01. *Authority to Execute and Perform Various Documents.* The Owner Participant hereby authorizes and directs the Owner Trustee (i) to execute and deliver each Transaction Document to which the Owner Trustee is to be a party and to execute and issue and request the Indenture Trustee to authenticate and deliver the Initial Series Note (each such Transaction Document, including the Initial Series Note, to be in the form approved by the Owner Participant), (ii) to execute and deliver all other agreements, instruments and certificates contemplated by the documents referred to in clause (i), (iii) to take whatever action shall be required to be taken by the Owner Trustee by the terms of, and exercise its rights and perform its duties under, each of the documents, agreements, instruments and certificates referred to in clauses (i) and (ii) above as set forth in such documents, agreements, instruments and certificates and (iv) subject to the terms of this Agreement, to take such other action in connection with the foregoing as the Owner Participant may from time to time direct.

SECTION 2.02. *Ratification and Confirmation.* By certificate dated December 2, 1986 (the "Section 15.6.1 Certificate"), the Owner Trustee confirmed the matters required to be confirmed on the part of a lessor in a sale and leaseback transaction under Section 15.6.1 of the ANPP Participation Agreement, a copy of which certificate is attached hereto as Schedule I. The Owner Participant, by its execution and delivery of this Agreement, ratifies and confirms the execution and delivery by the Owner Trustee of the Section 15.6.1 Certificate.

SECTION 2.03. *Declaration of Trust by the Owner Trustee.* The Owner Trustee hereby declares that it will hold all estate, right, title and interest of the Owner Trustee in and to the Undivided Interest, the Real Property Interest, the Transaction Documents and any other property contributed by the Owner Participant, including without limitation all amounts of Rent, insurance proceeds and

requisition, indemnity or other payments of any kind, but specifically excluding any Excepted Payments (collectively, the "Trust Estate"), upon the trusts set forth herein and for the use and benefit of the Owner Participant.

ARTICLE III

PAYMENTS

SECTION 3.01. *Payments from Trust Estate Only.* All payments to be made by the Owner Trustee under this Agreement shall be made only from the income and proceeds from the Trust Estate and only to the extent that the Owner Trustee shall have received income or proceeds from the Trust Estate to make such payments in accordance with the terms hereof, except as specifically provided in Section 6.01. The Owner Participant agrees that it will look solely to the income and proceeds from the Trust Estate to the extent available for payment as herein provided and that, except as specifically provided herein, the Owner Trustee shall not be liable to the Owner Participant for any amounts payable under this Agreement and shall not be subject to any liability under this Agreement.

SECTION 3.02. *Method of Payment.* All amounts payable to the Owner Participant pursuant to this Agreement shall be paid or caused to be paid by the Owner Trustee to the Owner Participant, or its nominee, by crediting the amount to be distributed to the Owner Participant to an account maintained by the Owner Participant with the Owner Trustee in immediately available funds or by transferring such amount in immediately available funds to a banking institution with bank wire transfer facilities for the account of the Owner Participant, as instructed from time to time by the Owner Participant.

ARTICLE IV

DISTRIBUTIONS

SECTION 4.01. *Distributions.* Subject to the terms and requirements of the Transaction Documents, all payments and amounts received by or on behalf of the Owner Trustee shall be distributed forthwith upon receipt in the following order of priority: first, so much of such payment or amount as shall be required to pay or reimburse the Owner Trustee for any fees or expenses (including reasonable attorney's fees and expenses) not otherwise paid or reimbursed to the Owner Trustee as to which the Owner Trustee is entitled to be paid or reimbursed hereunder shall be retained by the Owner Trustee; and, second, the balance, if any, of such payment or amount remaining thereafter shall be distributed to the Owner Participant.

ARTICLE V

DUTIES OF THE OWNER TRUSTEE

SECTION 5.01. *Notice of Certain Events.* In the event the Owner Trustee shall have knowledge of any Default, Event of Default, Indenture Default, Indenture Event of Default, Event of Loss or Deemed Loss Event, the Owner Trustee shall give prompt written notice thereof to the Owner Participant, the Lessee, the Loan Participant and the Indenture Trustee unless such Default, Event of Default, Indenture Default, Indenture Event of Default, Event of Loss or Deemed Loss Event no longer exists before the giving of such notice. Subject to the provisions of Section 5.03, the Owner Trustee shall take or refrain from taking such action, not inconsistent with the provisions of the Transaction Documents, with respect thereto as the Owner Participant shall direct by written instruction to the Owner Trustee. If the Owner Trustee shall have given the Owner Participant written notice of any event and shall not have received written instructions as above provided within 30 days after mailing notice of such event to the Owner Participant, the Owner Trustee may, subject to the provisions of the Transaction Documents, take or refrain from taking such action, but shall be under no duty to, and shall have no liability for its failure or refusal to, take or refrain from taking any act

with respect thereto as the Owner Trustee shall deem advisable and in the best interests of the Owner Participant. For all purposes of this Agreement, in the absence of actual knowledge of an officer in the corporate trust division of the Owner Trustee, the Owner Trustee shall not be deemed to have knowledge of any Default, Event of Default, Indenture Default, Indenture Event of Default, Event of Loss or Deemed Loss Event unless the Owner Trustee receives written notice thereof given by or on behalf of the Owner Participant, the Lessee, the Loan Participant, the Indenture Trustee or any Holder of a Note.

SECTION 5.02. *Action upon Instructions.* Subject to the terms of Sections 5.01 and 5.03, upon the written instructions of the Owner Participant, the Owner Trustee will take or refrain from taking such action or actions, not inconsistent with the provisions of the Transaction Documents, as may be specified in such instructions.

SECTION 5.03. *Indemnification.* The Owner Trustee shall not be required to take or refrain from taking any action under this Agreement or any other Transaction Document (other than the actions specified in the first sentence of Section 5.01) unless the Owner Trustee shall have been indemnified by the Lessee or, if the Owner Trustee reasonably believes such indemnity to be inadequate, by the Owner Participant, in manner and form reasonably satisfactory to the Owner Trustee, against any liability, fee, cost or expense (including reasonable attorneys' fees and expenses) which may be incurred or charged in connection therewith, other than such as may result from the willful misconduct or gross negligence of the Owner Trustee; and, if the Owner Participant shall have directed the Owner Trustee to take or refrain from taking any action under any Transaction Document, the Owner Participant agrees to furnish such indemnity by a written undertaking of indemnification and, in addition, to pay the reasonable compensation of the Owner Trustee for the services performed or to be performed by it pursuant to such direction. The Owner Trustee shall not be required to take any action under any Transaction Document if the Owner Trustee shall reasonably determine, or shall have been advised by counsel, that such action is likely to result in personal liability for which the Owner Trustee has not been and will not be adequately indemnified or is contrary to the terms hereof or of any document contemplated hereby to which the Owner Trustee is a party or is otherwise contrary to law.

SECTION 5.04. *No Duties Except as Specified in Trust Agreement or Instructions.* The Owner Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with the Undivided Interest, the Real Property Interest or any other part of the Trust Estate, or to otherwise take or refrain from taking any action under or in connection with any document contemplated hereby to which the Owner Trustee is a party, except as expressly provided by the terms of this Agreement or in written instructions from the Owner Participant received pursuant to Section 5.01 or 5.02; and no implied duties or obligations shall be read into this Agreement against the Owner Trustee. The Owner Trustee nevertheless agrees that it will, in its individual capacity and at its own cost and expense, promptly take all action as may be necessary to discharge any Lessor's Liens arising by, through or under it on any part of the Trust Estate.

SECTION 5.05. *No Action Except Under Specified Documents or Instructions.* The Owner Trustee agrees that it will not manage, control, use, sell, dispose of or otherwise deal with the Undivided Interest, the Real Property Interest or any other part of the Trust Estate except (i) as required by the terms of the Transaction Documents, (ii) in accordance with the powers granted to, or the authority conferred upon, the Owner Trustee pursuant to this Agreement or (iii) in accordance with the express terms hereof or with written instructions from the Owner Participant pursuant to Section 5.01 or 5.02.

SECTION 5.06. *Absence of Duties.* Except in accordance with written instructions furnished pursuant to Sections 5.01 and 5.02, and without limitation of the generality of Section 5.04, the Owner Trustee shall not have any duty to (i) file, record or deposit any Transaction Document or any other document, or to maintain any such filing, recording or deposit or to refile, rerecord or redeposit any such document, (ii) obtain insurance on the Undivided Interest or the Real Property Interest or effect

or maintain any such insurance, other than to receive and forward to the Owner Participant any notices, policies, certificates or binders furnished to the Owner Trustee pursuant to the Facility L[redacted] (iii) maintain Unit 2, the Undivided Interest or the Real Property Interest, (iv) pay or discharg[redacted] Tax or any Lien owing with respect to or assessed or levied against any part of the Trust Estate, except as provided in the last sentence of Section 5.04, other than to receive and forward notice of such Tax or Lien to the Owner Participant, (v) confirm, verify, investigate or inquire into the failure to receive any reports or financial statements of the Lessee, (vi) inspect Unit 2 at any time or ascertain or inquire as to the performance or observance of any of the covenants of the Lessee or any other Person under any Transaction Document with respect to the Undivided Interest, the Real Property Interest or Unit 2 or (vii) manage, control, use, sell, dispose of or otherwise deal with the Undivided Interest, the Real Property Interest or Unit 2 or any part thereof or any other part of the Trust Estate, except as provided in Section 5.05.

ARTICLE VI

THE OWNER TRUSTEE

SECTION 6.01. *Acceptance of Trust and Duties.* The Owner Trustee accepts the trusts hereby created and agrees to perform the same, but only upon the terms of this Agreement. The Owner Trustee also agrees to disburse all moneys actually received by it constituting part of the Trust Estate upon the terms of this Agreement. The Owner Trustee shall not be answerable or accountable under any circumstances, except for (i) its own willful misconduct or gross negligence, (ii) the inaccuracy of any of its representations or warranties contained in Section 6.03 or under Section 8(a) of the Participation Agreement given expressly in its individual capacity, (iii) its failure to perform obligations expressly undertaken by it in the last sentence of Section 5.04 of this Agreement or in Section 8(b) of the Participation Agreement or (iv) Taxes based on or measured by any fees, commissions or compensation received by it for acting as trustee in connection with any of the transacti[redacted] contemplated by the Transaction Documents.

SECTION 6.02. *Furnishing of Documents.* The Owner Trustee will furnish to the Owner Participant, promptly upon receipt thereof, duplicates or copies of all reports, notices, requests, demands, opinions, certificates, financial statements and any other writings furnished to the Owner Trustee hereunder or under the Transaction Documents, unless by the express terms of any Transaction Document a copy of the same is required to be furnished by some other Person directly to the Owner Participant, or the Owner Trustee shall have determined that the same has already been furnished to the Owner Participant.

SECTION 6.03. *No Representations or Warranties as to the Undivided Interest, the Real Property Interest, Unit 2 or Documents.* The Owner Trustee makes (i) NO REPRESENTATION OR WARRANTY AS TO THE TITLE, VALUE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR USE OF THE UNDIVIDED INTEREST, THE REAL PROPERTY INTEREST, UNIT 2 OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE UNDIVIDED INTEREST, THE REAL PROPERTY INTEREST OR UNIT 2 WHATSOEVER, except that the Owner Trustee hereby represents, warrants and covenants to the Owner Participant that it will comply with the last sentence of Section 5.04, and (ii) no representation or warranty as to the validity or enforceability of any Transaction Document or as to the correctness of any statement made by any Person other than the Owner Trustee, contained in any thereof, and except that the Owne[redacted] Trustee represents, warrants and covenants to the Owner Participant that this Agreement has been, and each of such other documents which contemplates execution thereof by the Owner Trustee has been or will be, executed and delivered by its officers who are, or will be, duly authorized to execute and deliver such documents on its behalf.

SECTION 6.04. *No Segregation of Moneys; No Interest.* Except as otherwise provided herein or in any of the Transaction Documents, moneys received by the Owner Trustee hereunder need not [redacted] segregated in any manner, except to the extent required by law, and may be deposited under [redacted]

general conditions as may be prescribed by law, and the Owner Trustee shall not be liable for any interest thereon, except as may be agreed to by the Owner Trustee.

SECTION 6.05. *Reliance; Advice of Counsel.* The Owner Trustee shall not incur any liability to any Person in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it in good faith to be signed by the proper party or parties. The Owner Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, the Owner Trustee may for all purposes hereof rely on an Officers' Certificate of the relevant party as to such fact or matter, and such certificate shall constitute full protection to the Owner Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon. In the administration of the trusts hereunder, the Owner Trustee may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys and may consult with counsel, accountants and other skilled Persons to be selected and employed by it, and the Owner Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion within the scope of such Person's competence of any such counsel, accountants or other skilled Persons and not contrary to this Agreement.

SECTION 6.06. *Not Acting in Individual Capacity.* Except as provided in this Article VI, in accepting the trusts hereby created the Owner Trustee acts solely as trustee hereunder and not in its individual capacity; and all Persons having any claim against the Owner Trustee by reason of the transactions contemplated by the Transaction Documents shall look only to the Trust Estate (or a part thereof, as the case may be) for payment or satisfaction thereof, except as specifically provided in this Article VI and except to the extent the Owner Trustee shall otherwise agree in any Transaction Document to which it is a party.

ARTICLE VII

INDEMNIFICATION OF THE OWNER TRUSTEE BY THE OWNER PARTICIPANT

SECTION 7.01. *The Owner Participant to Indemnify the Owner Trustee.* The Owner Participant agrees to assume liability for, and to indemnify and hold harmless the Owner Trustee and FNB, in its individual capacity, against and from, any and all Claims which may be imposed on, incurred by or asserted at any time against the Owner Trustee (and not indemnified by the Lessee within a reasonable time after demand therefor) in any way relating to or arising out of the Trust Estate, any of the properties included therein, the administration of the Trust Estate or any action or inaction of the Owner Trustee hereunder or under the Transaction Documents, *except* only that the Owner Participant shall not be required to indemnify the Owner Trustee for Claims arising or resulting from any of the matters described in the last sentences of Sections 5.04 and 6.01. The indemnities contained in this Section 7.01 shall survive the termination of this Agreement.

SECTION 7.02. *Compensation and Expenses.* The Owner Trustee shall receive as compensation for its services hereunder such ordinary fees as are fair, reasonable and customary for the performance of such services and as may heretofore and from time to time hereafter be agreed upon between the Owner Participant and the Owner Trustee. The Owner Trustee shall be entitled to be reimbursed for its reasonable expenses hereunder and to be compensated reasonably for any extraordinary services rendered hereunder.

ARTICLE VIII

TERMINATION OF TRUST AGREEMENT

SECTION 8.01. *Termination of Trust Agreement.* This Agreement and the trusts created hereby shall terminate and the Trust Estate shall, subject to the Participation Agreement, the Indenture and Article IV of this Agreement, be distributed to the Owner Participant, and this Agreement shall be of no further force or effect, upon the earlier of (i) the sale or other final disposition by the Owner Trustee of all property constituting part of the Trust Estate and the final distribution by the Owner Trustee of all moneys or other property or proceeds constituting part of the Trust Estate in accordance with the terms of Article IV and (ii) 21 years less one day after the death of the last survivor of all of the descendants living on the date of this Agreement of Joseph P. Kennedy, father of President John F. Kennedy, but if any such rights, privileges or options shall be or become valid under Applicable Law for a period subsequent to the 21st anniversary of the death of such last survivor (or, without limiting the generality of the foregoing, if legislation shall become effective providing for the validity or permitting the effective grant of such rights, privileges and options for a period in gross exceeding the period for which such rights, privileges and options are hereinabove stated to extend and be valid), then such rights, privileges or options shall not terminate as aforesaid but shall extend to and continue in effect, but only if such nontermination and extension shall then be valid under Applicable Law, until such time as the same shall, under Applicable Law, cease to be valid.

SECTION 8.02. *Termination at Option of the Owner Participant.* Notwithstanding Section 8.01, this Agreement and the trusts created hereby shall terminate and the Trust Estate shall be distributed to the Owner Participant, and this Agreement shall be of no further force and effect, upon the election of the Owner Participant by notice to the Owner Trustee, if such notice shall be accompanied by the written agreement of the Owner Participant assuming all the obligations of the Owner Trustee under or contemplated by the Transaction Documents and all other obligations of the Owner Trustee incurred by it as trustee hereunder; *provided, however*, that no such election shall be effective until (i) the lien of the Indenture on the Lease Indenture Estate has been released, (ii) full payment of the principal of and premium, if any, and interest on the Notes has been made and (iii) any lien on the Trust Estate heretofore created pursuant to Section 7(b)(4) of the Participation Agreement has terminated. Such written agreement shall be reasonably satisfactory in form and substance to the Owner Trustee and shall release the Owner Trustee from all further obligations of the Owner Trustee hereunder and under the agreements and other instruments mentioned in the preceding sentence.

ARTICLE IX

SUCCESSOR OWNER TRUSTEES, CO-OWNER TRUSTEES AND SEPARATE OWNER TRUSTEES

SECTION 9.01. *Resignation of the Owner Trustee; Appointment of Successor.* (a) The Owner Trustee may resign at any time without cause by giving at least 30 days' prior written notice to the Owner Participant, the Indenture Trustee and the Lessee, such resignation to be effective on the acceptance of appointment by a successor owner trustee under Section 9.01(b). In addition, the Owner Participant may at any time remove the Owner Trustee with or without cause by an instrument in writing delivered to the Owner Trustee, such removal to be effective upon the acceptance of appointment by a successor owner trustee under Section 9.01(b). In case of the resignation or removal of the Owner Trustee, the Owner Participant may appoint a successor owner trustee by an instrument signed by the Owner Participant. If a successor owner trustee shall not have been appointed within 30 days after the giving of written notice of such resignation or the delivery of the written instrument with respect to such removal, the Owner Trustee or the Owner Participant may apply to any court of competent jurisdiction to appoint a successor owner trustee to act until such time, if any, as a successor shall have been appointed and shall have accepted its appointment as above provided. Any successor owner trustee so appointed by such court shall immediately and without further act be

superseded by any successor owner trustee appointed as above provided within one year from the date of the appointment by such court.

(b) Any successor owner trustee, however appointed, shall execute and deliver to the predecessor Owner Trustee an instrument accepting such appointment, and thereupon such successor owner trustee, without further act, shall become vested with all the estates, properties, rights, powers, duties and trusts of the predecessor Owner Trustee in the trusts hereunder with like effect as if originally named an Owner Trustee herein; but nevertheless, upon the written request of such successor owner trustee, such predecessor Owner Trustee shall execute and deliver an instrument transferring to such successor owner trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, duties and trusts of such predecessor Owner Trustee, and such predecessor Owner Trustee shall duly assign, transfer, deliver and pay over to such successor owner trustee all moneys or other property then held by such predecessor Owner Trustee upon the trusts herein expressed.

(c) Any successor owner trustee, however appointed, shall be a bank or trust company incorporated and doing business within the United States of America and having a combined capital and surplus of at least $50,000,000, if there be such an institution willing, able and legally qualified to perform the duties of Owner Trustee hereunder upon reasonable or customary terms.

(d) Any corporation into which the Owner Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Owner Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Owner Trustee may be transferred, shall, subject to the terms of Section 9.01(c), be the Owner Trustee under this Agreement without further act.

SECTION 9.02. *Co-Trustees and Separate Trustees.* Whenever the Owner Trustee or the Owner Participant shall deem it necessary or prudent in order either to conform to any law of any jurisdiction in which all or any part of the Trust Estate shall be situated or to make any claim or bring any suit with respect to the Trust Estate, the Notes or any Transaction Document, or the Owner Trustee or the Owner Participant shall be advised by counsel satisfactory to it that it is so necessary or prudent, the Owner Trustee and the Owner Participant shall execute and deliver an agreement supplemental hereto and all other instruments and agreements, and shall take all other action necessary or proper to constitute one or more Persons (and the Owner Trustee may appoint one or more of its officers) either as co-trustee or co-trustees jointly with the Owner Trustee of all or any part of the Trust Estate, or as separate trustee or separate trustees of all or any part of the Trust Estate, and to vest in such Persons, in such capacity, such title to the Trust Estate or any part thereof and such rights or duties as may be necessary or desirable, all for such period and under such terms and conditions as are satisfactory to the Owner Trustee and the Owner Participant. In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the title to the Trust Estate and all rights and duties of such co-trustee or separate trustee shall, so far as permitted by law, vest in and be exercised by the Owner Trustee, without the appointment of a successor to such co-trustee or separate trustee.

ARTICLE X

SUPPLEMENTS AND AMENDMENTS

SECTION 10.01. *Supplements and Amendments.* At the written request of the Owner Participant, this Agreement shall be amended by a written instrument signed by the Owner Trustee and the Owner Participant, but if in the opinion of the Owner Trustee any instrument required to be so executed adversely affects any right, duty or liability of, or immunity or indemnity in favor of, it under this Agreement or any of the documents contemplated hereby to which it is a party, or would cause or result in any conflict with or breach of any terms, conditions or provisions of, or default under, its charter documents or by-laws or any document contemplated hereby to which it is a party, the Owner Trustee may in its sole discretion decline to execute such instrument, unless it shall have been provided an indemnity satisfactory to the Owner Trustee by the Owner Participant.

SECTION 10.02. *Limitation on Amendments.* Notwithstanding Section 10.01, the Owner Trustee shall not execute any amendment which might result in the trusts created hereunder being terminated (i) without the consent of the Indenture Trustee, prior to the release of the lien of the Indenture the Lease Indenture Estate or prior to the payment in full of the principal of and premium, if any, interest on the Notes or (ii) without the consent of the holder thereof, prior to the termination of any lien created pursuant to Section 7(b)(4) of the Participation Agreement.

ARTICLE XI

MISCELLANEOUS

SECTION 11.01. *No Legal Title to Trust Estate in the Owner Participant.* The Owner Participant shall not have legal title to any part of the Trust Estate. No transfer, by operation of law or otherwise, of any right, title or interest of the Owner Participant in and to the Trust Estate or hereunder shall operate to terminate this Agreement or the trusts hereunder or entitle any successor or transferee to an accounting or to the transfer to it of legal title to any part of the Trust Estate.

SECTION 11.02. *Sale of Undivided Interest and/or Real Property Interest by the Owner Trustee is Binding.* Any sale or other conveyance of the Undivided Interest, or Real Property Interest or any part thereof or any assignment of rights under the Assignment and Assumption by the Owner Trustee made pursuant to the terms of this Agreement or any other Transaction Document shall bind the Owner Participant and shall be effective to transfer and convey all right, title and interest of the Owner Trustee and the Owner Participant in and to the Undivided Interest, the Real Property Interest or any part thereof, or such rights under the Assignment and Assumption, as the case may be. No purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such sale or conveyance or as to the application of any sale or other proceeds with respect thereto by the Owner Trustee.

SECTION 11.03. *Limitations on Rights of Others.* Nothing in this Agreement, whether express or implied, shall be construed to give to any Person other than the Owner Trustee and the Owner Participant any legal or equitable right, remedy or claim under or in respect of this Agreement, or covenants, conditions or provisions contained herein or the Trust Estate, all of which are and shall be construed to be for the sole and exclusive benefit of the Owner Trustee and the Owner Participant.

SECTION 11.04. *Notices.* Unless otherwise expressly specified or permitted by the terms hereof, all notices hereunder shall be given as provided in the Participation Agreement.

SECTION 11.05. *Severability.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 11.06. *Limitation on the Owner Participant's Liability.* The Owner Participant shall not have any liability for the performance of this Agreement except as expressly set forth herein.

SECTION 11.07. *Separate Counterparts.* This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

SECTION 11.08. *Successors and Assigns.* All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Owner Trustee and its successors and assigns and the Owner Participant and its successors and assigns, all as herein provided. Any request, notice, direction, consent, waiver or other instrument or action by the Owner Participant shall bind the successors and assigns of the Owner Participant.

SECTION 11.09. *Transfer of Interests.* Subject to the provisions of Section 15 of the Participation Agreement, the Owner Participant may assign, convey or otherwise transfer all or any part of its right, title and interest in and to this Agreement and the Trust Estate. In case of any such assignment, conveyance or transfer of less than all of the interest of the Owner Participant, (i) the transferor and transferee or transferees shall be severally obligated with respect to the indemnification obligations imposed under Section 7.01 in accordance with the interest held by each of them and (ii) appropriate amendments shall be made to this Agreement to provide for the situation in which there is more than one Owner Participant as may be agreed to by the transferor and transferee or transferees and consented to by the Owner Trustee. No such assignment, conveyance or transfer shall violate any provision of Applicable Law or create a relationship which would be in violation thereof. The Owner Trustee shall not be on notice of or otherwise be bound by any such assignment, conveyance or transfer until it shall have received an executed counterpart of the instrument of such assignment, conveyance or transfer.

SECTION 11.10. *Headings.* The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

SECTION 11.11. *Governing Law.* This Agreement shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance, except to the extent that, pursuant to the laws of the State of Arizona, the laws of such State are mandatorily applicable hereto.

SECTION 11.12. *Administration of Trust.* The principal place of administration of the Trust shall be in Boston, Massachusetts.

SECTION 11.13. *Performance by the Owner Participant.* Any obligation of the Owner Trustee hereunder or under any Transaction Document or other document contemplated herein may be performed by the Owner Participant and any such performance shall not be construed as a revocation of the trusts created hereby.

SECTION 11.14. *Conflict with Transaction Documents.* If this Agreement (or any instructions given by the Owner Participant pursuant hereto) shall require that any action be taken with respect to any matter and any other Transaction Document (or any instructions duly given in accordance with the terms thereof) shall require that a different action be taken with respect to such matter, and such actions shall be mutually exclusive, the provisions of such other Transaction Document, in respect thereof, shall control.

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

CHRYSLER FINANCIAL CORPORATION

By _____

THE FIRST NATIONAL BANK OF BOSTON

By _____

Assistant Vice President

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

CHRYSLER FINANCIAL CORPORATION

By _____

THE FIRST NATIONAL BANK OF BOSTON

By _____
Assistant Vice President

SECTION 15.6.1
LESSOR'S CERTIFICATE
EL PASO UNIT 2/1986-6

The undersigned, being a duly elected, qualified and acting Assistant Vice President of THE FIRST NATIONAL BANK OF BOSTON, a national banking association ("FNB"), hereby certifies, for and on behalf of FNB, as follows:

1. Reference is made to (i) the Arizona Nuclear Power Project Participation Agreement, dated as of August 23, 1973, as amended (the "ANPP Participation Agreement"), and (ii) the sale and leaseback transaction proposed to be entered into by El Paso Electric Company ("El Paso") on or before December 31, 1986, with respect to Palo Verde Nuclear Generating Station ("PVNGS") Unit 2 and El Paso's interest therein and in certain PVNGS common facilities relating thereto (the "Proposed El Paso Sale and Leaseback Transaction");

2. In connection with the Proposed El Paso Sale and Leaseback Transaction, FNB will enter into a Trust Agreement (the "Trust Agreement") with Chrysler Financial Corporation, constituting FNB the trustee (in such capacity, "Owner Trustee") of a grantor trust (the "Grantor Trust"); thereafter, the Grantor Trust will acquire from El Paso an undivided ownership interest of up to approximately % in certain assets constituting part of PVNGS Unit 2, up to approximately % in certain PVNGS common facilities and up to approximately % in the PVNGS site and lease back such interests to El Paso pursuant to a Facility Lease having a primary term of at least 25 years; and

3. Upon the execution and delivery of the Trust Agreement and upon consummation of the Proposed El Paso Sale and Leaseback Transaction, FNB, solely in its capacity as Owner Trustee and not otherwise, confirms that, except as provided in Sections 15.2.2., 15.6.4. and 15.10 of the ANPP Participation Agreement, El Paso shall be and remain the sole "Participant" for all purposes of the ANPP Participation Agreement and the sole representative (with power to bind the Grantor Trust and any mortgagee, trustee and secured party of the Grantor Trust of the type described in Section 15.1.2 of the ANPP Participation Agreement) in all dealings with the other ANPP Participants in relation to the property, rights, titles and interest of El Paso transferred to the Grantor Trust pursuant to the Proposed El Paso Sale and Leaseback Transaction.

WITNESS the signature of the undersigned this day of December, 1986, for and on behalf of FNB.

Martin P. Henry
Assistant Vice President

CERTAIN RIGHTS OF THE LESSOR UNDER THIS FACILITY LEASE HAVE BEEN ASSIGNED TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF, FIRST CITY NATIONAL BANK OF HOUSTON, AS INDENTURE TRUSTEE UNDER A TRUST INDENTURE, MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS DATED AS OF DECEMBER 1, 1986. THIS FACILITY LEASE HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS. SEE SECTION 22(e) OF THIS FACILITY LEASE FOR INFORMATION CONCERNING THE RIGHTS OF HOLDERS OF VARIOUS COUNTERPARTS HEREOF. THIS COUNTERPART IS NOT THE ORIGINAL COUNTERPART.

THIS INSTRUMENT GRANTS A SECURITY INTEREST BY A UTILITY, but only if, contrary to the intention of the parties, it should be so construed. This instrument is filed as a utility security interest as a precautionary matter.

Facility Lease

Dated as of December 1, 1986

between

THE FIRST NATIONAL BANK OF BOSTON,
not in its individual capacity,
but solely as *Owner Trustee*
under a Trust Agreement, dated as of December 1, 1986,
with Chrysler Financial Corporation

Lessor

and

EL PASO ELECTRIC COMPANY

Lessee

Sale and Leaseback of an Undivided Interest
in Palo Verde Nuclear Generating Station Unit 2
and Certain Common Facilities

THIS INSTRUMENT CONTAINS AFTER ACQUIRED
PROPERTY PROVISIONS

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FACILITY LEASE

FACILITY LEASE, dated as of December 1, 1986 between THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as Owner Trustee under a Trust Agreement, dated as of December 1, 1986, with Chrysler Financial Corporation, as Lessor, and EL PASO ELECTRIC COMPANY, a Texas corporation, as Lessee.

WITNESSETH:

WHEREAS, the Lessor owns the Undivided Interest and the Real Property Interest, the Lessee desires to lease the Undivided Interest and the Real Property Interest from the Lessor, and the Lessor is willing to lease the Undivided Interest and the Real Property Interest to the Lessee all on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. *Definitions.*

For purposes hereof, capitalized terms used herein, and not defined herein, shall have the meanings assigned to such terms in Appendix A, as amended from time to time in conjunction with the amendment of this Facility Lease. References in this Facility Lease to sections, paragraphs and clauses are to sections, paragraphs and clauses in this Facility Lease unless otherwise indicated.

SECTION 2. *Lease of Undivided Interest and Real Property Interest; Term; Personal Property.*

(a) *Lease of Undivided Interest and Real Property Interest.* Upon the terms and subject to the conditions of this Facility Lease, the Lessor hereby leases to the Lessee, and the Lessee hereby leases from the Lessor, the Undivided Interest and the Real Property Interest.

(b) *Term.* The term of this Facility Lease shall begin on December 18, 1986, and shall end on the last day of the Lease Term.

(c) *Personal Property.* It is the express intention of the Lessor and the Lessee that title to the Undivided Interest and every portion thereof is severed, and shall be and remain severed, from title to the real estate constituting the PVNGS Site. The Lessor and the Lessee intend that the Undivided Interest shall constitute personal property to the maximum extent permitted by Applicable Law.

(d) *Description.* The Real Property Interest is described on Schedule 6 hereto. The Undivided Interest is described on Schedule 7 hereto.

SECTION 3. *Rent; Adjustments to Rent.*

(a) *Basic Rent.* The Lessee shall pay to the Lessor, as basic rent (herein referred to as *Basic Rent*) for the Undivided Interest, the following amounts:

(i) on July 2, 1987 and on each Basic Rent Payment Date thereafter to and including January 2, 2013, an amount equal to 4.6799432% of Facility Cost;

(ii) on July 2, 2013, an amount equal to 2.3399716% of Facility Cost;

(iii) if the Lessee shall elect the Renewal Term, on October 1, 2013, and on each Basic Rent Payment Date thereafter during the Renewal Term, an amount equal to one-half of the average of the last two payments of Basic Rent payable under clause (i) of this Section 3(a).

(b) *Supplemental Rent.* The Lessee shall pay the following amounts (herein referred to as *Supplemental Rent*):

(i) when due or, where no due date is specified, on demand, any amount (*other than* Basic Rent, Casualty Value, Termination Value, Special Termination Value, Enhanced Casualty Value

and Special Casualty Value) which the Lessee assumes the obligation to pay or agrees to pay to the Lessor, the Owner Participant, the Indenture Trustee, the Collateral Trust Trustee or any Indemnitee under this Facility Lease, any other Transaction Document or the Collateral Trust Indenture and any amount which the Lessor is obligated to pay under Sections 6.9, 7.6 or 8.[redacted] the Indenture;

(ii) when due, any amount payable hereunder as Casualty Value, Termination Value, Special Termination Value, Enhanced Casualty Value or Special Casualty Value, and an amount equal to any premium or prepayment penalty with respect to the Notes;

(iii) on demand and in any event on the Basic Rent Payment Date next succeeding the date such amounts shall be due and payable hereunder, *to the extent* permitted by Applicable Law, interest (computed on the same basis as interest on the Notes is computed) at a rate per annum equal to (A) the Overdue Interest Rate, on that portion of the payment of Basic Rent or Supplemental Rent distributable pursuant to clause *"first"* of Section 5.1 or clause *"second"* of Section 5.3 of the Indenture (determined prior to the computation of interest on overdue payments referred to in such clauses), and (B) the Penalty Rate, on the balance of any such payment of Basic Rent or Supplemental Rent (*including*, to the extent permitted by Applicable Law, interest payable pursuant to this clause (iii) not paid when due (without regard to any period of grace)) for any period for which the same shall be overdue.

The Lessor shall have all rights, powers and remedies provided for in this Facility Lease, at law, in equity or otherwise, in the case of non-payment of Basic Rent or Supplemental Rent. Drawings under the Letter of Credit shall be deemed to be in satisfaction of the Lessee's obligation to pay the Equity Portion of Rent hereunder to the extent of such drawing.

(c) *Form of Payment.* Subject to Section 11(b), each payment of Rent under this Facility Lease shall be made in immediately available funds no later than 12:00 noon, local time at the place of receipt, on the date each such payment shall be due and payable hereunder and shall be paid either (A) in the case of payments other than Excepted Payments, to the Lessor at its address determ[redacted] in accordance with Section 17, or at such other address as the Lessor may direct by notice in w[redacted]o the Lessee, or (B) in the case of Excepted Payments, to such Person as shall be entitled to receive such payment at such address as such Person may direct by notice in writing to the Lessee. If the date on which any payment of Rent is due hereunder shall not be a Business Day, the payment otherwise due thereon shall be due and payable on the preceding Business Day, with the same force and effect as if paid on the nominal date provided in this Facility Lease.

(d) *Adjustments to Rent for Change in Tax Law.* Basic Rent and the schedules of Casualty Values, Special Casualty Values, Special Termination Values, Enhanced Casualty Values and Termination Values attached hereto shall be adjusted (upward or downward) to preserve Net Economic Return if there is any change in the Internal Revenue Code of 1954, as amended, as in effect immediately prior to the enactment of the Tax Reform Act of 1986, or successor legislation enacted by the Ninety-ninth or One Hundredth Congresses (*including* proposed, temporary or final regulations resulting therefrom) *other than* a change in respect of an "alternative minimum tax" or an "add-on minimum tax" having the same effect as an "alternative minimum tax" (herein referred to as a *Change in Tax Law*; *provided, however*, that, to prevent double counting, to the extent the change in corporate tax rates contained in Section 601 of the Tax Reform Act of 1986 has been taken into account in determining Basic Rent and the values referred to in Section 3(b)(ii), such change will not be considered a Change in Tax Law). Any adjustment under this Section 3(d) shall be made no more frequently than annually.

The provisions of this Section 3(d) to the contrary notwithstanding, if any Change in Tax Law is, or becomes, applicable to the transaction contemplated by this Facility Lease in consequence of the transfer of the Owner Participant's beneficial interest in the Trust (*whether or not* permitted by Section 15 of the Participation Agreement) or if such Change in Tax Law would not have been applicable to such transaction had no such transfer occurred, then no upward or downward

adjustment shall be, or be required to be, made pursuant to this Section 3(d), *provided, however,* that this paragraph shall not apply to a transfer to an Affiliate of the Owner Participant.

(e) *Adjustments to Rent for Changes in Pricing Assumptions.* Basic Rent and the schedules of Casualty Values, Special Casualty Values, Termination Values, Enhanced Casualty Values and Special Termination Values attached hereto shall be adjusted (upward or downward) to preserve Net Economic Return if there is any change in the Pricing Assumptions, other than the Pricing Assumptions relating to taxes, *including, without limitation,* in respect of (1) the issuance of a Releveraging Note or a Refunding Note or (2) the payment of Transaction Expenses.

(f) *Computation of Adjustments.* As soon as practicable after the occurrence of an event requiring an adjustment to Basic Rent, and the schedules of Casualty Values, Special Termination Values, Special Casualty Values, Enhanced Casualty Values and Termination Values attached hereto, pursuant to Section 3(d) or (e) or Section 13 of the Participation Agreement, the Owner Participant shall make the necessary computations and furnish to the Lessee, the Loan Participant, the Lessor and the Indenture Trustee the revised amounts and percentages, which amounts and percentages shall be implemented upon delivery thereof and effective as of the date of occurrence of the event requiring such adjustment (taking into account any payment of Basic Rent already made) and shall remain effective until changed in consequence of any verification procedure set forth below. Such revised amounts and percentages shall be subject to verification (at the Lessee's request) by the Owner Participant's nationally recognized independent public accountants, in which case such accountants shall either (i) confirm to the Lessee in writing that such revised amounts were computed on a basis consistent with the original calculations, or (ii) compute and provide to the Lessee, the Lessor, the Owner Participant, the Loan Participant and the Indenture Trustee revised amounts and percentages which are on such a basis. The revised amounts and percentages, as so confirmed or computed if applicable, shall be conclusive and binding upon the Lessee, the Lessor and the Owner Participant. The cost of any such verification shall be borne by the Lessee, *unless* such accountants shall require an upward or downward adjustment to the revised amounts and percentages originally provided by the Owner Participant which is greater than 10% of the amount of the adjustment to Basic Rent so provided, in which case such cost shall be shared equally by the Owner Participant and the Lessee. Each adjustment pursuant to Section 3(d) or (e) or Section 13 of the Participation Agreement may, but need not, be evidenced by the execution and delivery of a supplement to this Facility Lease in form and substance satisfactory to the Lessee and the Owner Participant, but shall be effective as provided herein without regard to the date on which such supplement to this Facility Lease is so executed and delivered. Any adjustment referred to in this Section 3 and any related modifications of the Transaction Documents shall satisfy the provisions of applicable accounting requirements and of Revenue Procedure 75-21, Revenue Procedure 75-28 and any other applicable statute, regulation, revenue procedure, revenue ruling or technical information release relating to the subject matter of Revenue Procedure 75-21 or Revenue Procedure 75-28, but, in the case of any upward adjustment, such upward adjustment shall be no less than the adjustment otherwise required pursuant to this Section 3.

(g) *Sufficiency of Basic Rent and Supplemental Rent.* Notwithstanding any other provision of this Facility Lease or any other Transaction Document, (i) the amount of Basic Rent payable on each Basic Rent Payment Date shall be at least equal to the aggregate amount of principal, premium, if any, and accrued interest then due and payable on all Notes and (ii) each payment of Casualty Value, Special Casualty Value, Special Termination Value, Enhanced Casualty Value and Termination Value shall in no event be less (when added to all other amounts required to be paid by the Lessee under this Facility Lease in respect of any Event of Loss or Deemed Loss Event or termination of this Facility Lease) than an amount sufficient, as of the date of payment, to pay in full the principal of, and premium, if any, and interest on all Notes Outstanding on and as of such date of payment (taking into account any assumption of the Notes by the Lessee).

SECTION 4. *Net Lease.*

This Facility Lease (as originally executed and as modified, supplemented and amended from time to time) is a net lease and the Lessee hereby acknowledges and agrees that the Lessee's obligations to pay all Rent hereunder, and the rights of the Lessor in and to such Rent, shall be absolute, unconditional and irrevocable and shall not be affected by any circumstances of any character, *including, without limitation,* (i) any set-off, abatement, counterclaim, suspension, recoupment, reduction, defense or other right or claim which the Lessee may have against the Lessor, the Owner Participant, the Indenture Trustee, the Collateral Trust Trustee, the Loan Participant, the Operating Agent, any ANPP Participant, any vendor or manufacturer of any equipment or assets included in the Undivided Interest, Unit 2, any Capital Improvement, the Real Property Interest, the PVNGS Site, PVNGS, or any part of any thereof, or any other Person for any reason whatsoever, (ii) any defect in or failure of the title, merchantability, condition, design, compliance with specifications, operation or fitness for use of all or any part of the Undivided Interest, Unit 2, any Capital Improvement, the Real Property Interest, the PVNGS Site or PVNGS, (iii) any destruction of, damage to, or removal, abandonment, shutdown, salvage, scrapping, requisition, taking, loss, theft or destruction of all or any part of the Undivided Interest, Unit 2, any Capital Improvement, the Real Property Interest, the PVNGS Site or PVNGS, or any interference, interruption or cessation in the use or possession thereof or of the Undivided Interest by the Lessee or by any other Person (*including, without limitation,* the Operating Agent or any other ANPP Participant) for any reason whatsoever or of whatever duration, (iv) any restriction, prevention or curtailment of or interference with any use of all or any part of the Undivided Interest, Unit 2, any Capital Improvement, the Real Property Interest, the PVNGS Site or PVNGS, (v) any insolvency, bankruptcy, reorganization or similar proceeding by or against the Lessee, the Lessor, the Owner Participant, the Indenture Trustee, the Collateral Trust Trustee, the Loan Participant, the Operating Agent, any other ANPP Participant or any other Person, (vi) the invalidity, illegality or unenforceability of this Facility Lease, any other Transaction Document, any Financing Document, the ANPP Participation Agreement or any other instrument referred to herein or therein or any other infirmity herein or therein or any lack of right, power or authority of the Lessor, the Lessee, the Owner Participant, the Indenture Trustee, the Collateral Trust Trustee, the Loan Participant or any other Person to enter into this Facility Lease, any other Transaction Document or any Financing Document, or any doctrine of *force majeure,* impossibility, frustration, failure of consideration, or any similar legal or equitable doctrine that the Lessee's obligation to pay Rent is excused because the Lessee has not received or will not receive the benefit for which the Lessee bargained, *it being the intent* of the Lessee to assume all risks from all causes whatsoever that the Lessee does not receive such benefit, (vii) the breach or failure of any warranty or representation made in this Facility Lease or any other Transaction Document or any Financing Document by the Lessor, the Owner Participant, the Indenture Trustee, the Collateral Trust Trustee, the Loan Participant or any other Person, (viii) any amendment or other change of, or any assignment of rights under, this Facility Lease, any other Transaction Document, any Financing Document or any ANPP Project Agreement, or any waiver, action or inaction under or in respect of this Facility Lease, any other Transaction Document, any Financing Document or any ANPP Project Agreement, or any exercise or non-exercise of any right or remedy under this Facility Lease, any other Transaction Document, any Financing Document or any ANPP Project Agreement, *including, without limitation,* the exercise of any foreclosure or other remedy under the Indenture, the Collateral Trust Indenture or this Facility Lease, or the sale of Unit 2, any Capital Improvement, the Real Property Interest, the Undivided Interest, the PVNGS Site or PVNGS, or any part thereof or any interest therein, or (ix) any other circumstance or happening whatsoever whether or not similar to any of the foregoing. The Lessee acknowledges that, by conveying the leasehold estate created by this Facility Lease to the Lessee and by putting the Lessee in possession of the Undivided Interest and the Real Property Interest, the Lessor has performed all of the Lessor's obligations under and in respect of this Facility Lease, *except* the covenant contained in Section 6(a). The Lessee hereby waives, to the extent permitted by Applicable Law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Facility

Lease or to effect or claim any diminution or reduction of Rent payable by the Lessee hereunder, *including, without limitation*, the provisions of Arizona Revised Statutes Section 33-343. If for any reason whatsoever this Facility Lease shall be terminated in whole or in part by operation of law or otherwise, *except* as specifically provided herein, the Lessee nonetheless agrees to pay to the Lessor or other Person entitled thereto an amount equal to each installment of Basic Rent and all Supplemental Rent at the time such payment would have become due and payable in accordance with the terms hereof had this Facility Lease not been terminated in whole or in part. Each payment of Rent made by the Lessee hereunder shall be final and the Lessee shall not seek or have any right to recover all or any part of such payment from the Lessor or any other Person for any reason whatsoever. All covenants, agreements and undertakings of the Lessee herein shall be performed at its cost, expense and risk unless expressly otherwise stated. Nothing in this Section 4 or elsewhere shall be construed as a guaranty by the Lessee of any residual value in the Undivided Interest or the Real Property Interest or as a guaranty of the Notes or the Bonds. Any provision of Section 7(b)(2) or 8(c) of the Participation Agreement to the contrary notwithstanding, if the Lessee shall fail to make any payment of Rent to any Person when and as due (taking into account applicable grace periods), such Person shall have the right at all times, to the exclusion of the ANPP Participants, to demand, collect, sue for, enforce obligations relating to and otherwise obtain all amounts due in respect of such Rent.

SECTION 5. *Return of the Undivided Interest; Disposition Services.*

(a) *Return of the Undivided Interest.* On the Lease Termination Date, the Lessee will surrender possession of the Undivided Interest and the Real Property Interest to the Lessor or its designee. At the time of such return, (i) the Lessee shall pay or have paid all amounts due and payable, or to become due and payable, by it as an ANPP Participant under each and every ANPP Project Agreement allocable or chargeable (whether or not payable during or after the Lease Term) to the Undivided Interest or the Real Property Interest in respect of any period or periods ending on or prior to the Lease Termination Date *(including, without limitation*, all amounts payable with respect to any and all Capital Improvements to which the Owner Participant has consented pursuant to the second sentence of Section 8(c), whether or not implementation thereof has been completed on or prior to the Lease Termination Date), and (ii) the Undivided Interest and the Real Property Interest shall be free and clear of all Liens (other than Permitted Liens described in clauses (i), (vi), (ix), (x) and (xi) of the definition of such term and other than Permitted Liens described in clauses (iv), (v), (vii) and (viii) of the definition of such term if and to the extent such Permitted Liens are insured by a title insurance company or bonded or other arrangements, in each case reasonably satisfactory to the Lessor, have been made with respect thereto) and in the condition and state of repair required by Section 8. The Lessor shall not abandon the Undivided Interest. In the event that on or prior to the Lease Termination Date there shall have occurred a default by any ANPP Participant *(other than* El Paso) under the ANPP Participation Agreement and such default shall not have been cured by the defaulting ANPP Participant, then (i) the Lessee agrees to indemnify and hold the Lessor (and each successor, assign and transferee thereof) harmless against any and all obligations under the ANPP Participation Agreement with respect to contributions or payments required to be made thereby as a result of such default and (ii) the Lessor (and each successor, assign and transferee thereof) agrees to reimburse the Lessee for all amounts paid by the Lessee pursuant to the foregoing clause (i) to the extent, but only to the extent, that the Lessor (or such successor, assign or transferee) shall have actually received net proceeds from the sale of power and energy of the defaulting ANPP Participant as a result of the payment made by the Lessee pursuant to the foregoing clause (i), and, to the extent the Lessor (or such successor, assign or transferee) shall have received such proceeds, the amount to be reimbursed to the Lessee pursuant to this clause (ii) shall include interest at the Prime Rate from the date of any payment by the Lessee pursuant to the foregoing clause (i) through the date of reimbursement of such amount pursuant to this clause (ii).

(b) *Disposition Services.* The Lessee agrees that if it does not exercise its option to renew or purchase as provided in Sections 12 and 13, respectively, then during the last thirty-six months of the Lease Term, the Lessee will fully cooperate with the Lessor in connection with the Lessor's efforts to

lease or dispose of the Undivided Interest and the Real Property Interest, including using the Lessee's reasonable efforts to lease or dispose of the Undivided Interest and the Real Property Interest. The Lessor agrees to reimburse the Lessee for reasonable out-of-pocket costs and expenses of the Lessee incurred at the request of the Lessor or the Owner Participant in connection with such coope[redacted]n and such efforts.

SECTION 6. *Warranty of the Lessor.*

(a) *Quiet Enjoyment.* The Lessor warrants that until the Lease Termination Date, if the Lessee is in compliance with each and every material term and provision of this Facility Lease and each other Transaction Document to be complied with by the Lessee, the Lessee's use and possession of Unit 2, including the Undivided Interest, shall not be interrupted by the Lessor or any Person claiming by, through or under the Lessor, and their respective successors and assigns.

(b) *Disclaimer of Other Warranties.* The warranty set forth in Section 6(a) is in lieu of all other warranties of the Lessor or the Owner Participant, whether written, oral or implied, with respect to this Facility Lease, Unit 2, any Capital Improvement, the Real Property Interest, PVNGS or the PVNGS Site. As among the Owner Participant, the Loan Participant, the Indenture Trustee, the Collateral Trust Trustee, the Lessor and the Lessee, execution by the Lessee of this Facility Lease shall be conclusive proof of the compliance of Unit 2 (including any Capital Improvement), the Undivided Interest and the Real Property Interest with all requirements of this Facility Lease, and the Lessee acknowledges and agrees that (i) NEITHER THE LESSOR NOR THE OWNER PARTICIPANT IS A MANUFACTURER OR A DEALER IN PROPERTY OF SUCH KIND AND (ii) THE LESSOR LEASES AND THE LESSEE TAKES THE UNDIVIDED INTEREST AND THE REAL PROPERTY INTEREST, AND SHALL TAKE EACH CAPITAL IMPROVEMENT, AND ANY PART THEREOF, *AS IS AND WHERE IS*, and neither the Lessor nor the Owner Participant shall be deemed to have made, and THE LESSOR AND THE OWNER PARTICIPANT EACH HEREBY DISCLAIMS, ANY OTHER REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN OR CONDITION OF UNIT 2, ANY CAPITAL IMPROVEMENT, THE UNDIVIDED INTEREST, THE REAL PROPERTY INTEREST, THE PVNGS SITE OR PVNGS, OR ANY PART THEREOF, *THE MERCHANTABILITY THEREOF O[redacted] FITNESS THEREOF FOR ANY PARTICULAR PURPOSE*, TITLE TO UNIT 2, ANY CAPITAL IMPR[redacted]MENT, THE UNDIVIDED INTEREST, THE REAL PROPERTY INTEREST, THE PVNGS SITE OR PVNGS, OR ANY PART THEREOF, THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREOF OR CONFORMITY THEREOF TO SPECIFICATIONS, FREEDOM FROM PATENT OR TRADEMARK INFRINGEMENT OR THE ABSENCE OF ANY LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, NOR SHALL THE LESSOR OR THE OWNER PARTICIPANT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LIABILITY IN TORT, STRICT OR OTHERWISE), *it being agreed* that all such risks, as among the Owner Participant, the Loan Participant, the Collateral Trust Trustee, the Indenture Trustee, the Lessor and the Lessee, are to be borne by the Lessee. The provisions of this Section 6(b) have been negotiated, and, *except* to the extent otherwise expressly provided in Section 6(a), the foregoing provisions are intended to be a complete exclusion and negation of any representations or warranties by the Lessor, the Owner Participant, the Loan Participant, the Collateral Trust Trustee or the Indenture Trustee, express or implied, with respect to Unit 2 *(including* any Capital Improvement), the Undivided Interest, the Real Property Interest, PVNGS or the PVNGS Site that may arise pursuant to any law now or hereafter in effect, or otherwise.

(c) *Enforcement of Certain Warranties.* The Lessor authorizes the Lessee (directly or through agents, including the Operating Agent), at the Lessee's expense, to assert for the Lessor's account, during the Lease Term, all of Lessor's rights (if any) under any applicable warranty and any other claims (under this Facility Lease or any Purchase Document) that the Lessee or the Lessor may have against any vendor or manufacturer with respect to Unit 2 *(including* any Capital Improvement) or the Undivided Interest, and the Lessor agrees to cooperate, at the Lessee's expense, with the Lessee and the Operating Agent in asserting such rights. Any amount receivable (without regard to any right of

setoff or other similar right of any Person against the Lessee) by the Lessee as payment under any such warranty or other claim against any vendor or manufacturer (or, if such warranty or claim relates to the Undivided Interest and the Retained Assets, the portion of such received amount appropriately allocable to the Undivided Interest) shall be applied in accordance with Sections 9(g), (h) and (i).

SECTION 7. *Liens*

The Lessee will not directly or indirectly create, incur, assume or permit to exist any Lien except Permitted Liens on or with respect to the Undivided Interest, the Real Property Interest, the Lessor's title thereto or any interest of the Lessor or Lessee therein (and the Lessee will promptly, at its own expense, take such action as may be necessary duly to discharge any Lien except Permitted Liens).

SECTION 8. *Operation and Maintenance; Capital Improvements.*

(a) *Operation and Maintenance.* The Lessee agrees that it will or will cause the Operating Agent to (A) maintain Unit 2 in such condition that Unit 2 will have the capacity and functional ability to perform, on a continuing basis, ordinary wear and tear excepted, in normal commercial operation, the functions for which it was designed, (B) operate, service, maintain and repair Unit 2 and replace all necessary or useful parts and components thereof so that the condition and operating efficiency will be maintained and preserved, ordinary wear and tear excepted, in all material respects in accordance with (1) Prudent Utility Practice for items of similar size and nature, (2) such operating standards as shall be required to take advantage of and enforce all available warranties and (3) the terms and conditions of all insurance policies maintained in effect at any time with respect thereto, (C) use, possess, operate and maintain Unit 2 in compliance with all material applicable Governmental Actions (including the License) affecting PVNGS or Unit 2 or the use, possession, operation and maintenance thereof and (D) otherwise act in accordance with the standards set forth in the ANPP Participation Agreement. The Lessee will comply with all its obligations under Applicable Law affecting Unit 2, the Undivided Interest, PVNGS, the Real Property Interest and the PVNGS Site, and the use, operation and maintenance thereof. The Lessee agrees to (i) exercise its rights under the ANPP Participation Agreement so that there will always be an Operating Agent under the ANPP Participation Agreement and (ii) maintain in full force and effect a license from the NRC adequate to possess the Undivided Interest and the Real Property Interest under the circumstances contemplated by the ANPP Participation Agreement. The Lessee will keep and maintain proper books and records (i) relating to all Operating Funds (as defined in the ANPP Participation Agreement) provided by it to the Operating Agent under the ANPP Participation Agreement and (ii) relating to the application of such Operating Funds to the operation and maintenance of Unit 2 and the acquisition, construction and installation of Capital Improvements, in each such case upon receipt of the requisite information from the Operating Agent, all in accordance with the Uniform System of Accounts. The Lessor shall not be obliged in any way to maintain, alter, repair, rebuild or replace Unit 2, any Capital Improvement, the Real Property Interest or the Undivided Interest, or any part thereof, or, *except* as provided in Section 8(f), to pay the cost of alteration, rebuilding, replacement, repair or maintenance of Unit 2, any Capital Improvement, the Undivided Interest or the Real Property Interest, or any part thereof, and the Lessee expressly waives the right to perform any such action at the expense of the Lessor pursuant to any law at any time in effect.

(b) *Inspection.* The Lessor, the Owner Participant, the Indenture Trustee and the Collateral Trust Trustee shall have the right to inspect PVNGS (*subject*, in each event, to the ANPP Participation Agreement, Applicable Law and applicable confidentiality undertakings and procedures established by the Operating Agent) at their expense. The Lessor and the Owner Participant shall have the right to inspect, at their expense, the books and records of the Lessee relating to PVNGS, and make copies of and extracts therefrom (*subject* as aforesaid) and may, at their expense, discuss the Lessee's affairs, finances and accounts with its executive officers, all at such times and as often as may be reasonably requested. None of the Lessor, the Owner Participant, the Indenture Trustee and the Collateral Trust Trustee shall have any duty whatsoever to make any inspection or inquiry referred to in this Section

8(b) and shall not incur any liability or obligation by reason of not making any such inspection or inquiry.

(c) *Capital Improvements.* To the extent that Applicable Law or Prudent Utility Practice requires that a Capital Improvement be made to Unit 2, the Lessee shall cause such Capital Improvement to be made in accordance with the ANPP Participation Agreement; *provided, however,* that nothing in this sentence shall be deemed to increase the Lessee's obligations under the ANPP Participation Agreement. If and to the extent required by the ANPP Participation Agreement, the Lessee shall, at its sole expense, promptly participate in the making of any Capital Improvement to Unit 2. Without the written consent of the Lessor, the Lessee will not permit any Capital Improvement to be made during the last three years of the Lease Term unless (i) such Capital Improvement is reasonably expected to be completed prior to the end of the Lease Term, as determined by an independent engineer reasonably acceptable to the Lessee and the Lessor, (ii) arrangements for the payment thereof satisfactory to the Owner Participant have been made and (iii) the Lessee is committed to pay the cost thereof (whether or not completed prior to the end of the Lease Term) in a manner satisfactory to the Owner Participant. Of the net proceeds of (i) any sale or other disposition of property removed from Unit 2 receivable (without regard to any right of setoff or other similar right of any Person against the Lessee) by, or credited to the account of, the Lessee in accordance with the ANPP Participation Agreement and (ii) any insurance proceeds receivable (without regard to any right of setoff or other similar right of any Person against the Lessee) for the account of the Lessor or the Lessee in respect of the loss or destruction of, or damage to, any such property, the Applicable Unit 2 Percentage of such amount shall be applied as provided in Section 9(g), (h) or (i), as the case may be. An Applicable Unit 2 Percentage of property at any time removed from Unit 2 shall remain the property of the Lessor, no matter where located, until such time as a Capital Improvement constituting a replacement of such property shall have been installed in Unit 2 or such removed property has been disposed of by the Operating Agent in accordance with the ANPP Participation Agreement. Simultaneously with such disposition by the Operating Agent, title to an undivided interest equal to the Applicable Unit 2 Percentage in the removed property shall vest in the Person designated by the Operating Agent, free and clear of any and all claims or rights of the Lessor. *Unless* paragraph (B) of Section 8(e) shall be applicable, upon the incorporation of a Capital Improvement in Unit 2, without further act, (i) title to an undivided interest equal to the Applicable Unit 2 Percentage in such Capital Improvement shall vest in the Lessor and (ii) such undivided interest in such Capital Improvement shall become subject to this Facility Lease and be deemed to be part of the Undivided Interest for all purposes hereof to the same extent that the Lessor had a like undivided interest in the property originally incorporated or installed in Unit 2. The Lessee warrants and agrees that the Lessor's interest in all Capital Improvements shall be free and clear of all Liens, *except* Permitted Liens described in clauses (ii), (iii) and (xii) of the definition thereof.

(d) *Reports.* To the extent permissible, the Lessee shall prepare and file in timely fashion, or, where the Lessor shall be required to file, the Lessee shall prepare and deliver to the Lessor within a reasonable time prior to the date for filing, any reports with respect to Unit 2, the Undivided Interest or the condition or operation thereof that shall be required to be filed with any Governmental Authority. On or before March 1 of each year (commencing March 1, 1987) and on the Lease Termination Date, the Lessee shall furnish the Lessor and the Owner Participant with a report stating the total cost of all Capital Improvements and describing separately and in reasonable detail each Capital Improvement (or related group of Capital Improvements) made during the period from the date hereof to December 31, 1986, in the case of the first such report, or during the period from and the end of the period covered by the last previous report to the December 31 prior to such report, in the case of subsequent reports. On or before March 1 in each year (commencing March 1, 1987) and at such other times as the Lessor or the Owner Participant shall reasonably request in writing, the Lessee will report in writing to the Lessor with respect to (i) the most recent annual capital expenditure budget submitted by the Operating Agent to the Lessee in accordance with the ANPP Participation Agreement and (ii) the current plans (if any) which the Lessee may have for the financing of the same under Section 8(f).

(e) *Title to Capital Improvements.* Title to an undivided interest equal to the Applicable Unit 2 Percentage in each Capital Improvement to Unit 2 shall vest as follows:

(1) in the case of each Nonseverable Capital Improvement, whether or not the Lessor shall have financed or provided financing (in whole or in part) for such undivided interest in such Capital Improvement by an Additional Equity Investment or a Supplemental Financing, or both, effective on the date such Capital Improvement shall have been incorporated or installed in Unit 2, the Lessor shall, without further act, acquire title to such undivided interest in such Capital Improvement;

(2) in the case of each Severable Capital Improvement, if the Lessor shall have financed (by an Additional Equity Investment or a Supplemental Financing, or both) an Applicable Unit 2 Percentage of the cost of such Capital Improvement, the Lessor shall, without further act, acquire title to such undivided interest in such Capital Improvement; and

(3) in the case of each Severable Capital Improvement, if the Lessor shall not have financed (by either an Additional Equity Investment or a Supplemental Financing, or both) the Applicable Unit 2 Percentage of the cost of such Capital Improvement, the Lessee shall retain title to such undivided interest equal to the Applicable Unit 2 Percentage in such Capital Improvement.

Immediately upon title to such an undivided interest equal to the Applicable Unit 2 Percentage in any Capital Improvement vesting in the Lessor pursuant to paragraph (1) or paragraph (2) of this Section 8(e), such undivided interest in such Capital Improvement shall, without further act, become subject to this Facility Lease and be deemed part of the Undivided Interest and Unit 2 for all purposes hereof.

(f) *Funding of the Cost of Capital Improvements.* Before placing in service any Capital Improvement to Unit 2 the cost of which exceeds $50,000,000 in respect of the interests of all ANPP Participants, the Lessee shall give the Lessor and the Owner Participant reasonable advance notice thereof. The Owner Participant shall have the option, in its sole discretion, of financing, or arranging the financing of, an Applicable Unit 2 Percentage of the cost of any such Capital Improvement, or any other Capital Improvement presented to the Owner Participant for financing, including or not including the making of an investment by the Owner Participant (an *Additional Equity Investment*) and the issuance of Additional Notes, all on terms acceptable to the Lessee and the Owner Participant. If the Owner Participant does not finance, or arrange the financing of, an Applicable Unit 2 Percentage of the cost of such Capital Improvement, the Lessee may cause the Lessor to issue, if and to the extent permitted by the Indenture, to one or more Persons (*other than* any Person affiliated with the Lessee within the meaning of Section 318 of the Code) Additional Notes (such issuance of Notes being hereinafter referred, to as a *Supplemental Financing*) and to use the proceeds thereof to pay such percentage of the cost of such Capital Improvement, *subject, however,* to the satisfaction of the following conditions:

(i) there shall be no more than one Supplemental Financing in any calendar year;

(ii) the sum of the Supplemental Financing Amounts, if any, in any calendar year shall equal or exceed 13.820551% of $10,000,000;

(iii) the Lessee may include in any request for a Supplemental Financing only Capital Improvements not previously financed in any Supplemental Financing and which have been installed or affixed no earlier than three calendar years before the beginning of the calendar year in which such Supplemental Financing occurs;

(iv) the total amount of all Supplemental Financings during the Basic Lease Term shall not exceed 13.820551% of $200,000,000;

(v) unless waived by the Owner Participant, the Bonds shall, at the time of such Supplemental Financing, be rated at least "investment grade," as determined by Standard & Poor's Corporation or Moody's Investors Service, Inc. or, if neither of such rating organizations shall rate

the Bonds at the time, by any nationally recognized rating organization in the United States of America;

(vi) the sum of the Supplemental Financing Amount and any Additional Equity Investment shall not exceed that portion of the cost of Capital Improvements which, when financed, will constitute an addition to the Owner Participant's basis under Section 1012 or 1016 of the Code;

(vii) in the opinion of independent tax counsel to the Owner Participant, such Supplemental Financing shall not result in any adverse tax effect upon the Owner Participant, and the Owner Participant and the Lessee shall have agreed upon the amount and manner of payment of any indemnity payable by the Lessee as a consequence of such Supplemental Financing;

(viii) in the opinion of the Owner Participant, such Supplemental Financing shall not result in any material adverse effect on the Owner Participant's financial or accounting position;

(ix) the Additional Notes shall have a final maturity date no later than July 2, 2013;

(x) the Lessee shall have made such representations and warranties and covenants regarding the tax characteristics of the Lessor's undivided interest in each Capital Improvement financed in a Supplemental Financing as the Owner Participant shall have reasonably requested and Section 13(c) of the Participation Agreement shall have been appropriately modified;

(xi) appropriate adjustments to Basic Rent and the schedules of Casualty Values, Special Casualty Values, Termination Values, Enhanced Casualty Values and Special Termination Values shall have been agreed to by the Owner Participant to support the amortization of the Additional Notes issued in respect of such Supplemental Financing and to preserve Net Economic Return;

(xii) the Lessee shall have paid to the Lessor an amount equal to all out-of-pocket costs and expenses reasonably incurred by the Lessor or the Owner Participant and not financed as a part of such Supplemental Financing or reflected in adjustments to Basic Rent;

(xiii) no Default or Event of Default shall have occurred and be continuing and no Event of Loss shall have occurred or Deemed Loss Event shall have been declared; and

(xiv) the Lessee shall have entered into such agreements and shall have provided such tax indemnities, representations, warranties, covenants, opinions, certificates and other documents as the Owner Participant shall reasonably request.

(g) *Useful Life.* If the Lessee shall not theretofore have exercised its purchase option under Section 13(b), *then*, (i) if the Lessee shall not theretofore have exercised its renewal option pursuant to Section 12, on April 1, 2012, the Lessee shall initiate the Appraisal Procedure to determine the remaining Economic Useful Life of Unit 2 as of April 1, 2013, and (ii) if the Lessee shall have exercised its renewal option pursuant to Section 12, on the Basic Rent Payment Date occurring one year prior to the end of the Renewal Term, the Lessee shall initiate the Appraisal Procedure to determine the remaining Economic Useful Life of Unit 2 as of the date six months prior to the end of the Renewal Term. The Lessee and the Lessor agree to use their best efforts to ensure that either such determination of remaining Economic Useful Life is made no later than six months prior to the end of the Lease Term.

SECTION 9. *Event of Loss; Deemed Loss Event; Special Transfer for Failure to Maintain, Renew or Replace Letter of Credit.*

(a) *Damage or Loss.* In the event that Section 16.2 of the ANPP Participation Agreement (as in effect on the date hereof) shall become applicable, or an Event of Loss or Requisition of Use shall occur, or Unit 2 or any substantial part thereof shall suffer destruction, damage, loss, condemnation, confiscation, theft or seizure for any reason whatsoever, such fact shall promptly, and in any case within five Business Days following any such event, be reported by the Lessee to the Lessor and the Owner Participant.

(b) *Repair.* The Lessee shall promptly make any and all payments required of the Lessee under the provisions of the ANPP Participation Agreement relating to damage or destruction or the like to Unit 2 or any portion thereof; *provided, however*, that the Lessee shall in no event be obligated to make or join in any agreement under Section 16.2 of the ANPP Participation Agreement (as in effect on the date hereof) concerning repairs to or reconstruction of Unit 2.

(c) *Payment of Casualty Value.* On the date following the occurrence of an Event of Loss on which the Owner Participant delivers to the Lessee a written notice specifying such Event of Loss (it being understood that the Owner Participant is obligated under Section 7(b)(5) of the Participation Agreement to attempt to draw on the Letter of Credit, if any, to the extent provided therein), the Lessee shall pay to the Lessor an amount equal to *the excess* of (x) Casualty Value, determined as of the date such payment is due, *over* (y) the unpaid principal amount of, and accrued interest since the last preceding Basic Rent Payment Date on, the Notes outstanding on such date, after giving effect to the payment, if any, of the principal installment due and payable and paid in respect of the Notes on such date. If the Lessee shall have made such payment and shall have assumed all obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Lessor shall, so long as no Default or Event of Default shall have occurred and be continuing (and at any time after the occurrence of an Event of Loss the Lessor may):

(i) if Section 16.2 of the ANPP Participation Agreement (as in effect on the date hereof) shall be applicable and the Lessee shall have declined, but one or more of the other ANPP Participants shall have elected, to reconstruct or restore Unit 2, as permitted by the ANPP Participation Agreement, Transfer the Undivided Interest and the Real Property Interest to such electing ANPP Participants, as required by, and in the proportions set forth in, the ANPP Participation Agreement, in which case the Lessee shall be entitled to receive an Applicable Unit 2 Percentage of the "salvage value" purchase price receivable (without regard to any right of setoff, or other similar right of any Person against the Lessee) by the Lessee; or

(ii) in all other cases, Transfer the Undivided Interest and the Real Property Interest to the Lessee.

If the Lessee shall have made such payment but shall not have assumed all obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Owner Participant shall effect the Special Transfer, *in which case, without further act on the part of the Lessor or the Lessee*, (i) the obligation of the Lessee to pay further Basic Rent shall be reduced to an amount, payable on each Basic Rent Payment Date thereafter, equal to the aggregate amount of principal, premium, if any, and accrued interest then payable on all Notes then Outstanding, and (ii) this Facility Lease shall become a security agreement for all purposes of Applicable Law.

(d) *Payment of Special Casualty Value.* If events giving rise to a Deemed Loss Event (without regard to any declaration thereof) shall occur, the party hereto having knowledge thereof shall promptly notify the other party of the occurrence thereof. A Deemed Loss Event shall not occur unless and until the Owner Participant delivers to the Lessee a written notice identifying the applicable event and declaring that such event constitutes a Deemed Loss Event hereunder, which the Owner Participant shall do, to the extent practicable, within 90 days after it shall have actual knowledge of the relevant event. On the date such notice is delivered (it being understood that the Owner Participant is obligated under Section 7(b)(5) of the Participation Agreement to attempt to draw on the Letter of Credit, if any, to the extent provided therein), the Lessee shall pay to the Lessor an amount equal to the excess of (x) Special Casualty Value, determined as of the date such payment is due, over (y) the unpaid principal amount of, and accrued interest since the last preceding Basic Rent Payment Date on, the Notes outstanding on such date, after giving effect to the payment, if any, of the principal installment due and payable and paid in respect of the Notes on such date. If the Lessee shall have made such payment and shall have assumed all obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Lessor shall, so long as no Default or Event of Default shall have occurred and be continuing (and at any time after

the occurrence of a Deemed Loss Event the Lessor may), Transfer the Undivided Interest and the Real Property Interest to the Lessee. If the Lessee shall have made such payment but shall not have assumed all obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Owner Participant shall effect the Special Trans[redacted] *which case, without further act on the part of the Lessor or the Lessee,* (i) the obligation of the Le[redacted] pay further Basic Rent shall be reduced to an amount, payable on each Basic Rent Payment Date thereafter, equal to the aggregate amount of principal, premium, if any, and accrued interest then payable on all Notes Outstanding, and (ii) this Facility Lease shall become a security agreement for all purposes of Applicable Law.

(e) *Requisition of Use.* In the case of a Requisition of Use not constituting an Event of Loss, this Facility Lease shall continue, and each and every obligation of the Lessee hereunder and under each Transaction Document shall remain, in full force and effect. So long as no Default or Event of Default shall have occurred and be continuing, the Lessee shall be entitled to all sums received by reason of any such Requisition of Use for the period ending on the Lease Termination Date, and the Lessor shall be entitled to all sums received by reason of any such Requisition of Use for the period after the Lease Termination Date.

(f) *Termination of Lease Term.* Upon (but only upon) a Transfer by the Lessor pursuant to Section 9(c) or 9(d) of this Facility Lease or Section 10(b)(3)(xvii) of the Participation Agreement to the Lessee and payment by the Lessee of the amounts specified therein, the Lease Term shall end and the Lessee's obligation to pay Basic Rent after such Transfer shall cease: *provided, however,* that the Lessee shall continue to be required to make all payments of Supplemental Rent as and when due. In all other cases, the Lease Term shall continue and this Facility Lease shall remain in full force and effect.

(g) *Application of Payments on an Event of Loss.* Any payments receivable (without regard to any right of setoff or other similar right of any Person against the Lessee) at any time by the Lessor or the Lessee (*other than* insurance placed by the Owner Trustee or the Owner Participant pursuant to Section 10(b)) from any Governmental Authority, insurer or other Person (except the Lessee) [redacted] result of the occurrence of an Event of Loss shall be applied as follows:

(i) all such payments shall be promptly paid to the Lessor for application pursuant to the following provisions of this Section 9(g), *except* that the Lessee may retain any amounts that would at the time be payable to the Lessee as reimbursement under the provisions of clause (ii) below;

(ii) so much of such payments as shall not exceed the amount required to be paid by the Lessee pursuant to Section 9(c) (ignoring, for this purpose, clause (y) of the first sentence thereof) shall be applied in reduction of the Lessee's obligation to pay such amount if not already paid by the Lessee or, if already paid by the Lessee, shall be applied to reimburse the Lessee for its payment of such amount; and

(iii) the balance, if any, of such payments (including any "salvage value" referred to in clause (i) of Section 9(c)) shall, in the case of payments from insurance carried by or on behalf of the Lessee, be paid to the Lessee or, in the case of any other payment, be divided between the Lessor and the Lessee as their interests may appear.

(h) *Application of Payments Not Relating to an Event of Loss.* Payments receivable (without regard to any right of setoff or similar right of any Person against the Lessee) at any time by the Lessor or the Lessee (*other than* insurance placed by the Owner Trustee or the Owner Participant pursuant to Section 10(b)) from any Governmental Authority, insurer or other Person with respect to any event giving rise to an amount referred to in the second sentence of Section 6(c) or the fourth sentence of Section 8(c), destruction, damage, loss, condemnation, confiscation, theft or seizure of or requisition of title to Unit 2 or the Undivided Interest or the Real Property Interest or any requisition of use of Unit 2 or the Undivided Interest or the Real Property Interest or any part of any thereof, in each case

not constituting an Event of Loss, shall be applied *first* to reimburse the Lessee for all amounts expended by it pursuant to Section 9(b) and *second* the balance, if any, of such payments shall, in the case of payments from insurance carried by or on behalf of the Lessee, be paid to the Lessee or, in the case of any other payments, be divided between the Lessor and the Lessee as their interests may appear.

(i) *Dispositions at Time of Default or Event of Default.* Notwithstanding the foregoing provisions of this Section 9, if a Default or an Event of Default shall have occurred and be continuing, any amount that would otherwise be payable to or for the account of, or that would otherwise be retained by, the Lessee pursuant to Section 10 or this Section 9 shall be paid to the Lessor as security for the obligations of the Lessee under this Facility Lease and, at such time thereafter as the Lessee shall have cured any such Default or Event of Default, such amount shall be paid promptly to the Lessee unless this Facility Lease shall have theretofore been declared to be in default, in which event such amount shall be disposed of in accordance with the provisions hereof and of the Indenture.

(j) *Assumption of Notes; Creation of Lien on Undivided Interest.* In connection with an Event of Loss, a Deemed Loss Event, the exercise of the Cure Option or the exercise of the Lessee's purchase options pursuant to Section 13(c) of this Facility Lease or Section 10(b)(3)(xvii) of the Participation Agreement, (i) the Lessee agrees to use its best efforts to comply with the conditions set forth in Section 3.9(b) of the Indenture and, failing such compliance, agrees to accept the Special Transfer, and (ii) the Lessor agrees that, if the Lessee fails to assume all the obligations and liabilities of the Owner Trustee under the Indenture and the Outstanding Notes in accordance with Section 3.9(b) of the Indenture, not later than two Business Days prior to the date on which the Owner Participant effects the Special Transfer, the Lessor will execute and deliver the Undivided Interest Indenture Supplement.

(k) *Special Transfer for Failure to Maintain, Renew or Replace Letter of Credit.* If the Lessee shall have made all payments required pursuant to its option to purchase under Section 10(b)(3)(xvii) of the Participation Agreement but shall not have assumed all obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Owner Participant shall effect the Special Transfer, *in which case, without further act on the part of the Lessor or the Lessee,* (i) the obligation of the Lessee to pay further Basic Rent shall be reduced to an amount, payable on each Basic Rent Payment Date thereafter, equal to the aggregate amount of principal, premium, if any, and accrued interest then payable on all Notes then Outstanding, and (ii) this Facility Lease shall become a security agreement for all purposes of Applicable Law.

SECTION 10. *Insurance.*

(a) *Required Insurance.* The Lessee will cause the Operating Agent to carry and maintain at least the following insurance coverage with respect to the Undivided Interest and the Real Property Interest, in each case with insurers of recognized responsibility, in such form as shall be satisfactory to the Owner Participant.

(1) *Non-Nuclear Insurance.*

(i) The Lessee shall maintain "all risk" property insurance covering physical loss with respect to Unit 2 in such amounts and with such other terms as are required by or are in accordance with Prudent Utility Practice, but in no event shall such amounts be less than the estimated maximum probable loss in respect of such property. Any insurance carried in accordance with this Section 10(a)(1)(i) shall be endorsed to provide that:

(A) losses shall be adjusted and paid as provided in Section 10(a)(4);

(B) (i) the Lessor and the Owner Participant (the *Additional Insureds*) are included as additional insureds, as their interests may appear, and (ii) any obligation imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligation of the Lessee and not that of any Additional Insured;

(C) the respective interests of the Additional Insureds shall not be invalidated by any breach of any warranties by the ANPP Participants contained in such policies;

(D) the insurer thereunder waives all rights of subrogation against the Additional Insureds with respect to their respective interests in Unit 2;

(E) such insurance shall be primary without right of contribution of any other insurance carried by or on behalf of any Additional Insured with respect to its interest in Unit 2; and

(F) if such insurance is cancelled for any reason whatsoever including non-payment of premium or any substantial change is made in the coverage which affects the interest of the Additional Insureds, (1) such cancellation or change shall not be effective as to the Additional Insureds for 30 days after receipt by The First National Bank of Boston, as Owner Trustee and agent, of written notice from such insurer of such cancellation or change, and (2) the Lessee will use its best efforts to cause such insurer to deliver a certificate with respect to such cancellation or change to the Owner Participant and the Indenture Trustee.

(ii) The Lessee shall maintain bodily injury and property damage liability insurance (including product liability, completed operations and personal injury insurance) covering claims arising out of the ownership, operation, maintenance, condition or use of Unit 2 or the PVNGS Site. The amount and other terms of such insurance shall be in accordance with the higher of Prudent Utility Practice and the ANPP Participation Agreement, but such limits shall in no event be less than $25,000,000 per occurrence combined bodily injury and property damage. Such insurance may include deductible amounts not to exceed $2,000,000. Any insurance carried in accordance with this Section 10(a)(1)(ii) shall be endorsed as provided in paragraphs (B), (C), (D), (E) and (F) of Section 10(a)(1)(i), *except that* the term "*Additional Insureds*" wherever it appears shall include the Lessor, the Owner Participant and all Indemnitees.

(2) *Nuclear Insurance.*

(i) The Lessee shall maintain nuclear property insurance in amounts and with such other terms as are required by or are in accordance with the highest of (a) Applicable Law, (b) the ANPP Participation Agreement and (c) Prudent Utility Practice; *provided, however,* that such insurance shall at all times be maintained in amounts at least equal to the maximum nuclear property insurance available on commercially reasonable terms. The coverage afforded by such nuclear property insurance in respect of any loss at PVNGS and available for any loss at Unit 2, either (A) shall at all times be at least equal to $750 million regardless of any suspension, termination, amendment, supplement or reduction of such insurance for any reason (*including* by reason of a Nuclear Incident) or (B) so long as (1) Unit 2 is in, or is in a procedure which will result in, a state of cold shutdown in accordance with Prudent Utility Practice and (2) the first mortgage bonds of the Lessee shall have an investment grade rating (x) by two nationally accepted rating agencies if such first mortgage bonds are rated by two nationally accepted rating agencies or (y) by one nationally accepted rating agency if such first mortgage bonds are only rated by one nationally accepted rating agency, will be reinstated to be equal to at least $750 million within 180 days of any suspension, termination, amendment, supplement or reduction of such insurance for any reason (including by reason of a Nuclear Incident). Such insurance may include deductible amounts not to exceed $2,000,000. Any insurance carried in accordance with this Section 10(a)(2)(i) shall be endorsed by the insurer as provided in paragraphs (A), (B), (D), (E) and (F) of Section 10(a)(1)(i).

(ii) The Lessee shall maintain the maximum nuclear liability insurance in amounts and such other terms as required by or in accordance with the highest of (a) Applicable Law, (b)

the ANPP Participation Agreement, (c) Prudent Utility Practice and (d) the maximum nuclear liability insurance available on commercially reasonable terms, *but in any event* in such amounts and containing such other terms as to cover the "aggregate liability" for a single "nuclear incident" of all "persons indemnified" (as such terms are used in the Atomic Energy Act) and in connection with the ownership, maintenance, condition or use of Unit 2 and the PVNGS Site. The Lessee shall also maintain supplier's and transporter's insurance in amounts consistent with Prudent Utility Practice. The Lessee shall maintain nuclear liability insurance pursuant to this Section 10(a)(2)(ii), whether or not the Lease Termination Date shall have occurred, until notified by the Owner Participant that neither the Lessor nor the Owner Participant has any further real or potential liability in connection with the ownership, operation, maintenance, condition or use of Unit 2 or the PVNGS Site; provided that after Decommissioning has been completed the Lessee shall not be required to maintain nuclear liability insurance for more than 30 years. Any insurance carried in accordance with this Section 10(a)(2)(ii) shall be endorsed as provided in paragraphs (B), (D), (E) and (F) of Section 10(a)(1)(i).

(iii) The Lessee shall, or shall cause the Operating Agent to, use its best efforts at all times to obtain the endorsement referred to in paragraph (C) of Section 10(a)(1)(i) on all insurance referred to in this Section 10(a)(2), and shall cause such endorsement to be obtained if and to the extent it is available to any other owner or operator of a nuclear generating unit.

(3) *Annual Reports and Certificates.* The Lessee shall, on or before March 1 of each year, commencing March 1, 1987, furnish to the Lessor and the Owner Participant (A) a report signed by the broker or brokers for the PVNGS insurance (or if insurance is placed directly by the Operating Agent, a report signed by the Operating Agent which will include a copy of the certificate of insurance signed by the carrier, which certificate shall indicate that all endorsements required by this Section 10 are applicable) (i) describing in detail the insurance then maintained by the ANPP Participants with respect to PVNGS, (ii) stating that no premiums are then delinquent, and (iii) stating that insurance maintained is in accordance with (1) the ANPP Participation Agreement and (2) this Section 10; (B) a report signed by the broker or brokers for the Lessee's insurance (or if insurance is placed directly by the Lessee, a report signed by the Lessee which will include a copy of the certificate of insurance signed by the carrier, which certificate shall indicate that all endorsements required by this Section 10 are applicable) showing the separate insurance, if any, then maintained by the Lessee with respect to its interest in PVNGS and stating that no premiums under such insurance are delinquent; (C) a certificate signed by the Lessee stating that the insurance maintained by the ANPP Participants and by the Lessee, identified on the reports to be delivered pursuant to clauses (A) and (B), is in accordance with Prudent Utility Practice within the nuclear industry, the ANPP Participation Agreement and this Section 10; and (D) upon the request of the Lessor or the Owner Participant, copies (to the extent permitted by the issuers of such policies) of policies so maintained. Any report by an insurance broker with respect to clause (A)(iii)(1) of this paragraph 3 may be made in reliance upon a schedule provided by the Lessee (a copy of which shall be attached) identifying the insurance (by coverage, limits, insureds and other pertinent details) required to be maintained under the ANPP Participation Agreement. Any report with respect to clause (A)(iii)(2) may be made in reliance upon a similar schedule provided by the Lessee (a copy of which shall be attached) identifying the insurance required to be maintained under this Section 10.

(4) *Proceeds.* All insurance proceeds paid in respect of or pursuant to paragraphs (1) and (2) above shall (i) be applied as provided in Section 9(g), (h) or (i), as the case may be, and (ii) be adjusted with the insurance companies or otherwise collected, including the filing of appropriate proceedings, by the Operating Agent in accordance with the ANPP Participation Agreement, *subject, however,* to any priority allocations of such proceeds to decontamination and debris removal set forth in the insurance policies or required under Applicable Law. If the Operating

Agent, as trustee, shall become the loss payee under any policy of insurance constituting "*Project Insurance*," as such term is defined in the ANPP Participation Agreement, then the Lessor and the Owner Participant shall be made beneficiaries of the trust arrangement under which the Operating Agent acts as trustee.

(b) *Permitted Insurance.* Nothing in this Section 10 shall prohibit the Lessee from placing at its expense insurance on or with respect to the cost of purchasing replacement power, naming the Lessee as insured and/or loss payee, *unless* such insurance would conflict with or otherwise limit the availability of insurance to be provided or maintained in accordance with Section 10(a). Nothing in this Section 10 shall prohibit the Lessor or the Owner Participant from placing at its expense other insurance on or with respect to Unit 2, the Undivided Interest or the Real Property Interest or the operation of Unit 2, naming the Lessor or the Owner Participant as insured and/or loss payee, *unless* such insurance would conflict with or otherwise limit the insurance to be provided or maintained in accordance with Section 10(a).

SECTION 11. *Rights to Assign or Sublease.*

(a) *Assignment or Sublease by the Lessee.* Without the prior written consent of the Lessor, the Lessee shall not encumber (*except* for Permitted Liens), or assign, sublease or transfer (*except* as permitted by Section 10(b)(3)(ii) of the Participation Agreement), its leasehold interest under this Facility Lease in the Undivided Interest or the Real Property Interest, *except* that the Lessee may assign its leasehold interest under this Facility Lease in the Undivided Interest and the Real Property Interest to a wholly owned subsidiary of the Lessee or of the Lessee's parent if such subsidiary's obligations under this Facility Lease and the other Transaction Documents and Financing Documents shall be guaranteed by El Paso pursuant to a valid and enforceable guarantee containing appropriate covenants of El Paso and otherwise satisfactory in form and substance to the Owner Participant in its absolute discretion. The Lessee shall not, without the prior written consent of the Lessor and the Owner Participant, part with the possession of, or suffer or allow to pass out of its possession, the Undivided Interest or the Real Property Interest or any interest therein, *except* to the extent required pursuant to the ANPP Participation Agreement (as in effect on the date hereof) or as expressly permitted by the provisions of this Facility Lease (*including, without limitation*, the first sentence of this Section 11(a)) or any other Transaction Document.

(b) *Assignment by Lessor as Security for Lessor's Obligations.* To secure the indebtedness evidenced by the Notes, the Lessor will assign to the Indenture Trustee (x) its right, title and interest to receive certain payments of Rent (*not including*, in any event, Excepted Payments) to the extent provided in the Indenture and (y) if and when required by Section 9(j), its right, title and interest in the Undivided Interest and the Real Property Interest. The Lessee hereby (a) consents to such assignment and to the terms of the Indenture, (b) agrees to pay directly to the Indenture Trustee at such office in New York, N.Y. of Mellon Trust Company or of such other bank or trust company in New York, N.Y., all as the Indenture Trustee shall specify in writing to the Lessee (*so long as* the lien of the Indenture has not been satisfied and discharged and the Lessor is obligated thereunder), all amounts of Rent (*other than* Excepted Payments) due or to become due to the Lessor that shall be required to be paid to the Indenture Trustee pursuant to the Indenture, (c) agrees that the right of the Indenture Trustee to any such payments shall be absolute and unconditional and shall not be affected by any circumstances whatsoever, *including, without limitation*, those circumstances set forth in Section 4, and (d) agrees that, to the extent provided in the Indenture and until the Indenture is discharged in accordance with its terms, the Indenture Trustee shall have all the rights of the Lessor hereunder with respect to Assigned Payments as if the Indenture Trustee had originally been named herein as the Lessor.

SECTION 12. *Limited Lease Renewal.*

Subject to the notice requirements set forth in Section 13(a), at the end of the Basic Lease Term, *provided* that no Default or Event of Default shall have occurred and be continuing, no Event of Loss

shall have occurred and no Deemed Loss Event shall have been declared, all Notes shall have been paid in full and the Lessee shall be concurrently renewing the term of all other leases of interests in Unit 2 then leased by it as lessee (other than leases that are not leases for federal tax purposes), the Lessee shall have the right to renew the term of this Facility Lease for a period (the *Renewal Term*) commencing October 1, 2013, and ending, at the option of the Lessee (which option shall be exercised at the time of, and set forth in, the notice pursuant to Section 13(a)), on either October 1, 2017 or the final day of the Maximum Option Period, during which Basic Rent shall be payable as provided in Section 3(a)(iii) and Section 21.

SECTION 13. *Notices for Renewal or Purchase; Purchase Options.*

(a) *Notices.* In order to exercise the renewal option permitted by Section 12 or the purchase option permitted by Section 13(b), the Lessee shall give to the Lessor written notice of such election not later than three years nor earlier than five years prior to the expiration of the Basic Lease Term or, in the case of such purchase option, the Basic Lease Term or, if elected, the Renewal Term. Any such election shall be irrevocable as to the Lessee, but shall not be binding on the Lessor if, on the date of such notice, a Default or an Event of Default shall have occurred and be continuing or an Event of Loss shall have occurred or Deemed Loss Event shall have been declared. Promptly after receipt by the Lessor of any such notice, (i) in case the renewal option has been elected, the Maximum Option Period shall be determined by the Appraisal Procedure or (ii) in case either the renewal option or the purchase option has been elected, the Lessee and the Owner Participant shall agree upon the Fair Market Sales Value of the Undivided Interest and the Real Property Interest, or if within three months after the date of the Lessee's notice, the Lessee and the Owner Participant shall be unable so to agree, such Fair Market Sales Value shall be determined by the Appraisal Procedure.

(b) *Limited Purchase Option at Expiration of the Lease Term.* (i) Subject to the notice requirements set forth in Section 13(a), *unless* an Event of Default shall have occurred and be continuing or an Event of Loss shall have occurred or a Deemed Loss Event shall have been declared, if all Notes shall have been paid in full and the Lessee shall be concurrently purchasing all interests in Unit 2 then leased by it as lessee (other than leases that are not leases for federal tax purposes), the Lessee shall have the right to purchase the Undivided Interest and the Real Property Interest on the date of the expiration of the Basic Lease Term or the Renewal Term (if elected) for a purchase price equal to the Fair Market Sales Value thereof.

(ii) If the Lessee shall have elected to purchase the Undivided Interest and the Real Property Interest pursuant to Section 13(a), payment by the Lessee of the purchase price therefor shall be made in immediately available funds, whereupon the Lessor shall Transfer the Undivided Interest and the Real Property Interest to the Lessee.

(c) *Purchase Option for Change in Tax Law.* (i) If the Owner Participant shall notify the Lessee pursuant to Section 3(f) that, as the result of the adjustments to Basic Rent required pursuant to Section 3(d), the aggregate Basic Rent payable pursuant to Sections 3(a)(i) and (ii) (without regard to any adjustment required by Section 3(e)) is greater than 110 percent of the amount of aggregate Basic Rent that would be payable absent such adjustment, then, upon written irrevocable notice given by the Lessee to the Owner Participant (the *Exercise Notice*) not later than 60 days after such Owner Participant's notice pursuant to Section 3(f), but in no event after September 30, 1989, the Lessee may purchase the Undivided Interest and the Real Property Interest. Such purchase shall occur on the next succeeding date specified in Schedule 4 hereto occurring not earlier than 90 days after the date of the Exercise Notice, for an amount equal to the sum of (A) the greater of the Fair Market Sales Value of the Undivided Interest and the Real Property Interest (determined as of the date on which such purchase by the Lessee occurs by agreement of the Owner Participant and the Lessee, or, if they shall fail to agree within 15 days after the giving of the Exercise Notice, by the Appraisal Procedure) and the Special Termination Value (as adjusted pursuant to Section 3(d) and/or 3(e)) specified for such date in Schedule 4 hereto, *minus* the unpaid principal amount of, and (if such Special Termination Value is greater than or equal to such Fair Market Sales Value) accrued interest since the

last preceding Basic Rent Payment Date on the Notes Outstanding on such date, and (B) Basic Rent (after adjustment pursuant to Section 3(d)) accrued and unpaid with respect to the period prior to the date of such purchase (the *Exercise Price*).

(ii) If the Lessee shall have elected to purchase the Undivided Interest and the Real [redacted]ty Interest pursuant to this Section 13(c), the Lessee shall pay the Exercise Price in immediately available funds. If the Lessee shall fail to pay the full amount of the Exercise Price on the date specified in this Section 13(c), the Lessee shall no longer have any purchase right pursuant to this Section 13(c) and this Facility Lease shall remain in effect, taking into account the adjustments provided for under Section 3(d).

(iii) If the Lessee shall have elected to purchase the Undivided Interest and the Real Property Interest pursuant to this Section 13(c), shall have made the payment required by this Section 13(c) and shall have assumed all obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Lessor shall, so long as no Default or Event of Default shall have occurred and be continuing, no Event of Loss shall have occurred and no Deemed Loss Event shall have been declared, Transfer the Undivided Interest and the Real Property Interest to the Lessee. If the Lessee shall have made such payment but shall not have assumed all obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Owner Participant shall effect the Special Transfer, in which case, without further act on the part of the Lessor or the Lessee, (A) the obligation of the Lessee to pay further Basic Rent shall be reduced to an amount, payable on each Basic Rent Payment Date thereafter, equal to the aggregate amount of principal, premium, if any, and accrued interest then payable on all Notes Outstanding, and (B) this Facility Lease shall become a security agreement for all purposes of Applicable Law.

(iv) The amount of Basic Rent has been calculated on the assumption that the estimated tax payments to be made by the Owner Participant on the estimated tax payment dates after the Closing Date will reflect the benefit of the occurrence of the Undivided Interest being placed in service by the Lessor in December 1986. If the Lessee shall exercise the purchase option under this Section 13(c), then, upon demand by the Owner Participant, the Lessee shall pay to the Owner Participant, in addition to the Exercise Price, an amount which, on an After-Tax Basis, shall be equal to the [redacted]st, penalties and additions to tax, if any, payable by the Owner Participant or any Affiliate [redacted] of resulting from any underpayment of estimated taxes, if any, that was caused by assuming that the Undivided Interest would be placed in service by the Lessor in December 1986, and that such purchase would not occur. The computation of the amount of such interest, penalties and additions to tax shall be subject to the verification procedure set forth in Section 3(f).

(v) The Lessee shall have no right to purchase under this Section 13(c) if the Lessor or the Owner Participant has provided notice to the Lessee on or prior to 15 days after the date of the Exercise Notice that it has waived the increase of the amount of aggregate Basic Rent payable pursuant to Sections 3(a)(i) and (ii) as a result of an adjustment required pursuant to Section 3(d) to the extent such adjustment would require the aggregate Basic Rent payable to exceed 110% of the amount that would have been payable absent such adjustment.

SECTION 14. *Termination for Obsolescence.*

(a) *Termination Notice.* Unless a Default or an Event of Default shall have occurred and be continuing or an Event of Loss shall have occurred or a Deemed Loss Event shall have been declared, the Lessee shall have the option (*provided that* the Lessee shall have delivered to the Lessor an Officers' Certificate to the effect that the Lessee's Board of Directors has adopted and there is in effect a resolution determining that Unit 2 is surplus to the Lessee or economically obsolete, which determination shall be concurred in by an independent engineer selected jointly by the Lessee and the Owner Participant (or selected by the Appraisal Procedure if the Lessee and the Owner Participant shall be unable to agree upon such an engineer within 30 days following the delivery of such Officers' Certificate) and provided that the Lessee shall be simultaneously disposing of all other interests in Unit 2 leased by it pursuant to leases (other than finance leases for accounting purposes)), on at least one year's and not more than 2 years' prior written notice (a *Termination Notice*) to the

Lessor, the Owner Participant and the Indenture Trustee (which notice shall be irrevocable), to terminate this Facility Lease on any Basic Rent Payment Date (the *Termination Date*) after January 2, 1997, and prior to January 2, 2011. If the Lessee shall give the Lessor a Termination Notice, the Lessee shall, as agent for the Lessor, use its best efforts to obtain cash bids for the purchase of the Undivided Interest and the Real Property Interest. The Lessor shall also have the right to obtain such cash bids, either directly or through agents other than the Lessee. The Lessee shall certify to the Lessor within ten days after the Lessee's receipt of each bid (and, in any event, prior to the Termination Date) the amount and terms thereof and the name and address of the Person (which shall not be the Lessee or any Affiliate of the Lessee, or any agent of either thereof) submitting such bid.

(b) *Right of Lessor to Retain Undivided Interest upon Termination.* The Lessor may elect to retain, rather than sell, the Undivided Interest and the Real Property Interest by giving notice to the Lessee and the Indenture Trustee prior to the Termination Date. It shall be a condition precedent to the Lessor's right to retain the Undivided Interest and the Real Property Interest that on or prior to the Termination Date the Lessor shall have paid (or made provision for payment) to the Indenture Trustee the unpaid principal amount of all Notes Outstanding on such date and all premium, if any, and interest accrued and unpaid on the date of payment. If the Lessor elects to retain the Undivided Interest and the Real Property Interest pursuant to this Section 14(b), the Lessee shall pay to the Lessor on the Termination Date the Basic Rent and any other Rent due or accrued, as the case may be, to and including the Termination Date, together with an amount equal to *the excess, if any,* of the Termination Value as of the Termination Date *over* the highest bona fide offer received pursuant to Section 14(a).

(c) *Events on the Termination Date.* If the Lessor has not elected to retain the Undivided Interest and the Real Property Interest as provided in Section 14(b), on the Termination Date the Lessor shall (but only upon receipt of the sale price and all additional payments specified in the next sentence) Transfer the Undivided Interest and the Real Property Interest for cash to the bidder (which shall not be the Lessee or an Affiliate of the Lessee, or any agent of either thereof) that shall have submitted the highest bid on or before the Termination Date. The total sale price realized at such sale shall be retained by the Lessor (*subject, however,* to the terms of the Indenture and the requirement that there shall have been paid, or provision for payment made, to the Indenture Trustee the unpaid principal amount of all Notes Outstanding on the Termination Date and all premium, if any, and interest accrued and unpaid on the date of payment) and, in addition, on the Termination Date the Lessee shall pay to the Lessor the *excess, if any,* of the Termination Value as of the Termination Date *over* the net sale price of the Undivided Interest and the Real Property Interest and shall pay to the Person or Persons entitled thereto all Supplemental Rent (*other than* Termination Value). Upon compliance by the Lessee with the applicable provisions of this Section 14, the obligation of the Lessee to pay Basic Rent for any period after the Termination Date shall cease and the Basic Lease Term shall end on the Termination Date, but the obligations of the Lessee to pay Supplemental Rent when and as due shall continue in full force and effect and shall not be impaired by reason of any such termination. If, *other than* as a result of the Lessor's election to retain the Undivided Interest and the Real Property Interest as provided in Section 14(b), on or as of the Termination Date no such sale shall occur or the Lessee shall not have complied in full with this Section 14, this Facility Lease shall continue in full force and effect in accordance with its terms and the Lessee shall not thereafter be entitled to deliver another Termination Notice. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise take any action in connection with any such sale, *other than,* if the Lessor has not elected to retain the Undivided Interest and the Real Property Interest, to Transfer the Undivided Interest and the Real Property Interest to the purchaser named in the highest bid certified by the Lessee to the Lessor or obtained by the Lessor, against receipt of the payments provided for herein.

(d) *Early Termination.* If the Lessee shall fail to exercise its renewal option or purchase option within the time provided by Section 13(a), the Lessor shall have the option, on any Basic Rent Payment Date thereafter, on at least 60 days prior written notice (an *Early Termination Notice*) to the

Lessee and the Indenture Trustee, to terminate this Facility Lease on the Basic Rent Payment Date specified in such notice (the *Early Termination Date*). Any Early Termination Notice may be revoked by the Lessor at any time on or prior to the Early Termination Date if any purchaser from or lessee of the Lessor shall fail to fulfill its obligation to purchase or lease on the Early Termination Date. On or prior to the Early Termination Date, the Lessor shall pay (or make provision for payment) to the Indenture Trustee the unpaid principal amount of all Notes outstanding on such date and all premium, if any, and interest accrued and unpaid on the date of payment. On the Early Termination Date, the Lessee shall pay to the Lessor any Basic Rent due or accrued, as the case may be, to and including the Early Termination Date, and shall pay to the Person or Persons entitled thereto all Supplemental Rent, whereupon the obligation of the Lessee to pay any Basic Rent for any period after the Early Termination Date shall cease and the Lease Term shall end, but the obligations of the Lessee to pay Supplemental Rent when and as due shall continue in full force and effect and shall not be impaired by reason of any such termination.

SECTION 15. *Events of Default.*

The term *Event of Default*, wherever used herein, shall mean any of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary, or come about or be effected by operation of law, or be pursuant to or in compliance with any Applicable Law or Governmental Action):

(i) the Lessee shall fail to make, or cause to be made, (x) payment of Casualty Value, Special Casualty Value or Termination Value when due or payment due pursuant to exercise of the Cure Option when due (unless such amount shall have been wholly satisfied by a drawing under the Letter of Credit), (y) any payment of Basic Rent within 5 Business Days after the same shall become due or (z) any payment of Supplemental Rent (*other than* Casualty Value, Special Casualty Value, Termination Value, Special Termination Value or payment due pursuant to exercise of the Cure Option) within 20 days after the same shall become due or demanded, as the case may be (unless such amount shall have been wholly satisfied by a drawing under the Letter of Credit and the maximum drawing amount under the Letter of Credit shall have been reinstated within three Business Days of such drawing); *provided, however*, that in respect of Early Payment Obligations, an Event of Default shall not be deemed to occur until the Lessee shall have failed to make, or cause to be made, payment thereof (i) in the case of an Early Payment Obligation in respect of Section 9(c), on the Basic Rent Payment Date next following the occurrence of an Event of Loss (the last day of the Lease Term being deemed a Basic Rent Payment Date for this purpose) or (ii) in the case of an Early Payment Obligation in respect of Section 9(d), the next date specified in Schedule 2 hereto following the date that written notice of a Deemed Loss Event has been delivered (or if such notice shall be given less than 10 days prior to such next date, on the second succeeding date specified in Schedule 2 hereto following such notice); or

(ii) the Lessee shall fail to perform or observe any covenant, condition or agreement to be performed or observed by it under Section 10(b)(3)(i), 10(b)(3)(ii), 10(b)(3)(iii), 10(b)(3)(v), or 10(b)(3)(xi) (but, with respect to the Lessee's obligation to make payments into the Decommissioning Trust Fund and the Second Fund, if any, only after 30 days following the date such payment is due) of the Participation Agreement or Section 7 or 11 of this Facility Lease; or

(iii) the remaining Economic Useful Life of Unit 2, as determined under Section 8(g) if required thereby to be so determined, shall be less than (x) five and one-half years as of April 1, 2013 or (y) three and one-half years as of the date six months prior to the end of the Renewal Term; or

(iv) the Lessee shall fail to perform or observe any covenant or agreement to be performed or observed by it under Section 10(b)(3)(viii) of the Participation Agreement and such failure shall continue for a period of 15 days after there shall have been given to the Lessee by the Lessor or the Owner Participant a notice specifying such failure and requiring it to be remedied and stating that such notice is a "*Notice of Default*" hereunder; or

(v) the Lessee shall fail to perform or observe any covenant, condition or agreement (*other than* those referred to in clauses (i) through (iv) above) to be performed or observed by it under this Facility Lease (other than Section 10) or any other Transaction Document, and such failure shall continue for a period of 30 days after there shall have been given to the Lessee by the Lessor or the Owner Participant a notice specifying such failure and requiring it to be remedied and stating that such notice is a "*Notice of Default*" hereunder; or

(vi) any representation or warranty made by the Lessee in this Facility Lease, any other Transaction Document (*other than* Section 13(c) of the Participation Agreement) or any agreement, document or certificate delivered by the Lessee in connection herewith or therewith shall prove to have been incorrect in any material respect when any such representation or warranty was made or given and shall remain material and materially incorrect at the time in question; or

(vii) the Lessee shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking of possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall take any corporate action to authorize any of the foregoing; or an involuntary case or other proceeding shall be commenced against the Lessee seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed or unstayed for a period of 60 consecutive days; or

(viii) final judgment for the payment of money in excess of $3,000,000 shall be rendered against the Lessee and the Lessee shall not have discharged the same or provided for its discharge in accordance with its terms or bonded the same or procured a stay of execution thereof within 60 days from the entry thereof; or

(ix) (1) a default by the Lessee under the ANPP Participation Agreement in consequence of which the Lessee's right to receive its Generation Entitlement Share is suspended by the other ANPP Participants or (2) the giving by any ANPP Participant of a notice under Section 23.2 (or any comparable successor provision) of the ANPP Participation Agreement respecting a default thereunder by the Lessee and the lapse of 15 Business Days from the giving of such notice without the Lessee having cured such default; *provided, however*, that for purposes of this clause (2) if the Lessee shall have disputed the existence or nature of a default and such dispute shall have become the subject of an arbitration under Section 24 (or any comparable successor provision) of the ANPP Participation Agreement, such 15 Business Day period shall commence on the date of the final determination of the board of arbitrators under such provision; or

(x) (1) the Lessee shall fail to pay when due (whether by schedule maturity, required prepayment, acceleration, demand or otherwise) any Debt of the Lessee the principal amount (or equivalent) of which is greater than $10,000,000) and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt; or (2) any other default under any agreement or instrument relating to any such Debt, or any other event, shall occur and such Debt shall become due as a result thereof; or

(xi) the Lessee shall fail, at any time, (A) to provide or maintain a Letter of Credit which complies with all of the terms and conditions of Section 10(b)(3)(xvii) of the Participation Agreement (unless the Lessee has exercised its purchase option, and paid all amounts due in connection therewith, under Section 10(b)(3)(xvii) of the Participation Agreement), or (B) to provide a renewal or replacement Letter of Credit so complying (1) not less than 30 days

prior to the stated expiration date of an existing Letter of Credit, (2) within 25 days after the receipt by the Owner Participant of notice that an existing Letter of Credit will be terminated prior to its stated termination date under circumstances in which at least 30 days' notice of such termination is required or (3) concurrently with the receipt by the Lessor of notice that an existing Letter of Credit will be terminated prior to its stated termination date under circumstances in which less than 30 days' notice of such termination is required.

SECTION 16. *Remedies.*

(a) *Remedies.* Upon the occurrence of any Event of Default and so long as the same shall be continuing, the Lessor may, to the extent permitted by Applicable Law, exercise one or more of the following remedies as the Lessor in its sole discretion shall elect:

(i) the Lessor may declare this Facility Lease to be in default by written notice to such effect given to the Lessee, or may, by notice to the Lessee, rescind or terminate this Facility Lease;

(ii) the Lessor may (x) demand that the Lessee, and thereupon the Lessee shall, return possession of the Undivided Interest and the Real Property Interest promptly to the Lessor in the manner and condition required by, and otherwise in accordance with the provisions of, this Facility Lease as if the Undivided Interest and the Real Property Interest were being returned at the end of the Lease Term, and the Lessor shall not be liable for the reimbursement of the Lessee for any costs and expenses incurred by the Lessee in connection therewith or (y) enter upon the PVNGS Site and take immediate possession of (to the exclusion of the Lessee) the Undivided Interest and the Real Property Interest, by summary proceedings or otherwise, all without liability to the Lessee for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by such taking or otherwise;

(iii) the Lessor may sell the Undivided Interest and the Real Property Interest, or any part thereof, together with any interest of the Lessor under the Assignment and Assumption, at public or private sale, as the Lessor may determine, free and clear of any rights of the Lessee and without any duty to account to the Lessee with respect to such action or inaction or any proceeds in respect thereto (*except to the extent* required by clause (v) or (vi) below if the Lessor shall elect to exercise its rights thereunder), in which event the Lessee's obligation to pay Basic Rent hereunder for periods commencing after the date of such sale shall be terminated or proportionately reduced, as the case may be (*except to the extent* that Basic Rent is to be included in computations under clause (v) or (vi) below if the Lessor shall elect to exercise its rights thereunder);

(iv) the Lessor may hold, keep idle or lease to others all or any part of the Undivided Interest and the Real Property Interest, as the Lessor in its sole discretion may determine, free and clear of any rights of the Lessee and without any duty to account to the Lessee with respect to such action or inaction or for any proceeds with respect to such action or inaction, *except* that the Lessee's obligation to pay Basic Rent for periods commencing after the Lessee shall have been deprived of use of the Undivided Interest and the Real Property Interest pursuant to this clause (iv) shall be reduced by an amount equal to the net proceeds, if any, received by the Lessor from leasing the Undivided Interest and the Real Property Interest to any Person other than the Lessee for the same periods or any portion thereof;

(v) except in the case of an Event of Default specified in clause (iii) of Section 15, the Lessor may, whether or not the Lessor shall have exercised or shall thereafter at any time exercise its rights under clause (i), (ii), (iii) or (iv) above, demand, by written notice to the Lessee specifying a payment date which shall be a Basic Rent Payment Date not earlier than 10 days after the date of such notice, that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor, on the Basic Rent Payment Date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent due after the Basic Rent Payment Date specified in such notice), any unpaid Rent due through the Basic Rent Payment Date specified in

such notice *plus* whichever of the following amounts the Lessor, in its sole discretion, shall specify in such notice, together with interest on such amount at the higher of the Overdue Interest Rate and the Penalty Rate from the Basic Rent Payment Date specified in such notice to the date of actual payment:

(A) an amount equal to *the excess, if any,* of Casualty Value, computed as of the Basic Rent Payment Date specified in such notice, *over* the Fair Market Rental Value of the Undivided Interest and the Real Property Interest (determined on the basis of the then actual condition of Unit 2) until the end of the remaining useful life of Unit 2, after discounting such Fair Market Rental Value semiannually to present value as of the Basic Rent Payment Date specified in such notice at a rate of 12% per annum; or

(B) an amount equal to *the excess, if any,* of such Casualty Value over the Fair Market Sales Value of the Undivided Interest and the Real Property Interest (determined on the basis of the then actual condition of Unit 2) as of the Basic Rent Payment Date specified in such notice; or

(C) an amount equal to *the excess, if any,* of (1) the present value as of the Basic Rent Payment Date specified in such notice of all installments of Basic Rent until the end of the Basic Lease Term or the Renewal Term, as the case may be, discounted semiannually at a rate of 10% per annum, *over* (2) the present value as of such Basic Rent Payment Date of the Fair Market Rental Value of the Undivided Interest and the Real Property Interest (determined on the basis of the then actual condition of Unit 2) until the end of the Basic Lease Term or the Renewal Term, as the case may be, discounted semiannually at a rate of 10% per annum; or

(D) an amount equal to the highest of (X) such Casualty Value, (Y) such discounted Fair Market Rental Value and (Z) such Fair Market Sales Value and, in this event, upon full payment by the Lessee of all sums due hereunder, the Lessor shall, at its option, either Transfer the Undivided Interest and the Real Property Interest to the Lessee or promptly sell the Undivided Interest and the Real Property Interest and pay over to the Lessee the net proceeds thereof up to the amount set forth in (X), (Y) or (Z) above actually paid by the Lessee to the Lessor;

(vi) if the Lessor shall have sold all the Undivided Interest and the Real Property Interest pursuant to clause (iii) above, the Lessor, in lieu of exercising its rights under clause (v) above, may, if it shall so elect, but not in the case of an Event of Default specified in clause (iii) of Section 15, demand that the Lessee pay to the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty (in lieu of Basic Rent due for periods commencing after the next Basic Rent Payment Date following the date of such sale), any unpaid Basic Rent due through such Basic Rent Payment Date, plus the amount of any difference between the Sale Proceeds and Casualty Value, computed as of such Basic Rent Payment Date, together with interest at the higher of the Overdue Interest Rate and the Penalty Rate on the amount of such Rent and such deficiency from the date of such sale until the date of actual payment;

(vii) in the case of an Event of Default specified in clause (iii) of Section 15, the Lessor may demand, by written notice to the Lessee specifying a payment date which shall be the last Basic Rent Payment Date of the Lease Term, that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor, on such Basic Rent Payment Date, as liquidated damages for loss of a bargain and not as a penalty, any unpaid Rent due through such Basic Rent Payment Date *plus* an amount equal to the Fair Market Sales Value (without including in such value the availability of the Decommissioning Trust Fund and the Second Fund, if any, or the benefit to the Lessor of the Lessee's obligations under Section 10(b)(3)(xi) of the Participation Agreement) of the Undivided Interest and the Real Property Interest (determined on the basis of the then actual condition of

Unit 2) determined as of such Basic Rent Payment Date, together with interest on such amount at the higher of the Overdue Interest Rate and the Penalty Rate from the Basic Rent Payment Date specified in such notice to the date of actual payment, and upon receipt of such payment the Lessor shall Transfer to the Lessee the Undivided Interest and the Real Property Interes[redacted]

(b) *No Release.* No rescission or termination of this Facility Lease, in whole or in part, or repossession of the Undivided Interest and the Real Property Interest or exercise of any remedy under Section 16(a) shall, *except* as specifically provided therein, relieve the Lessee of any of its liabilities and obligations hereunder. In addition, the Lessee shall be liable, *except* as otherwise provided above, for any and all unpaid Rent due hereunder before, after or during the exercise of any of the foregoing remedies, including all reasonable legal fees and other costs and expenses incurred by the Lessor, the Owner Participant and the Indenture Trustee by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto.

At any sale of the Undivided Interest and the Real Property Interest or any part thereof pursuant to this Section 16, the Owner Participant, the Lessor or the Indenture Trustee may bid for and purchase such property.

(c) *Remedies Cumulative.* No remedy under Section 16(a) is intended to be exclusive, but each shall be cumulative and in addition to any other remedy provided under Section 16(a) or otherwise available to the Lessor at law or in equity. No express or implied waiver by the Lessor of any Default or Event of Default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent Default or Event of Default. The failure or delay of the Lessor in exercising any right granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of such right upon the continuation or recurrence of any such contingencies or similar contingencies and any single or partial exercise of any particular right by the Lessor shall not exhaust the same or constitute a waiver of any other right provided herein. To the extent permitted by Applicable Law, the Lessee hereby waives any rights now or hereafter conferred by statute or otherwise which may require the Lessor to sell, lease or otherwise use the Undivided Interest or the Real Property Interest in mitigation of the Lessor's damages as set forth in Section 16(a) or whi[redacted]y otherwise limit or modify any of the Lessor's rights and remedies provided in this Section 16.

(d) *Exercise of Other Rights or Remedies.* In addition to all other rights and remedies provided in this Section 16, the Lessor may exercise any other right or remedy that may be available to it under Applicable Law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof.

(e) *Special Cure Right of Lessee.* If a *Notice of Default* is given under clause (iv) of Section 15, the Lessee may, on or prior to the occurrence of an Event of Default resulting therefrom, give written notice to the Lessor stating that the Lessee has elected to exercise the option (the *Cure Option*) provided in this Section 16(e), which election shall be irrevocable as to the Lessee. Promptly after the giving of such notice, the Lessee and the Owner Participant shall agree upon the Fair Market Sales Value of the Undivided Interest and the Real Property Interest or, if they shall be unable so to agree within one month after the date of the Lessee's notice, such value shall be determined by the Appraisal Procedure. On the Basic Rent Payment Date next following the date that such Fair Market Sales Value shall have been determined, the Lessee shall pay to the Lessor an amount equal to *the excess of* (i) the greater of such Fair Market Sales Value and the Casualty Value determined as of such Basic Rent Payment Date *over* (ii) the unpaid principal amount of, and (if such Casualty Value is greater than or equal to such Fair Market Sales Value) accrued interest since the last preceding Basic Rent Payment Date on, the Notes Outstanding on such date after giving effect to the payment, if any, of the principal installment due and payable and paid in respect of the Notes on such date. If the Lessee shall have made such payment and shall have assumed all obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Lessor shall Transfer the Undivided Interest and the Real Property Interest to the Lessee. If the Lessee shall have made such payment but shall not have assumed all obligations and liabilities of the Owner Trustee under the

Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Owner Participant shall effect the Special Transfer, *in which case, without further act on the part of the Lessor or the Lessee*, (i) the obligation of the Lessee to pay further Basic Rent shall be reduced to an amount, payable on each Basic Rent Payment Date thereafter, equal to the aggregate amount of principal, premium, if any, and accrued interest then payable on all Notes then Outstanding and (ii) this Facility Lease shall become a security agreement for all purposes of Applicable Law.

SECTION 17. *Notices.*

All communications and notices provided for in this Facility Lease shall be in writing and shall be given in person or by means of telex, telecopy, or other wire transmission, or mailed by registered or certified mail, addressed as provided in the Participation Agreement. All such communications and notices given in such manner shall be effective on the date of receipt of such communication or notice.

SECTION 18. *Successors and Assigns.*

This Facility Lease, including all agreements, covenants, indemnities, representations and warranties, shall be binding upon and inure to the benefit of the Lessor and its successors and permitted assigns, and the Lessee and its successors and, to the extent permitted hereby, assigns.

SECTION 19. *Right to Perform for Lessee.*

If the Lessee shall fail to make any payment of Rent to be made by it, or shall fail to perform or comply with any of its other agreements contained herein, or shall fail to make any payment to be made by it under any ANPP Project Agreement, or shall fail to perform or comply with any of its other agreements contained in any ANPP Project Agreement, either the Lessor or the Owner Participant may, but shall not be obligated to (i) to the extent not prohibited by Applicable Law, tender such payment, or (ii) to the extent not prohibited by Applicable Law and, in the case of the ANPP Project Agreements, to the extent not expressly prohibited thereby, effect such performance or compliance, and the amount of such payment and the amount of all costs and expenses (including, without limitation, attorneys' and other professionals' fees and expenses) of the Lessor or the Owner Participant, as the case may be, incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the higher of the Overdue Interest Rate and the Penalty Rate, shall be deemed Supplemental Rent, payable by the Lessee upon demand. In the event that the Lessor or the Owner Participant shall cure any default by the Lessee under the ANPP Participation Agreement, then (so long as an Event of Default has occurred and is continuing) the Lessor, together with each other Person contributing to such cure, shall be entitled (to the full extent enforceable in accordance with Applicable Law and the ANPP Participation Agreement) to receive the Generation Entitlement Share of the Lessee under the ANPP Participation Agreement (not limited to Unit 2), with each contributor to receive a percentage of such Generation Entitlement Share equal to the percentage of the cure contributed thereby.

SECTION 20. *Additional Covenants.*

The Lessee agrees to comply with and to pay, as Supplemental Rent, all amounts payable by it under the provisions of Section 13 of the Participation Agreement, which provisions are incorporated herein by this reference as fully as if set forth in full at this place. The Lessee agrees to comply with its covenants and agreements set forth in Sections 10(b), 14 and 16 of the Participation Agreement and Articles III, IV, V, VI and VII of the Assignment and Assumption, which covenants and agreements are incorporated herein by this reference as fully as if set forth in full at this place.

SECTION 21. *Lease of Real Property Interest.*

Pursuant to the Deed and the Assignment of Beneficial Interest, the Lessee has sold to the Lessor the Real Property Interest. The Lessor hereby grants to the Lessee a leasehold interest in the Real Property Interest, such leasehold to be coterminous with the lease of the Undivided Interest hereunder and to be at a rent per annum equal to 12% of the Real Estate Investment payable by the

Lessee to the Lessor in arrears in equal semiannual installments on each Basic Rent Payment Date during the Lease Term.

SECTION 22. *Amendments and Miscellaneous.*

(a) *Amendments in Writing.* The terms of this Facility Lease may not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever *except* by written instrument signed by the Lessor and the Lessee.

(b) *Survival.* (1) All indemnities, representations and warranties contained in this Facility Lease and the other Transaction Documents and the Financing Documents and in any agreement, document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith shall survive, and continue in effect following, the execution and delivery of this Facility Lease and the expiration or other termination of this Facility Lease.

(2) The obligations of the Lessee to pay Supplemental Rent and the obligations of the Lessee under Sections 5, 10(a)(2)(ii), 16, 19 and 20 shall survive the expiration or termination of this Facility Lease. The modification by law of any statute of limitations or the waiver or extension of any statute of limitations by the Owner Trustee, the Indenture Trustee, the Lessee, the Owner Participant, the Loan Participant or any Indemnitee shall not affect such survival. The obligations of the Lessee under Section 20 are expressly made for the benefit of, and shall be enforceable by, any Indemnitee, separately or together, without declaring this Facility Lease to be in default and notwithstanding any assignment by the Lessor of this Facility Lease or any of its rights thereunder or any disposition of all or any part of any interest in the Undivided Interest, the Real Property Interest, Unit 2 or any other property referred to in this Facility Lease or any other Transaction Document or Financing Document. All payments required to be made pursuant to Section 20 shall be made directly to, or as otherwise requested by, the Indemnitee entitled thereto upon written demand by such Indemnitee.

(c) *Severability of Provisions.* Any provision of this Facility Lease which may be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Applicable Law, the Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(d) *True Lease.* This Facility Lease shall constitute an agreement of lease and nothing herein shall be construed as conveying to the Lessee any right, title or interest in or to the Undivided Interest or the Real Property Interest, except as lessee only.

(e) *Original Lease.* The single executed original of this Facility Lease marked "THIS COUNTERPART IS THE ORIGINAL COUNTERPART" and containing the receipt of the Indenture Trustee thereon shall be the *Original* of this Facility Lease. No security interest in this Facility Lease may be created through the transfer or possession of any counterpart other than the Original.

(f) *Governing Law.* This Facility Lease shall be governed by and construed in accordance with the law of the State of New York, *except* to the extent that pursuant to the law of the State of Arizona the law of the State of Arizona is mandatorily applicable hereto.

(g) *Headings.* The division of this Facility Lease into sections, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Facility Lease.

(h) *Concerning the Owner Trustee.* FNB is entering into this Facility Lease solely as Owner Trustee under the Trust Agreement and not in its individual capacity. Anything herein to the contrary notwithstanding, all and each of the representations, warranties, undertakings and agreements herein made on the part of the Owner Trustee are made and intended not as personal representations,

warranties, undertakings and agreements by or for the purpose or with the intention of binding FNB personally but are made and intended for the purpose of binding only the Trust Estate, and this Facility Lease is executed and delivered by the Owner Trustee solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or responsibility is assumed hereunder by or shall at any time be enforceable against FNB or any successor in trust or the Owner Participant on account of any representation, warranty, undertaking or agreement hereunder of the Owner Trustee, either expressed or implied, all such personal liability, if any, being expressly waived by the Lessee, *except that* the Lessee or any Person claiming by, through or under it, making claim hereunder, may look to the Trust Estate for satisfaction of the same and the Owner Trustee or its successor in trust, as applicable, shall be personally liable for its own gross negligence or willful misconduct. If a successor owner trustee is appointed in accordance with the terms of the Trust Agreement, such successor owner trustee shall, without any further act, succeed to all the rights, duties, immunities and obligations of the Owner Trustee hereunder and the predecessor owner trustee shall be released from all further duties and obligations hereunder.

(i) *Disclosure.* Pursuant to Arizona Revised Statutes Section 33-401, the beneficiary of the Trust Agreement is Chrysler Financial Corporation, a Michigan corporation, whose address is Greenwich Office Park I, Greenwich, Connecticut 06836, Attention: Leasing and Investment Services. A copy of the Trust Agreement is available for inspection at the offices of the Owner Trustee at 100 Federal Street, Boston, Massachussetts 02110, Attention: Corporate Trust Division.

(j) *Counterpart Execution.* This Facility Lease may be executed in any number of counterparts and by each of the parties hereto or thereto on separate counterparts, all such counterparts together constituting but one and the same instrument.

(k) *Notice Prior to Exercise of Rights.* Before sending any notice or otherwise exercising any right with respect to any of its rights referred to in Section 12, 13(b), 13(c) or 14(a), the Lessee shall give notice to the Owner Participant of any facts known to the Lessee with respect to any possible Event of Loss or Deemed Loss Event, and the Lessee shall have no right to exercise any of its rights referred to in Section 12, 13(b), 13(c) or 14 until 15 days after receipt of such notice by the Owner Participant.

IN WITNESS WHEREOF, each of the parties hereto has caused this Facility Lease to be duly executed in New York, New York by an officer thereunto duly authorized.

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as Owner Trustee under a Trust Agreement dated as of December 1, 1986, with Chrysler Financial Corporation

By _____
Assistant Vice President

EL PASO ELECTRIC COMPANY

By _____
Vice President

STATE OF NEW YORK
COUNTY OF NEW YORK } ss:

The foregoing instrument was acknowledged before me this 16th day of December, 1986 by WILLIAM J. JOHNSON, the Vice President of EL PASO ELECTRIC COMPANY, a Texas corporation, on behalf of said corporation.

David A. Spivak

Notary Public

DAVID A. SPIVAK
Notary Public, State of New York
No. 31-4693468
Qualified in New York County
Commission Expires March 30, 1987

STATE OF NEW YORK
COUNTY OF NEW YORK } ss:

The foregoing instrument was acknowledged before me this 16th day of December, 1986 by MARTIN P. HENRY, an Assistant Vice President of THE FIRST NATIONAL BANK OF BOSTON, a national banking association, on behalf of the banking association as trustee under that certain Trust Agreement, dated as of December 1, 1986, with Chrysler Financial Corporation.

David A. Spivak

Notary Public

DAVID A. SPIVAK
Notary Public, State of New York
No. 31-4693468
Qualified in New York County
Commission Expires March 30, 1988

SCHEDULE 1
TO
FACILITY LEASE

SCHEDULE OF CASUALTY VALUES

Date	Percentage of Facility Cost
2 JUL 1987	110.17813
2 AUG 1987	106.42859
2 SEP 1987	107.36144
2 OCT 1987	108.27268
2 NOV 1987	109.18618
2 DEC 1987	110.10197
2 JAN 1988	108.43551
2 FEB 1988	104.62699
2 MAR 1988	105.50034
2 APR 1988	106.36592
2 MAY 1988	107.22199
2 JUN 1988	108.07987
2 JUL 1988	108.92817
2 AUG 1988	105.09332
2 SEP 1988	105.94017
2 OCT 1988	106.77738
2 NOV 1988	107.61626
2 DEC 1988	108.45682
2 JAN 1989	109.28769
2 FEB 1989	105.43511
2 MAR 1989	106.26408
2 APR 1989	107.08964
2 MAY 1989	107.90769
2 JUN 1989	108.72728
2 JUL 1989	109.53932
2 AUG 1989	105.66755
2 SEP 1989	106.47721
2 OCT 1989	107.27928
2 NOV 1989	108.08278
2 DEC 1989	108.88774
2 JAN 1990	109.68505
2 FEB 1990	105.79825
2 MAR 1990	106.59281
2 APR 1990	107.38473
2 MAY 1990	108.16908
2 JUN 1990	108.95475
2 JUL 1990	109.73279
2 AUG 1990	105.82638
2 SEP 1990	106.60118
2 OCT 1990	107.36831
2 NOV 1990	108.13665
2 DEC 1990	108.90622
2 JAN 1991	109.66806
2 FEB 1991	105.74511
2 MAR 1991	106.50328
2 APR 1991	107.25866
2 MAY 1991	108.00638
2 JUN 1991	108.75520
2 JUL 1991	109.49630
2 AUG 1991	105.55223
2 SEP 1991	106.28914
2 OCT 1991	107.01828
2 NOV 1991	107.74840
2 DEC 1991	108.47950
2 JAN 1992	109.20279
2 FEB 1992	105.24054
2 MAR 1992	105.95916
2 APR 1992	106.67480
2 MAY 1992	107.38378
2 JUN 1992	108.09360
2 JUL 1992	108.79670
2 AUG 1992	104.81388
2 SEP 1992	105.51181
2 OCT 1992	106.20296
2 NOV 1992	106.89486
2 DEC 1992	107.58750
2 JAN 1993	108.27333
2 FEB 1993	104.27191
2 MAR 1993	104.95113
2 APR 1993	105.62769
2 MAY 1993	106.29755
2 JUN 1993	106.96803
2 JUL 1993	107.63177
2 AUG 1993	103.60775
2 SEP 1993	104.26424
2 OCT 1993	104.91393
2 NOV 1993	105.56412
2 DEC 1993	106.21482
2 JAN 1994	106.85867
2 FEB 1994	102.81427
2 MAR 1994	103.45028
2 APR 1994	104.08346
2 MAY 1994	104.70993
2 JUN 1994	105.33677
2 JUL 1994	105.95684
2 AUG 1994	101.88811
2 SEP 1994	102.49965
2 OCT 1994	103.10435
2 NOV 1994	103.70930
2 DEC 1994	104.31451
2 JAN 1995	104.91283
2 FEB 1995	100.82181
2 MAR 1995	101.41093
2 APR 1995	101.99707
2 MAY 1995	102.57977
2 JUN 1995	103.16261

Chrysler

SCHEDULE 1
TO
FACILITY LEASE

SCHEDULE OF CASUALTY VALUES

Date	Percentage of Facility Cost
2 JUL 1995	103.74558
2 AUG 1995	99.63873
2 SEP 1995	100.21197
2 OCT 1995	100.78534
2 NOV 1995	101.35884
2 DEC 1995	101.93249
2 JAN 1996	102.50628
2 FEB 1996	98.38979
2 MAR 1996	98.95339
2 APR 1996	99.51714
2 MAY 1996	100.08102
2 JUN 1996	100.64505
2 JUL 1996	101.20923
2 AUG 1996	97.08266
2 SEP 1996	97.63618
2 OCT 1996	98.18985
2 NOV 1996	98.74367
2 DEC 1996	99.29763
2 JAN 1997	99.85175
2 FEB 1997	95.71463
2 MAR 1997	96.25759
2 APR 1997	96.80072
2 MAY 1997	97.34400
2 JUN 1997	97.88743
2 JUL 1997	98.43102
2 AUG 1997	94.28284
2 SEP 1997	94.81477
2 OCT 1997	95.34685
2 NOV 1997	95.87909
2 DEC 1997	96.41150
2 JAN 1998	96.94407
2 FEB 1998	92.78273
2 MAR 1998	93.30150
2 APR 1998	93.82156
2 MAY 1998	94.34549
2 JUN 1998	94.86962
2 JUL 1998	95.39765
2 AUG 1998	91.23111
2 SEP 1998	91.74476
2 OCT 1998	92.26235
2 NOV 1998	92.78023
2 DEC 1998	93.29840
2 JAN 1999	93.82054
2 FEB 1999	89.64549
2 MAR 1999	90.15066
2 APR 1999	90.65776
2 MAY 1999	91.16917
2 JUN 1999	91.68092
2 JUL 1999	92.19702
2 AUG 1999	88.01349
2 SEP 1999	88.51020
2 OCT 1999	89.01121
2 NOV 1999	89.51257
2 DEC 1999	90.01427
2 JAN 2000	90.52032
2 FEB 2000	86.32684
2 MAR 2000	86.81362
2 APR 2000	87.30249
2 MAY 2000	87.79599
2 JUN 2000	88.28987
2 JUL 2000	88.78842
2 AUG 2000	84.58594
2 SEP 2000	85.06373
2 OCT 2000	85.54615
2 NOV 2000	86.02893
2 DEC 2000	86.51210
2 JAN 2001	86.99993
2 FEB 2001	82.78687
2 MAR 2001	83.25409
2 APR 2001	83.72357
2 MAY 2001	84.19801
2 JUN 2001	84.67286
2 JUL 2001	85.15272
2 AUG 2001	80.93009
2 SEP 2001	81.38776
2 OCT 2001	81.85039
2 NOV 2001	82.31343
2 DEC 2001	82.77688
2 JAN 2002	83.24533
2 FEB 2002	79.01144
2 MAR 2002	79.45786
2 APR 2002	79.90670
2 MAY 2002	80.36087
2 JUN 2002	80.81549
2 JUL 2002	81.27549
2 AUG 2002	77.03142
2 SEP 2002	77.46769
2 OCT 2002	77.90928
2 NOV 2002	78.35131
2 DEC 2002	78.79380
2 JAN 2003	79.24166
2 FEB 2003	74.98560
2 MAR 2003	75.40989
2 APR 2003	75.83679
2 MAY 2003	76.26941
2 JUN 2003	76.70251
2 JUL 2003	77.14139
2 AUG 2003	72.87451

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SCHEDULE 1
TO
FACILITY LEASE

SCHEDULE OF CASUALTY VALUES

Date	Percentage of Facility Cost
2 SEP 2003	73.28801
2 OCT 2003	73.70722
2 NOV 2003	74.12691
2 DEC 2003	74.54710
2 JAN 2004	74.97305
2 FEB 2004	70.69342
2 MAR 2004	71.09419
2 APR 2004	71.49775
2 MAY 2004	71.90744
2 JUN 2004	72.31767
2 JUL 2004	72.73409
2 AUG 2004	68.44297
2 SEP 2004	68.83227
2 OCT 2004	69.22769
2 NOV 2004	69.62364
2 DEC 2004	70.02013
2 JAN 2005	70.42281
2 FEB 2005	66.11812
2 MAR 2005	66.49387
2 APR 2005	66.87263
2 MAY 2005	67.25798
2 JUN 2005	67.64392
2 JUL 2005	68.03652
2 AUG 2005	63.72144
2 SEP 2005	64.08686
2 OCT 2005	64.45892
2 NOV 2005	64.83161
2 DEC 2005	65.20492
2 JAN 2006	65.58494
2 FEB 2006	61.26035
2 MAR 2006	61.61640
2 APR 2006	61.97586
2 MAY 2006	62.34274
2 JUN 2006	62.71043
2 JUL 2006	63.08561
2 AUG 2006	58.75505
2 SEP 2006	59.10532
2 OCT 2006	59.46317
2 NOV 2006	59.82199
2 DEC 2006	60.18178
2 JAN 2007	60.54924
2 FEB 2007	56.20973
2 MAR 2007	56.55124
2 APR 2007	56.89678
2 MAY 2007	57.25083
2 JUN 2007	57.60607
2 JUL 2007	57.96991
2 AUG 2007	53.62556
2 SEP 2007	53.96243
2 OCT 2007	54.30801
2 NOV 2007	54.65496
2 DEC 2007	55.00329
2 JAN 2008	55.36043
2 FEB 2008	51.00805
2 MAR 2008	51.33711
2 APR 2008	51.67096
2 MAY 2008	52.01456
2 JUN 2008	52.35980
2 JUL 2008	52.71490
2 AUG 2008	48.35914
2 SEP 2008	48.68507
2 OCT 2008	49.02098
2 NOV 2008	49.35875
2 DEC 2008	49.69840
2 JAN 2009	50.04816
2 FEB 2009	45.68560
2 MAR 2009	46.00498
2 APR 2009	46.33004
2 MAY 2009	46.66626
2 JUN 2009	47.00466
2 JUL 2009	47.35435
2 AUG 2009	42.99025
2 SEP 2009	43.30842
2 OCT 2009	43.63802
2 NOV 2009	43.97006
2 DEC 2009	44.30456
2 JAN 2010	44.65064
2 FEB 2010	40.28137
2 MAR 2010	40.59464
2 APR 2010	40.91460
2 MAY 2010	41.24714
2 JUN 2010	41.58249
2 JUL 2010	41.93055
2 AUG 2010	37.54252
2 SEP 2010	37.83696
2 OCT 2010	38.14382
2 NOV 2010	38.45333
2 DEC 2010	38.76553
2 JAN 2011	39.09030
2 FEB 2011	34.67229
2 MAR 2011	34.93645
2 APR 2011	35.20726
2 MAY 2011	35.49032
2 JUN 2011	35.77581
2 JUL 2011	36.07369
2 AUG 2011	31.62852
2 SEP 2011	31.86528
2 OCT 2011	32.11396

Chrysler

SCHEDULE 1
TO
FACILITY LEASE

SCHEDULE OF CASUALTY VALUES

Date	Percentage of Facility Cost	Date	Percentage of Facility Cost
2 NOV 2011	32.36475		
2 DEC 2011	32.61765		
2 JAN 2012	32.88264		
2 FEB 2012	28.40427		
2 MAR 2012	28.60750		
2 APR 2012	28.81682		
2 MAY 2012	29.03782		
2 JUN 2012	29.26065		
2 JUL 2012	29.49527		
2 AUG 2012	24.98624		
2 SEP 2012	25.15853		
2 OCT 2012	25.34213		
2 NOV 2012	25.52722		
2 DEC 2012	25.71381		
2 JAN 2013	25.91184		
2 FEB 2013	21.36588		
2 MAR 2013	21.50088		
2 APR 2013	21.64132		
2 MAY 2013	21.79750		
2 JUN 2013	21.95491		
2 JUL 2013	22.12820		
2 AUG 2013	19.93007		
2 SEP 2013	20.07299		
1 OCT 2013	20.00000		

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SCHEDULE 2
TO
FACILITY LEASE

SCHEDULE OF SPECIAL CASUALTY VALUES

Date	Percentage of Facility Cost
2 JUL 1987	110.19464
2 AUG 1987	106.42218
2 SEP 1987	107.33172
2 OCT 1987	108.22140
2 NOV 1987	109.11298
2 DEC 1987	110.00646
2 JAN 1988	108.34292
2 FEB 1988	104.51516
2 MAR 1988	105.36895
2 APR 1988	106.21551
2 MAY 1988	107.05328
2 JUN 1988	107.89255
2 JUL 1988	108.72295
2 AUG 1988	104.86992
2 SEP 1988	105.69827
2 OCT 1988	106.51772
2 NOV 1988	107.33855
2 DEC 1988	108.16077
2 JAN 1989	108.97403
2 FEB 1989	105.10355
2 MAR 1989	105.91434
2 APR 1989	106.72189
2 MAY 1989	107.52246
2 JUN 1989	108.32430
2 JUL 1989	109.11912
2 AUG 1989	105.22988
2 SEP 1989	106.02180
2 OCT 1989	106.80667
2 NOV 1989	107.59271
2 DEC 1989	108.37994
2 JAN 1990	109.16007
2 FEB 1990	105.25584
2 MAR 1990	106.03271
2 APR 1990	106.80784
2 MAY 1990	107.57434
2 JUN 1990	108.34272
2 JUL 1990	109.10402
2 AUG 1990	105.18062
2 SEP 1990	105.93820
2 OCT 1990	106.68865
2 NOV 1990	107.44009
2 DEC 1990	108.19252
2 JAN 1991	108.93778
2 FEB 1991	104.99802
2 MAR 1991	105.73915
2 APR 1991	106.47760
2 MAY 1991	107.20897
2 JUN 1991	107.94120
2 JUL 1991	108.66629
2 AUG 1991	104.70599
2 SEP 1991	105.42646
2 OCT 1991	106.13974
2 NOV 1991	106.85379
2 DEC 1991	107.56861
2 JAN 1992	108.27619
2 FEB 1992	104.29804
2 MAR 1992	105.00057
2 APR 1992	105.70026
2 MAY 1992	106.39376
2 JUN 1992	107.08792
2 JUL 1992	107.77585
2 AUG 1992	103.77767
2 SEP 1992	104.46005
2 OCT 1992	105.13616
2 NOV 1992	105.81283
2 DEC 1992	106.49007
2 JAN 1993	107.16099
2 FEB 1993	103.14449
2 MAR 1993	103.80846
2 APR 1993	104.46990
2 MAY 1993	105.12513
2 JUN 1993	105.78082
2 JUL 1993	106.43026
2 AUG 1993	102.39180
2 SEP 1993	103.03368
2 OCT 1993	103.66928
2 NOV 1993	104.30523
2 DEC 1993	104.94154
2 JAN 1994	105.57152
2 FEB 1994	101.51310
2 MAR 1994	102.13495
2 APR 1994	102.75413
2 MAY 1994	103.36710
2 JUN 1994	103.98032
2 JUL 1994	104.58727
2 AUG 1994	100.50531
2 SEP 1994	101.10350
2 OCT 1994	101.69537
2 NOV 1994	102.28738
2 DEC 1994	102.87953
2 JAN 1995	103.46636
2 FEB 1995	99.36377
2 MAR 1995	99.94123
2 APR 1995	100.51878
2 MAY 1995	101.09644
2 JUN 1995	101.67419

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SCHEDULE 2
TO
FACILITY LEASE

SCHEDULE OF SPECIAL CASUALTY VALUES

Date	Percentage of Facility Cost
2 JUL 1995	102.25205
2 AUG 1995	98.14006
2 SEP 1995	98.70811
2 OCT 1995	99.27626
2 NOV 1995	99.84452
2 DEC 1995	100.41288
2 JAN 1996	100.98135
2 FEB 1996	96.85951
2 MAR 1996	97.41772
2 APR 1996	97.97604
2 MAY 1996	98.53447
2 JUN 1996	99.09301
2 JUL 1996	99.65165
2 AUG 1996	95.51951
2 SEP 1996	96.06743
2 OCT 1996	96.61546
2 NOV 1996	97.16360
2 DEC 1996	97.71185
2 JAN 1997	98.26022
2 FEB 1997	94.11730
2 MAR 1997	94.65445
2 APR 1997	95.19170
2 MAY 1997	95.72908
2 JUN 1997	96.26657
2 JUL 1997	96.80418
2 AUG 1997	92.64998
2 SEP 1997	93.17585
2 OCT 1997	93.70183
2 NOV 1997	94.22794
2 DEC 1997	94.75417
2 JAN 1998	95.28052
2 FEB 1998	91.11292
2 MAR 1998	91.62539
2 APR 1998	92.13798
2 MAY 1998	92.65070
2 JUN 1998	93.16355
2 JUL 1998	93.67685
2 AUG 1998	89.49545
2 SEP 1998	89.99414
2 OCT 1998	90.49628
2 NOV 1998	90.99859
2 DEC 1998	91.50107
2 JAN 1999	92.00704
2 FEB 1999	87.81613
2 MAR 1999	88.30532
2 APR 1999	88.79615
2 MAY 1999	89.29078
2 JUN 1999	89.78561
2 JUL 1999	90.28427
2 AUG 1999	86.08404
2 SEP 1999	86.56392
2 OCT 1999	87.04758
2 NOV 1999	87.53144
2 DEC 1999	88.01550
2 JAN 2000	88.50338
2 FEB 2000	84.29232
2 MAR 2000	84.76138
2 APR 2000	85.23221
2 MAY 2000	85.70712
2 JUN 2000	86.18225
2 JUL 2000	86.66148
2 AUG 2000	82.44049
2 SEP 2000	82.89961
2 OCT 2000	83.36280
2 NOV 2000	83.82620
2 DEC 2000	84.28981
2 JAN 2001	84.75752
2 FEB 2001	80.52496
2 MAR 2001	80.97253
2 APR 2001	81.42201
2 MAY 2001	81.8758
2 JUN 2001	82.3299
2 JUL 2001	82.78842
2 AUG 2001	78.54526
2 SEP 2001	78.98223
2 OCT 2001	79.42355
2 NOV 2001	79.86510
2 DEC 2001	80.30688
2 JAN 2002	80.75306
2 FEB 2002	76.49755
2 MAR 2002	76.92217
2 APR 2002	77.34885
2 MAY 2002	77.78020
2 JUN 2002	78.21181
2 JUL 2002	78.64814
2 AUG 2002	74.38130
2 SEP 2002	74.79462
2 OCT 2002	75.21260
2 NOV 2002	75.63082
2 DEC 2002	76.04930
2 JAN 2003	76.47248
2 FEB 2003	72.19245
2 MAR 2003	72.59258
2 APR 2003	72.99491
2 MAY 2003	73.40225
2 JUN 2003	73.80986
2 JUL 2003	74.2225
2 AUG 2003	69.93042

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SCHEDULE 2
TO
FACILITY LEASE

SCHEDULE OF SPECIAL CASUALTY VALUES

Date	Percentage of Facility Cost
2 SEP 2003	70.31846
2 OCT 2003	70.71151
2 NOV 2003	71.10483
2 DEC 2003	71.49841
2 JAN 2004	71.89704
2 FEB 2004	67.59083
2 MAR 2004	67.96480
2 APR 2004	68.34112
2 MAY 2004	68.72282
2 JUN 2004	69.10481
2 JUL 2004	69.49222
2 AUG 2004	65.17312
2 SEP 2004	65.53419
2 OCT 2004	65.90062
2 NOV 2004	66.26735
2 DEC 2004	66.63435
2 JAN 2005	67.00677
2 FEB 2005	62.67262
2 MAR 2005	63.01865
2 APR 2005	63.36721
2 MAY 2005	63.72155
2 JUN 2005	64.07620
2 JUL 2005	64.43668
2 AUG 2005	60.09014
2 SEP 2005	60.42384
2 OCT 2005	60.76334
2 NOV 2005	61.10318
2 DEC 2005	61.44336
2 JAN 2006	61.78940
2 FEB 2006	57.43053
2 MAR 2006	57.75200
2 APR 2006	58.07631
2 MAY 2006	58.40712
2 JUN 2006	58.73841
2 JUL 2006	59.07624
2 AUG 2006	54.70799
2 SEP 2006	55.02022
2 OCT 2006	55.33906
2 NOV 2006	55.65851
2 DEC 2006	55.97856
2 JAN 2007	56.30528
2 FEB 2007	51.92466
2 MAR 2007	52.22466
2 APR 2007	52.52803
2 MAY 2007	52.83882
2 JUN 2007	53.15038
2 JUL 2007	53.46943
2 AUG 2007	49.07986
2 SEP 2007	49.37107
2 OCT 2007	49.66984
2 NOV 2007	49.96953
2 DEC 2007	50.27014
2 JAN 2008	50.57840
2 FEB 2008	46.17665
2 MAR 2008	46.45583
2 APR 2008	46.73902
2 MAY 2008	47.03068
2 JUN 2008	47.32346
2 JUL 2008	47.62480
2 AUG 2008	43.21473
2 SEP 2008	43.48580
2 OCT 2008	43.76553
2 NOV 2008	44.04654
2 DEC 2008	44.32883
2 JAN 2009	44.61988
2 FEB 2009	40.13800
2 MAR 2009	40.45745
2 APR 2009	40.72161
2 MAY 2009	40.99546
2 JUN 2009	41.27082
2 JUL 2009	41.55596
2 AUG 2009	37.12663
2 SEP 2009	37.37887
2 OCT 2009	37.64100
2 NOV 2009	37.90485
2 DEC 2009	38.17043
2 JAN 2010	38.44601
2 FEB 2010	34.00546
2 MAR 2010	34.24671
2 APR 2010	34.49348
2 MAY 2010	34.75112
2 JUN 2010	35.01076
2 JUL 2010	35.28137
2 AUG 2010	30.81960
2 SEP 2010	31.03950
2 OCT 2010	31.27013
2 NOV 2010	31.50260
2 DEC 2010	31.73692
2 JAN 2011	31.98209
2 FEB 2011	27.48961
2 MAR 2011	27.67855
2 APR 2011	27.87297
2 MAY 2011	28.07794
2 JUN 2011	28.28453
2 JUL 2011	28.50179
2 AUG 2011	23.98115
2 SEP 2011	24.14170
2 OCT 2011	24.31252

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SCHEDULE 2
TO
FACILITY LEASE

SCHEDULE OF SPECIAL CASUALTY VALUES

Date	Percentage of Facility Cost	Date	Percentage of Facility Cost
2 NOV 2011	24.48466		
2 DEC 2011	24.65815		
2 JAN 2012	24.84202		
2 FEB 2012	20.28772		
2 MAR 2012	20.41430		
2 APR 2012	20.54586		
2 MAY 2012	20.68743		
2 JUN 2012	20.83009		
2 JUL 2012	20.98285		
2 AUG 2012	16.39718		
2 SEP 2012	16.49214		
2 OCT 2012	16.59680		
2 NOV 2012	16.70223		
2 DEC 2012	16.80843		
2 JAN 2013	16.92443		
2 FEB 2013	12.30614		
2 MAR 2013	12.36820		
2 APR 2013	12.43066		
2 MAY 2013	12.49985		
2 JUN 2013	12.56950		
2 JUL 2013	12.64638		
2 AUG 2013	10.37052		
2 SEP 2013	10.43505		
2 OCT 2013	10.00000		

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SCHEDULE 3
TO
FACILITY LEASE

SCHEDULE OF TERMINATION VALUES

Basic Rent Payment Date	Percentage of Facility Cost	Basic Rent Payment	Percentage of Facility
		2 JAN 2000	88.50338
		2 JUL 2000	86.66148
		2 JAN 2001	84.75752
2 JUL 1997	96.80418	2 JUL 2001	82.78842
2 JAN 1998	95.28052	2 JAN 2002	80.75306
2 JUL 1998	93.67685	2 JUL 2002	78.64814
2 JAN 1999	92.00704	2 JAN 2003	76.47248
2 JUL 1999	90.28427	2 JUL 2003	74.22253

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SCHEDULE 3
TO
FACILITY LEASE

SCHEDULE OF TERMINATION VALUES

Basic Rent Payment Date	Percentage of Facility Cost	Basic Rent Payment Date	Percentage of Facility Cost
2 JAN 2004	71.89704	2 JAN 2008	50.57840
2 JUL 2004	69.49222	2 JUL 2008	47.62480
2 JAN 2005	67.00677	2 JAN 2009	44.61988
2 JUL 2005	64.43668	2 JUL 2009	41.5559[illegible]
2 JAN 2006	61.78940	2 JAN 2010	38.44601
2 JUL 2006	59.07624	2 JUL 2010	35.28137
2 JAN 2007	56.30528	2 JAN 2011	31.98209
2 JUL 2007	53.46943	2 JUL 2011	28.5017[illegible]

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SCHEDULE 4
TO
FACILITY LEASE

SCHEDULE OF SPECIAL TERMINATION VALUES

Date	Percentage of Facility Cost
2 JUL 1987	108.91072
2 AUG 1987	105.12987
2 SEP 1987	106.03095
2 OCT 1987	106.91214
2 NOV 1987	107.79515
2 DEC 1987	108.68002
2 JAN 1988	107.00781
2 FEB 1988	103.17132
2 MAR 1988	104.01632
2 APR 1988	104.85404
2 MAY 1988	105.68291
2 JUN 1988	106.51322
2 JUL 1988	107.33461
2 AUG 1988	103.47250
2 SEP 1988	104.29171
2 OCT 1988	105.10197
2 NOV 1988	105.91354
2 DEC 1988	106.72644
2 JAN 1989	107.53032
2 FEB 1989	103.65040
2 MAR 1989	104.45170
2 APR 1989	105.24968
2 MAY 1989	106.04063
2 JUN 1989	106.83278
2 JUL 1989	107.61785
2 AUG 1989	103.71879
2 SEP 1989	104.50084
2 OCT 1989	105.27576
2 NOV 1989	106.05179
2 DEC 1989	106.82895
2 JAN 1990	107.59894
2 FEB 1990	103.68451
2 MAR 1990	104.45110
2 APR 1990	105.21509
2 MAY 1990	105.97198
2 JUN 1990	106.72989
2 JUL 1990	107.48064
2 AUG 1990	103.54663
2 SEP 1990	104.29353
2 OCT 1990	105.03323
2 NOV 1990	105.77385
2 DEC 1990	106.51538
2 JAN 1991	107.24967
2 FEB 1991	103.29888
2 MAR 1991	104.02890
2 APR 1991	104.75617
2 MAY 1991	105.47628
2 JUN 1991	106.19719
2 JUL 1991	106.91087
2 AUG 1991	102.93910
2 SEP 1991	103.64802
2 OCT 1991	104.34967
2 NOV 1991	105.05201
2 DEC 1991	105.75506
1 JAN 1992	106.43014

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SCHEDULE 5
TO
FACILITY LEASE

SCHEDULE OF ENHANCED CASUALTY VALUES

Date	Percentage of Facility Cost
2 JUL 1987	115.17813
2 AUG 1987	111.42859
2 SEP 1987	112.36144
2 OCT 1987	113.27268
2 NOV 1987	114.18618
2 DEC 1987	115.10197
2 JAN 1988	113.43551
2 FEB 1988	109.62699
2 MAR 1988	110.50034
2 APR 1988	111.36592
2 MAY 1988	112.22199
2 JUN 1988	113.07987
2 JUL 1988	113.92817
2 AUG 1988	110.09332
2 SEP 1988	110.94017
2 OCT 1988	111.77738
2 NOV 1988	112.61626
2 DEC 1988	113.45682
2 JAN 1989	114.28769
2 FEB 1989	110.43511
2 MAR 1989	111.26408
2 APR 1989	112.08964
2 MAY 1989	112.90769
2 JUN 1989	113.72728
2 JUL 1989	114.53932
2 AUG 1989	110.66755
2 SEP 1989	111.47721
2 OCT 1989	112.27928
2 NOV 1989	113.08278
2 DEC 1989	113.88774
2 JAN 1990	114.68505
2 FEB 1990	110.79825
2 MAR 1990	111.59281
2 APR 1990	112.38473
2 MAY 1990	113.16908
2 JUN 1990	113.95475
2 JUL 1990	114.73279
2 AUG 1990	110.82638
2 SEP 1990	111.60118
2 OCT 1990	112.36831
2 NOV 1990	113.13665
2 DEC 1990	113.90622
2 JAN 1991	114.66806
2 FEB 1991	110.74511
2 MAR 1991	111.50328
2 APR 1991	112.25866
2 MAY 1991	113.00638
2 JUN 1991	113.75520
2 JUL 1991	114.49630
2 AUG 1991	110.55223
2 SEP 1991	111.28914
2 OCT 1991	112.01828
2 NOV 1991	112.74840
2 DEC 1991	113.47950
2 JAN 1992	114.20279
2 FEB 1992	110.24054
2 MAR 1992	110.95916
2 APR 1992	111.67480
2 MAY 1992	112.38378
2 JUN 1992	113.09360
2 JUL 1992	113.79670
2 AUG 1992	109.81388
2 SEP 1992	110.51181
2 OCT 1992	111.20296
2 NOV 1992	111.89486
2 DEC 1992	112.58750
2 JAN 1993	113.27333
2 FEB 1993	109.27191
2 MAR 1993	109.95113
2 APR 1993	110.62769
2 MAY 1993	111.29755
2 JUN 1993	111.96803
2 JUL 1993	112.63177
2 AUG 1993	108.60775
2 SEP 1993	109.26424
2 OCT 1993	109.91393
2 NOV 1993	110.56412
2 DEC 1993	111.21482
2 JAN 1994	111.85867
2 FEB 1994	107.81427
2 MAR 1994	108.45028
2 APR 1994	109.08346
2 MAY 1994	109.70993
2 JUN 1994	110.33677
2 JUL 1994	110.95684
2 AUG 1994	106.88811
2 SEP 1994	107.49965
2 OCT 1994	108.10435
2 NOV 1994	108.70930
2 DEC 1994	109.31451
2 JAN 1995	109.91283
2 FEB 1995	105.82181
2 MAR 1995	106.41093
2 APR 1995	106.99707
2 MAY 1995	107.57977
2 JUN 1995	108.16261

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SCHEDULE 5
TO
FACILITY LEASE

SCHEDULE OF ENHANCED CASUALTY VALUES

Date	Percentage of Facility Cost
2 JUL 1995	108.74558
2 AUG 1995	104.63873
2 SEP 1995	105.21197
2 OCT 1995	105.78534
2 NOV 1995	106.35884
2 DEC 1995	106.93249
2 JAN 1996	107.50628
2 FEB 1996	103.38979
2 MAR 1996	103.95339
2 APR 1996	104.51714
2 MAY 1996	105.08102
2 JUN 1996	105.64505
2 JUL 1996	106.20923
2 AUG 1996	102.08266
2 SEP 1996	102.63618
2 OCT 1996	103.18985
2 NOV 1996	103.74367
2 DEC 1996	104.29763
2 JAN 1997	104.85175
2 FEB 1997	100.71463
2 MAR 1997	101.25759
2 APR 1997	101.80072
2 MAY 1997	102.34400
2 JUN 1997	102.88743
2 JUL 1997	103.43102
2 AUG 1997	99.28284
2 SEP 1997	99.81477
2 OCT 1997	100.34685
2 NOV 1997	100.87909
2 DEC 1997	101.41150
2 JAN 1998	101.94407
2 FEB 1998	97.78273
2 MAR 1998	98.30150
2 APR 1998	98.82156
2 MAY 1998	99.34549
2 JUN 1998	99.86962
2 JUL 1998	100.39765
2 AUG 1998	96.23111
2 SEP 1998	96.74476
2 OCT 1998	97.26235
2 NOV 1998	97.78023
2 DEC 1998	98.29840
2 JAN 1999	98.82054
2 FEB 1999	94.64549
2 MAR 1999	95.15066
2 APR 1999	95.65776
2 MAY 1999	96.16917
2 JUN 1999	96.68092
2 JUL 1999	97.19702
2 AUG 1999	93.01349
2 SEP 1999	93.51020
2 OCT 1999	94.01121
2 NOV 1999	94.51257
2 DEC 1999	95.01427
2 JAN 2000	95.52032
2 FEB 2000	91.32684
2 MAR 2000	91.81362
2 APR 2000	92.30249
2 MAY 2000	92.79599
2 JUN 2000	93.28987
2 JUL 2000	93.78842
2 AUG 2000	89.58594
2 SEP 2000	90.06373
2 OCT 2000	90.54615
2 NOV 2000	91.02893
2 DEC 2000	91.51210
2 JAN 2001	91.99993
2 FEB 2001	87.78687
2 MAR 2001	88.25409
2 APR 2001	88.72357
2 MAY 2001	89.19801
2 JUN 2001	89.67286
2 JUL 2001	90.15272
2 AUG 2001	85.93009
2 SEP 2001	86.38776
2 OCT 2001	86.85039
2 NOV 2001	87.31343
2 DEC 2001	87.77688
2 JAN 2002	88.24533
2 FEB 2002	84.01144
2 MAR 2002	84.45786
2 APR 2002	84.90670
2 MAY 2002	85.36087
2 JUN 2002	85.81549
2 JUL 2002	86.27549
2 AUG 2002	82.03142
2 SEP 2002	82.46769
2 OCT 2002	82.90928
2 NOV 2002	83.35131
2 DEC 2002	83.79380
2 JAN 2003	84.24166
2 FEB 2003	79.98560
2 MAR 2003	80.40989
2 APR 2003	80.83679
2 MAY 2003	81.26941
2 JUN 2003	81.70251
2 JUL 2003	82.14139
2 AUG 2003	77.87451

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SCHEDULE 5
TO
FACILITY LEASE

SCHEDULE OF ENHANCED CASUALTY VALUES

Date	Percentage of Facility Cost
2 SEP 2003	78.28801
2 OCT 2003	78.70722
2 NOV 2003	79.12691
2 DEC 2003	79.54710
2 JAN 2004	79.97305
2 FEB 2004	75.69342
2 MAR 2004	76.09419
2 APR 2004	76.49775
2 MAY 2004	76.90744
2 JUN 2004	77.31767
2 JUL 2004	77.73409
2 AUG 2004	73.44297
2 SEP 2004	73.83227
2 OCT 2004	74.22769
2 NOV 2004	74.62364
2 DEC 2004	75.02013
2 JAN 2005	75.42281
2 FEB 2005	71.11812
2 MAR 2005	71.49387
2 APR 2005	71.87263
2 MAY 2005	72.25798
2 JUN 2005	72.64392
2 JUL 2005	73.03652
2 AUG 2005	68.72144
2 SEP 2005	69.08686
2 OCT 2005	69.45892
2 NOV 2005	69.83161
2 DEC 2005	70.20492
2 JAN 2006	70.58494
2 FEB 2006	66.26035
2 MAR 2006	66.61640
2 APR 2006	66.97586
2 MAY 2006	67.34274
2 JUN 2006	67.71043
2 JUL 2006	68.08561
2 AUG 2006	63.75505
2 SEP 2006	64.10532
2 OCT 2006	64.46317
2 NOV 2006	64.82199
2 DEC 2006	65.18178
2 JAN 2007	65.54241
2 FEB 2007	61.20973
2 MAR 2007	61.55124
2 APR 2007	61.89678
2 MAY 2007	62.25083
2 JUN 2007	62.60607
2 JUL 2007	62.96991
2 AUG 2007	58.62556
2 SEP 2007	58.96243
2 OCT 2007	59.30801
2 NOV 2007	59.65496
2 DEC 2007	60.00329
2 JAN 2008	60.36043
2 FEB 2008	56.00805
2 MAR 2008	56.33711
2 APR 2008	56.67096
2 MAY 2008	57.01456
2 JUN 2008	57.35980
2 JUL 2008	57.71490
2 AUG 2008	53.35914
2 SEP 2008	53.68507
2 OCT 2008	54.02098
2 NOV 2008	54.35875
2 DEC 2008	54.69840
2 JAN 2009	55.04816
2 FEB 2009	50.68560
2 MAR 2009	51.00498
2 APR 2009	51.33004
2 MAY 2009	51.66626
2 JUN 2009	52.00466
2 JUL 2009	52.35435
2 AUG 2009	47.99025
2 SEP 2009	48.30842
2 OCT 2009	48.63802
2 NOV 2009	48.97006
2 DEC 2009	49.30456
2 JAN 2010	49.65064
2 FEB 2010	45.28137
2 MAR 2010	45.59464
2 APR 2010	45.91460
2 MAY 2010	46.24714
2 JUN 2010	46.58249
2 JUL 2010	46.93055
2 AUG 2010	42.54252
2 SEP 2010	42.83696
2 OCT 2010	43.14382
2 NOV 2010	43.45333
2 DEC 2010	43.76553
2 JAN 2011	44.09030
2 FEB 2011	39.67229
2 MAR 2011	39.93645
2 APR 2011	40.20726
2 MAY 2011	40.49032
2 JUN 2011	40.77581
2 JUL 2011	41.07369
2 AUG 2011	36.62852
2 SEP 2011	36.86528
2 OCT 2011	37.11396

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SCHEDULE 5
TO
FACILITY LEASE

SCHEDULE OF ENHANCED CASUALTY VALUES

Date	Percentage of Facility Cost	Date	Percentage of Facility Cost
2 NOV 2011	37.36475		
2 DEC 2011	37.61765		
2 JAN 2012	37.88264		
2 FEB 2012	33.40427		
2 MAR 2012	33.60750		
2 APR 2012	33.81682		
2 MAY 2012	34.03782		
2 JUN 2012	34.26065		
2 JUL 2012	34.49527		
2 AUG 2012	29.98624		
2 SEP 2012	30.15853		
2 OCT 2012	30.34213		
2 NOV 2012	30.52722		
2 DEC 2012	30.71381		
2 JAN 2013	30.91184		
2 FEB 2013	26.36588		
2 MAR 2013	26.50088		
2 APR 2013	26.64132		
2 MAY 2013	26.79750		
2 JUN 2013	26.95491		
2 JUL 2013	27.12820		
2 AUG 2013	24.93007		
2 SEP 2013	25.07299		
2 OCT 2013	25.00000		

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SCHEDULE 6
TO
FACILITY LEASE

DESCRIPTION OF REAL PROPERTY INTEREST

The Real Property Interest consists of a .727881% undivided interest in the following:

I. PVNGS PLANT SITE

PARCEL NO. 1: Lot Four (4); the Southwest quarter of the Northwest quarter; and the West half of the Southwest quarter, all in Section Two (2), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 2: All of Section Three (3), Township One (1) South, Range Six (6) West of the Gila And Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 3: The East half of Section Four (4), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 4: The West half of Section Twenty-six (26), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 5: Section Twenty-seven (27), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the Northwest quarter of Section 27.

PARCEL NO. 6: The Southeast quarter of Section Twenty-eight (28), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT 50% of all oil, gas and other mineral deposits and geothermal resources recovered from or developed on the property, as reserved in instrument recorded May 10, 1974 in Docket 10647, page 136.

PARCEL NO. 7: The East half of Section Thirty-three (33), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 8: All of Section Thirty-four (34), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 9: The West half of Section Thirty-five (35), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 10: The Southeast quarter of Section Nine (9), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the Northwest quarter thereof.

PARCEL NO. 11: All of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the East half of the Southeast quarter thereof; and EXCEPT the North half of the South half of the Northwest quarter of the Northwest quarter thereof.

PARCEL NO. 12: That part of the East half of the Southwest quarter of Section Twenty-three (23), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Southeast corner of the said East half of the Southwest quarter of Section 23; thence West, an assumed bearing along the South line of the said East half of the Southwest quarter of Section 23, for a distance of 762.04 feet; thence North 0 degrees 03 minutes 39 seconds West; parallel to the East line of the said East half of the Southwest quarter of Section 23, for a distance of 1946.46 feet to a point on the South right-of-way line of the 200 foot wide HASSAYAMPA-SALOME HIGHWAY, as recorded in Book 12 of Road Maps, page 82.

Maricopa County Recorder, Maricopa County, Arizona: thence continuing North 0 degrees 03 minutes 39 seconds West for a distance of 234.15 feet to a point on the North right-of-way line of said highway; thence South 58 degrees 43 minutes 35 seconds East, along said North right-of-way line for a distance of 892.17 feet to a point on the said East line of the East half [redacted] Southwest quarter of Section 23; thence South 0 degrees 03 minutes 39 seconds East, alo[redacted] East line for a distance of 234.15 feet to a point on the said South right-of-way line; thence continuing South 0 degrees 03 minutes 39 seconds East for a distance of 1483.31 feet to the true point of beginning;

EXCEPT the East 305 feet of the South 305 feet thereof; and

EXCEPT one-half of the minerals and mineral rights and mineral estates of every kind and nature, as set forth in Deed recorded in Docket 11652, page 52, Maricopa County Records.

Parcel No. 13: The North half of the South half of the Northwest quarter of the Northwest quarter of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

II. Hassayampa Pumping Station and Effluent Pipeline

All real property, leases, licenses, easements, rights-of-way and other property held by Title USA Company of Arizona Trust No. 530 established by that certain Trust Agreement dated October 15, 1975, as amended, but excluding therefrom all improvements.

III. Miscellaneous Real Property Interests

Those ANPP Project Agreements (as defined in the ANPP Participation Agreement), other than the Trust Agreement for Title USA Company of Arizona Trust 530, consisting of leases, licenses, easements, and permits, which provide land and land rights for (a) the pipeline to supply waste waster effluent to PVNGS from the 91st Avenue sewage treatment plant serving the Phoenix Metropolitan area and (b) railroad access to the Nuclear Plant Site (as defined in the ANPP Partici[redacted] Agreement).

SCHEDULE 7
TO
FACILITY LEASE

DESCRIPTION OF UNDIVIDED INTEREST

A. A 2.153647% undivided interest in Unit 2 of the Palo Verde Nuclear Generating Station (PVNGS), located in Maricopa County, Arizona, approximately 55 miles west of the City of Phoenix, Arizona, and approximately 16 miles west of the City of Buckeye, Arizona, consisting of:

I. Unit 2 Combustion Engineering "System 80" pressurized water reactor nuclear steam supply system (the NSSS). The NSSS is comprised of a reactor vessel containing 241 fuel assemblies with approximately 100 tons of enriched uranium (fuel assemblies, however, are not part of Unit 2 and are not included in the Undivided Interest being sold), two steam generators, four reactor coolant pumps and various additional systems and subsystems. The licensed thermal rating of the NSSS is 3800 MW.

II. Unit 2 GE TC6F-43, 1800 RPM tandem-compound, six flow, reheat turbine-generator including turbine, generator, moisture separator-reheater, exciter, controls, and auxiliary subsystems. The turbine-generator is conductor cooled and rated at 1,554 MVA at 24.000 V, 3 phase, 60 Hz, 1.5 in Hg ABS back pressure, and approximately 1,363 MW maximum gross electric output.

III. Unit 2 146 ft. inside diameter, steel-lined, pre-stressed concrete cylindrical containment building with a hemispherical dome designed for 60 psig. The containment building houses the reactor system.

IV. Unit 2 auxiliary systems and equipment including engineered safeguards systems, reactor auxiliary systems and turbine-generator auxiliary systems associated with items I, II, and III above, extending to and including the Unit 2 start-up transformer.

V. Unit 2 cooling tower system consisting of three (3) mechanical draft cooling towers, including a closed cycle circulating water system, make-up water systems and essential spray ponds.

VI. Unit 2 radioactive waste treatment system, including liquid, gaseous, and solid waste subsystems, controls, instrumentation, storage, handling and shipment facilities.

VII. Unit 2 emergency diesel-generator system, including a diesel-generator building which contains two diesel generators, fuel oil systems, storage tanks, control and instrumentation systems and other equipment.

VIII. Unit 2 internal communication systems, including associated interconnections and computer data links.

BUT EXCLUDING:

I. Nuclear fuel for Unit 2, including spare fuel assemblies, and nuclear waste.

II. Spare Parts (Unit 2).

III. Transmission facilities (including any and all facilities and equipment, providing interconnection between the Unit 2 turbine generator and the ANPP High Voltage Switchyard, including stepup transformers and standby equipment and systems).

IV. Oil and diesel fuel inventories (Unit 2).

B. A 0.727881% undivided interest in all PVNGS common facilities. *INCLUDING BUT NOT LIMITED TO:*

I. Surveillance systems, including associated radioactive monitoring systems and equipment.

II. Water treatment facilities and transport systems for supply of waste water effluent.

III. Related storage facilities and equipment (excluding Warehouses).

BUT EXCLUDING:

I. Nuclear fuel, including spare fuel assemblies, and nuclear waste.

II. Electrical power facilities including Construction Switchyard and all transmission and ANPP High Voltage Switchyard facilities.

III. Administration Building.

IV. Administration Annex Building.

V. Technical Support Center.

VI. Visitor Center.

VII. External communication systems and equipment, including associated interconnections and computer data links.

VIII. Parking lot improvements, road improvements, site improvements, fencing and dikes.

IX. Spare parts (Common Facilities).

X. Simulator.

XI. Oil and diesel fuel inventories.

XII. Evaporation Pond.

XIII. Guard house.

XIV. Coating facility.

XV. Fire pump house.

XVI. Radiation Instrument calibration lab.

XVII. Service building.

XVIII. Water treatment building.

XIX. Shooting range.

XX. WRF operations building.

XXI. Warehouses.

XXII. Real Property, beneficial interest in Title USA Company of Arizona Trust 530, and Project Agreement interests described in Schedule 6.

Trust Indenture, Mortgage, Security Agreement and Assignment of Rents

Dated as of December 1, 1986

between

THE FIRST NATIONAL BANK OF BOSTON,
not in its individual capacity, but solely
as Owner Trustee under a Trust
Agreement dated as of December 1, 1986,
with Chrysler Financial Corporation

and

FIRST CITY NATIONAL BANK OF HOUSTON,
as Indenture Trustee

Sale and Leaseback of an Undivided Interest in
Palo Verde Nuclear Generating Station Unit 2
and Certain Common Facilities

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Appendix A — Definitions

TRUST INDENTURE, MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS dated as of December 1, 1986, between THE FIRST NATIONAL BANK OF BOSTON, a national banking association, not in its individual capacity, but solely as trustee under a Trust Agreement dated as of December 1, 1986 between FNB (whose address is 100 Federal Street, Boston, Massachusetts 02110) and Chrysler Financial Corporation, and FIRST CITY NATIONAL BANK OF HOUSTON, a national banking association, whose address is First City Financial Center, 1301 Fannin Street, 21st Floor, Houston, Texas 77002.

WITNESSETH:

WHEREAS, the Owner Trustee has entered into a Participation Agreement, dated as of December 1, 1986 among the Owner Participant, El Paso Funding Corporation, a Delaware corporation, El Paso Electric Company, a Texas corporation (*El Paso*), and the Indenture Trustee;

WHEREAS, the Owner Trustee, acting on behalf of the Owner Participant, pursuant to the Trust Agreement and the Participation Agreement, intends to purchase the Undivided Interest and the Real Property Interest from El Paso and lease the Undivided Interest and the Real Property Interest to El Paso pursuant to the Facility Lease;

WHEREAS, in order to finance a portion of the Purchase Price of the Undivided Interest, the Owner Trustee desires to issue its promissory notes hereunder with such promissory notes to be substantially in the form of Exhibits A-1, A-2 and A-3 hereto;

WHEREAS, in the circumstances contemplated by Sections 2(c), 2(d) and 2(e) of the Participation Agreement, the Owner Trustee may desire to finance a greater portion of the Purchase Price of the Undivided Interest than the portion financed from the proceeds of the Initial Series Notes (but in no event in an amount in excess of 80% of said Purchase Price) and in connection therewith to issue its promissory note or notes or to change the amortization of any Notes;

WHEREAS, in order to finance all or a portion of the Supplemental Financing Amount of Capital Improvements and to refund Notes of any series previously issued, the Owner Trustee may desire to issue additional promissory notes hereunder (together with the Releveraging Notes and the Refunding Notes, the *Additional Notes)* secured on a *pari passu* basis with other Notes Outstanding from time to time;

WHEREAS, in order to secure the obligations referred to herein, the Owner Trustee desires to grant to the Indenture Trustee the security interest herein provided and the parties hereto desire that this Indenture be regarded as a "security agreement" and as a "financing statement" for such security agreement under the Uniform Commercial Code;

NOW, THEREFORE, in consideration of the premises, of the acceptance by the Indenture Trustee of the trusts hereby created and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

CONSTRUCTION, GOVERNING LAW, INTERPRETATION AND DEFINITIONS

SECTION 1.1. *Governing Law.*

This Indenture (i) is being executed and delivered in the State of New York, (ii) shall be deemed to be a contract made in such State and (iii) for all purposes shall be construed in accordance with and governed by the laws of the State of New York, except to the extent to which the laws of the State of Arizona are mandatorily applicable hereto.

SECTION 1.2. *Headings and Table of Contents.*

The division of this Indenture into articles and sections, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Indenture.

SECTION 1.3. *Definitions; Construction of References.*

In this Indenture, unless the context otherwise requires:

(a) the term *this Indenture* means this instrument together with all exhibits, appendices and schedules hereto as originally executed and as it may from time to time be supplemented or amended by one or more indentures supplemental hereto pursuant to the provisions hereof;

(b) all references in this instrument to designated Articles, Sections and other subdivisions are to designated Articles, Sections and other subdivisions of this instrument unless otherwise indicated;

(c) all accounting terms not otherwise defined herein shall have the meanings assigned to them in accordance with generally accepted accounting principles;

(d) capitalized terms used herein which are not otherwise defined herein shall have the meanings set forth in Appendix A hereto, and the rules of construction set forth in Appendix A hereto shall be applicable hereto; and

(e) to the extent different from Appendix A hereto, the definitions of Deemed Loss Event, Event of Loss, Economic Useful Life and Final Shutdown (including for purposes of such definitions all defined terms contained in or relating to any of such definitions) shall have the respective meanings set forth in or appended to the Facility Lease as amended from time to time in accordance with its terms.

SECTION 1.4. *Disclosure of Beneficiaries.*

Pursuant to Arizona Revised Statutes Section 33-401, (i) the beneficiary of the Trust Agreement Chrysler Financial Corporation, a Michigan corporation, whose address is Greenwich Office Par Greenwich, Connecticut 06836, Attention: Leasing and Investment Services and (ii) the beneficiary of this Indenture is the Holder of the Notes, El Paso Funding Corporation, whose address is Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801 and, by pledge and assignment, First City National Bank of Houston, as trustee under the Collateral Trust Indenture, whose address is First City Financial Center, 1301 Fannin Street, 21st Floor, Houston, Texas 77002: Attention: Corporate Trust Department. Copies of the Trust Agreement and this Indenture are available for inspection at the Indenture Trustee's office.

ARTICLE II

SECURITY

SECTION 2.1. *Grant of Security Interest; Mortgage.*

As security for the due and punctual payment of the principal of and premium, if any, and interest on the Notes according to their respective terms and effect and the performance and observance by the Owner Trustee of all the covenants and agreements made by it or on its behalf in the Notes, the Participation Agreement and this Indenture, the Owner Trustee does by its execution and delivery hereof hereby grant a security interest in and grant, bargain, convey, warrant, assign, transfer, mortgage, pledge and set over unto the Indenture Trustee, and to its successors and assigns in trust, the following (the *Lease Indenture Estate*):

(1) all right, title and interest of the Owner Trustee in, to and under the Facility Lease recorded December , 1986 as Instrument No. , records of Maricopa County, Arizona, to the extent, and only to the extent, constituting Rent (including, without limitation,

Basic Rent, payments of Casualty Value, Termination Value and Special Casualty Value, and payments under and pursuant to Sections 13(c) and 16 of the Facility Lease) (the *Assigned Payments*), together with all rights, powers and remedies on the part of the Owner Trustee arising under the Facility Lease to demand, collect or receive the Assigned Payments;

(2) all moneys and securities deposited or required to be deposited with the Indenture Trustee pursuant to any term of this Indenture and held or required to be held by the Indenture Trustee hereunder;

(3) all profits, revenues and other income of all property from time to time subjected to the lien of this Indenture, and all right, title and interest of every nature whatsoever of the Owner Trustee in and to the same and every part thereof;

(4) all right, title and interest of the Owner Trustee in and to any right to restitution from the Lessee in respect of any determination of invalidity of the Facility Lease; and

(5) all proceeds of the foregoing;

but excluding, however, from the Lease Indenture Estate any and all Excepted Payments; and *subject, however,* to (i) the terms and provisions of this Indenture and (ii) the rights of the Lessee under the Facility Lease.

To the extent that any portion of the Lease Indenture Estate constitutes fixtures or real property, this Indenture constitutes a realty mortgage and an assignment of rents with respect to all such items of real property and in addition to all other rights or remedies set forth in this Indenture, the Indenture Trustee shall have, to the extent not inconsistent with this Indenture, all of the rights, remedies and benefits of a mortgagee of real property under Applicable Law, including, without limitation, the rights and remedies pursuant to Arizona Revised Statutes § 33-702.B and the Owner Trustee shall be deemed a mortgagor with respect to such items.

TO HAVE AND TO HOLD all the aforesaid properties, rights and interests unto the Indenture Trustee, its successors and assigns forever, but in trust, nevertheless, for the use and purposes and with the power and authority and subject to the terms and conditions mentioned and set forth in this Indenture.

UPON CONDITION that, unless and until an Indenture Event of Default shall have occurred and be continuing, the Owner Trustee shall be permitted, to the exclusion of the Indenture Trustee, to possess and use the Lease Indenture Estate and exercise all rights with respect thereto and, without limitation of the foregoing, the Owner Trustee may exercise all of its rights under the Facility Lease to the same extent as if its right, title and interest therein had not been assigned to the Indenture Trustee to the extent set forth above, except that the Indenture Trustee shall receive all payments of Assigned Payments and all moneys and securities required to be held by or deposited with the Indenture Trustee hereunder.

It is expressly agreed that, anything herein contained to the contrary notwithstanding, the Owner Trustee shall remain obligated to the Lessee under the Facility Lease to perform all of the Owner Trustee's obligations thereunder in accordance with and pursuant to the terms and provisions thereof, and the Indenture Trustee shall not be required or obligated in any manner, except as expressly provided herein, to perform or fulfill any obligations of the Owner Trustee under the Facility Lease or to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim, or to take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

The Owner Trustee hereby warrants and represents that it has not assigned or pledged any of its right, title or interest in and to the Lease Indenture Estate to anyone other than the Indenture Trustee.

SECTION 2.2. *Payments Under the Facility Lease.*

The Facility Lease provides that (i) all payments constituting Assigned Payments shall be made to the Indenture Trustee at such office in New York, N.Y. of Mellon Trust Company, or of such other bank or trust company in New York, N.Y., all as the Indenture Trustee shall specify in writing to the Lessee, (ii) all other payments other than Excepted Payments shall be made to the Lessor at such address as the Lessor may direct by notice in writing to the Lessee, and (iii) all Excepted Payments shall be made to the Person entitled to receive such payments. The Owner Trustee agrees that, so long as any Notes shall be Outstanding hereunder, all payments described in clause (i) above shall be directed to be made to the Indenture Trustee or in accordance with the Indenture Trustee's instruction and that if it should receive any such payments or any proceeds for or with respect to the Lease Indenture Estate or otherwise constituting part of the Lease Indenture Estate, it will promptly forward such payments to the Indenture Trustee or in accordance with the Indenture Trustee's instructions. The Indenture Trustee agrees to apply payments from time to time received by it (from the Lessee, the Owner Trustee or otherwise) with respect to the Lease Indenture Estate in the manner provided in Section 3.11 and Article V.

SECTION 2.3. *Release of Lien on Lease Indenture Estate.*

(a) Upon receiving evidence satisfactory to the Indenture Trustee that (i) it has received, or provision has been made in accordance with paragraph (c) of this Section 2.3 for, full payment of all principal of and premium, if any, and interest on the Notes and any other sums payable to the Indenture Trustee and the Holders of the Notes under this Indenture or the Facility Lease, and (ii) all Trustee's Expenses shall have been paid in full or provision satisfactory to the Indenture Trustee shall have been made for such payment,

(A) the security interest and all other estate and rights granted by this Indenture shall cease and become null and void and all of the property, rights and interests included in the Lease Indenture Estate shall revert to and revest in the Owner Trustee *without any other act or formality whatsoever*, and

(B) the Indenture Trustee shall, at the request of the Owner Trustee, execute and deliver to the Owner Trustee such termination statements, releases or other instruments presented to the Indenture Trustee by or at the direction of the Owner Trustee as shall be requisite to evidence the satisfaction and discharge of this Indenture and the lien hereby created with respect to the Lease Indenture Estate, to release or reconvey to the Owner Trustee or as directed by the Owner Trustee all the Lease Indenture Estate, freed and discharged from the provisions herein contained with respect thereto, and to release the Owner Trustee from its covenants herein contained.

(b) Upon receipt by the Indenture Trustee of the Assumption Agreement and other documents and opinions described in Section 3.9(b), (i) the security interest and all other estate and rights granted by this Indenture by or on behalf of the Owner Trustee shall cease and become null and void and all of the property, rights and interests included in the Lease Indenture Estate shall revert to and revest in the Owner Trustee without any other act or formality whatsoever and (ii) the Indenture Trustee shall, at the request of the Owner Trustee, execute and deliver to the Owner Trustee such termination statements, releases or other instruments presented to the Indenture Trustee by or at the direction of the Owner Trustee as shall be requisite to evidence the satisfaction and discharge of this Indenture as to the Owner Trustee and the lien hereby created with respect to the Lease Indenture Estate, to release or reconvey to the Owner Trustee or as directed by the Owner Trustee all the Lease Indenture Estate, freed and discharged from the provisions herein contained with respect thereto, and to release the Owner Trustee from its covenants herein contained.

(c) Any Note shall, prior to the maturity or redemption date thereof, be deemed to have been paid within the meaning and with the effect expressed in this Section 2.3(c) if (i) there shall have been deposited with the Indenture Trustee either moneys in an amount which shall be sufficient, or direct obligations of or obligations the principal of and interest on which are unconditionally

guaranteed by the United States of America or certificates of an ownership interest in the principal of or interest on obligations of or guaranteed as to principal and interest by the United States of America *(Federal Securities)*, in each case which shall not contain provisions permitting the redemption thereof at the option of the issuer, the principal of and the interest on which when due, and without any reinvestment thereof, will provide moneys in an amount which shall be sufficient, together with the moneys, if any, deposited with or held by the Indenture Trustee at the same time (such sufficiency to be established by the delivery to the Indenture Trustee of a certificate of an independent public accountant), to pay when due the principal of and premium, if any, and interest due and to become due on said Note on and prior to the redemption date or maturity date thereof, as the case may be, and (ii) in the event said Note does not mature or is not to be redeemed within the next 45 days, the Indenture Trustee shall have been given irrevocable instructions to give, as soon as practicable, a notice to the registered Holder of such Note that the deposit required by subclause (i) above has been made with the Indenture Trustee and that said Note is deemed to have been paid in accordance with this Section 2.3(c) and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal of and premium, if any, and interest on said Note. Neither the Federal Securities nor moneys deposited with the Indenture Trustee pursuant to this Section 2.3(c) or principal or interest payments on any such Federal Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and premium, if any, and interest on said Note; *provided, however*, that any cash received from such principal or interest payments on such Federal Securities deposited with the Indenture Trustee shall be reinvested pursuant to Section 8.8 in Federal Securities. At such time as any Note shall be deemed paid as aforesaid, it shall no longer be secured by or entitled to the benefits of the Lease Indenture Estate or this Indenture, *except* that such Note shall be entitled to the benefits of the portions of the Lease Indenture Estate described in Granting Clauses (2), (3) and (5), to the extent such portions relate to such moneys or Federal Securities deposited with the Indenture Trustee.

(d) So long as any Note as to which this Indenture has been discharged remains unpaid, this Indenture shall continue in effect with respect to such Note solely with respect to rights of registration of transfer, exchange or replacement of such Note, rights to receive payment of the principal thereof and premium, if any, and interest thereon in accordance with the terms of this Indenture from such deposited funds or the proceeds of or interest on such Federal Securities and the correlative rights and responsibilities of the Indenture Trustee; *provided, however*, that following such discharge, no claim for payment of principal of or premium, if any, or interest on such Note shall be made against the Owner Trustee or the Lease Indenture Estate other than as provided in this Section; *provided further*, that the Owner Trustee, following such discharge, shall be released from any further duties or obligations under this Indenture and, except as expressly provided therein, any other Transaction Document.

SECTION 2.4. *Power of Attorney.*

Subject to the other terms of this Indenture, the Owner Trustee hereby appoints, effective whenever an Indenture Event of Default shall have occurred and be continuing, the Indenture Trustee the Owner Trustee's attorney-in-fact, irrevocably, with full power of substitution, to collect, ask, require, demand, receive and give acquittance for any and all moneys and claims for moneys due and to become due to the Owner Trustee under or arising out of the Lease Indenture Estate, to endorse any checks or other instruments or orders in connection therewith, and to take any action (including the filing of financing statements or other documents) or institute any proceedings which the Indenture Trustee may deem to be necessary or appropriate to protect and preserve the interest of the Indenture Trustee in the Lease Indenture Estate. Prior to any exercise by it (acting as attorney in fact for the Owner Trustee) of the powers, authority or rights granted by this Section 2.4, the Indenture Trustee will give three Business Days' prior written notice to the Owner Trustee and the Owner Participant.

ARTICLE III

ISSUE, EXECUTION, AUTHENTICATION, FORM AND REGISTRATION OF NOTES

SECTION 3.1. *Limitation on Notes.*

No Notes may be issued under the provisions of, or become secured by, this Indenture except in accordance with the provisions of this Article III. No Note shall be issued in an original principal amount of less than $150,000.

SECTION 3.2. *Execution of Notes.*

All Notes shall be manually executed on behalf of the Owner Trustee by one of its Responsible Officers. In case any Responsible Officer of the Owner Trustee who shall have executed any of the Notes shall cease to be such a Responsible Officer before such Notes so executed shall have been authenticated by the Indenture Trustee and delivered or disposed of by the Owner Trustee, such Notes nevertheless may be authenticated and delivered or disposed of as though the person who executed such Notes had not ceased to be such a Responsible Officer of the Owner Trustee; and any Note may be executed on behalf of the Owner Trustee by such person as, at the actual time of execution of such Note, shall be a Responsible Officer of the Owner Trustee, although at the date of such Note any such person was not such a Responsible Officer.

SECTION 3.3. *Effect of Certificate of Authentication.*

Only such Notes as shall bear thereon a certificate of authentication substantially in the following form manually executed by the Indenture Trustee shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate of authentication of the Indenture Trustee upon any Note executed by the Owner Trustee shall be conclusive evidence that the Note so authenticated was duly issued, authenticated and delivered under this Indenture:

This Note is one of the series of Notes referred to therein and in the within-mentioned Indentu

FIRST CITY NATIONAL BANK OF HOUSTON
as Indenture Trustee,

By: _____
Authorized Officer

SECTION 3.4. *Creation of the Initial Series Notes; Aggregate Principal Amount, Dating and Terms.*

(a) There is hereby created and established a separate series of Notes of the Owner Trustee designated: "Nonrecourse Promissory Note, Initial Series," which will be substantially in the forms of Exhibits A-1, A-2 and A-3 hereto, and are herein referred to as the "*Initial Series Notes.*"

(b) Subject to the provisions of Section 3.10, the aggregate principal amount of the Initial Series Notes issued by the Owner Trustee and authenticated and delivered by the Indenture Trustee hereunder shall not exceed $76,400,000.

(c) The Initial Series Notes shall be executed and issued by the Owner Trustee and authenticated and delivered by the Indenture Trustee on the date and to the Person specified by the Owner Trustee in its request and authorization for issuance, shall be dated the date specified by the Owner Trustee in its request and authorization for issuance, and shall be in the form of registered Notes, registered in the name of the Person designated in the Owner Trustee's request and authorization for issuance or its registered assigns.

(d) The Initial Series Notes shall bear interest on the principal amounts thereof from time to time Outstanding from the date thereof until paid at the rates of interest set forth in the forms of the Initial Series Notes. The principal amounts of the Initial Series Notes shall be payable as set forth in the Schedules of Principal Payments attached thereto. Interest on the Initial Series Notes shall be due and payable on the dates specified in the forms of the Initial Series Notes.

SECTION 3.5. *Additional Notes.*

(1) Subject to Section 3.6, Additional Notes of the Owner Trustee may be issued under and secured by this Indenture, at any time or from time to time, in addition to the Initial Series Notes and subject to the conditions hereinafter provided in this Section, for cash in the amount of the original principal amount of such Additional Notes, for the purpose of (i) refunding any previously issued series of Notes, in whole or in part and/or (ii) providing funds for the payment of all or any portion of the Supplemental Financing Amount relating to Capital Improvements made or installed from time to time pursuant to the Facility Lease and/or (iii) providing funds to be paid to the Owner Trustee in the event of a partial return of the Investment to the Owner Trustee as contemplated by Section 2(c) or 2(d) of the Participation Agreement; *provided, however,* that in the case of Notes issued for the purposes set forth in clause (i) or (iii) of this Section 3.5(1), no Note shall be issued by the Owner Trustee pursuant to this Section 3.5 unless Section 2(c) and/or 2(d) of the Participation Agreement (if applicable) shall have been complied with.

(2) Before any Additional Notes shall be issued under the provisions of this Section 3.5, the Owner Trustee shall have received from the Owner Participant, and delivered to the Indenture Trustee not less than 10 nor more than 30 days prior to the proposed date of issuance of such Additional Notes as set forth in the below-mentioned request and authorization, a request and authorization to issue Additional Notes, which request and authorization shall include the amount of such Additional Notes, the date of issuance of such Additional Notes and details with respect thereto which are not inconsistent with this Section. Additional Notes shall have a designation so as to distinguish such Additional Notes from the Initial Series Notes but otherwise shall be substantially similar in terms to the Initial Series Notes, shall specify maturity date, rank *pari passu* with all Notes then Outstanding, be dated their respective dates of authentication, bear interest at such rates (which may be fixed or floating) as shall be indicated in the aforementioned request and authorization, and shall be stated to be payable by their terms not later than the last day of the Basic Lease Term.

(3) Except as to any differences in the maturity dates and amortization schedules of the Additional Notes or the rate or rates of interest thereon and the date or dates such interest is payable or the provisions for redemption with respect thereto, if any, such Additional Notes shall be on a parity with, and shall be entitled to the same benefits and security of this Indenture as, other Notes issued pursuant to the terms hereof.

(4) The terms, conditions and designations of such Additional Notes (which shall be consistent with this Indenture) shall be set forth in an indenture supplemental to this Indenture executed by the Owner Trustee and the Indenture Trustee. Such Additional Notes shall be executed as provided in Section 3.2 and deposited with the Indenture Trustee for authentication, but before such Additional Notes shall be authenticated and delivered by the Indenture Trustee there shall be filed with the Indenture Trustee, in addition to the other documents and certificates required by this Section 3.5, the following, all of which shall be dated as of the date of the supplemental indenture:

(a) a copy of such supplemental indenture (which shall include the form of such series of Notes in respect thereof);

(b) such additional documents, certificates and opinions as shall be reasonably requested by, and acceptable to, the Owner Trustee and the Indenture Trustee;

(c) a request and authorization to the Indenture Trustee by or on behalf of the Owner Trustee to authenticate and deliver such Additional Notes to or upon the order of the Person or Persons noted in such request at the address set forth therein, and in such principal amounts as are stated therein, upon payment to the Indenture Trustee, but for the account of the Owner Trustee, of the sum or sums specified in such request and authorization; and

(d) an opinion of counsel to the effect that the conditions precedent required under this Indenture for the issuance of such Additional Notes have been complied with.

When the documents referred to in the foregoing clauses (a) through (d) above shall have been filed with the Indenture Trustee and when the Additional Notes described in the above-mentioned order and authorization shall have been executed and authenticated as required by this Indenture, the Indenture Trustee shall deliver such Additional Notes in the manner described in clause (c) above, but only upon payment to the Indenture Trustee of the sum or sums specified in such request and authorization.

SECTION 3.6. *Security for and Parity of Notes.*

All Notes issued and Outstanding hereunder shall rank on a parity with each other and shall as to each other be secured equally and ratably by this Indenture, without preference, priority or distinction of any thereof over any other by reason of difference in time of issuance or otherwise.

SECTION 3.7. *Source of Payments Limited.*

All payments to be made by the Owner Trustee under this Indenture or on the Notes shall be made only from the Lease Indenture Estate and the Trust Estate. Each Holder of a Note, by its acceptance of such Note, and the Indenture Trustee agree that they will look solely to the Trust Estate and the income and proceeds from the Lease Indenture Estate to the extent available for distribution to such Holder or the Indenture Trustee as herein provided and that neither the Owner Participant nor, except as expressly provided in this Indenture, the Owner Trustee nor the Indenture Trustee, shall be personally liable to such Holder of a Note or the Indenture Trustee, as the case may be, for any amounts payable hereunder or under such Note; *provided, however,* that in the event that the Lessee shall assume all the obligations and liabilities of the Owner Trustee hereunder and under the Notes pursuant to Section 3.9(b), then all payments to be made under this Indenture and the Notes shall be made only from payments made by the Lessee under the Notes in accordance with the Assumption Agreement referred to in Section 3.9(b) and each Holder of a Note and the Indenture Trustee agree that in such event they will look solely to the Lessee for such payment. Nothing herein contained shall be interpreted as affecting the duties and obligations of the Indenture Trustee set forth in Section 7.4.

In furtherance of the foregoing, to the fullest extent permitted by law, each Holder of a Note (and each assignee of such Person), by its acceptance thereof, and the Indenture Trustee agree, as a condition to the Notes being secured under this Indenture, that neither such Holder nor the Indenture Trustee will exercise any statutory right to negate the agreements set forth in this Section 3.7.

SECTION 3.8. *Place and Medium of Payment.*

The principal of and premium, if any, and interest on each Note shall be payable at the Indenture Trustee's Office in immediately available funds in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Notwithstanding the foregoing or any provision in any Note to the contrary, if so requested by the Holder of any Note, by written notice to the Indenture Trustee, all amounts (other than the final payment) payable with respect to such obligation shall be paid by crediting the amount to be distributed to such Holder to an account maintained by such Holder with the Indenture Trustee or by the Indenture Trustee's transferring such amount by wire, with such wire transfer to be initiated by such time as to permit, to the extent practicable, oral confirmation thereof (specifying the wire number) to be given no later than 1:00 p.m. Houston time on the date scheduled for payment, but only to the extent of funds available for such wire transfer, to such other bank in the United States having wire transfer facilities, including a Federal Reserve Bank, as shall have been specified in such notice, for credit to the account of such Holder maintained at such bank, any such credit or transfer pursuant to this Section 3.8 to be in immediately available funds, without any presentment or surrender of such Note. Final payment of any such Note shall be made only against surrender of such Note at the Indenture Trustee's Office.

SECTION 3.9. *Prepayment of Notes; Assumption by Lessee; Notice of Assumption or Prepayment.*

(a) Notes shall be subject to prepayment (other than through application of the installment payments on such Notes) from time to time only as provided in this Indenture and as otherwise specifically provided, with respect to Notes of a particular series, in such Notes.

(b) In the event of the occurrence of an Event of Loss, declaration of a Deemed Loss Event, exercise of the Cure Option, exercise of the purchase option provided in Section 13(c) of the Facility Lease or exercise of the purchase option provided in Section 10(b)(3)(xvii) of the Participation Agreement, and upon receipt by the Indenture Trustee of the documents listed below, (i) all the obligations and liabilities of the Owner Trustee hereunder and under the Notes (including payments of accrued interest) shall be assumed by the Lessee, and (ii) the Owner Trustee shall be released and discharged without further act or formality whatsoever from all obligations and liabilities hereunder and under the Notes:

(1) a duly executed Assumption Agreement substantially in the form of Exhibit B hereto;

(2) an opinion of counsel addressed to the Indenture Trustee and the Holders of the Outstanding Notes, to the effect that the conditions precedent required by this Indenture for such assumption have been complied with, that the Assumption Agreement has been duly authorized, executed and delivered on behalf of the Lessee, that no Governmental Action is necessary or required in connection therewith (or if any such Governmental Action is necessary or required, that the same has been duly obtained and is in full force and effect), and that the Assumption Agreement is a legal, valid and binding agreement and obligation of the Lessee, enforceable in accordance with its terms (except as limited by bankruptcy, insolvency or similar laws of general application affecting the enforcement of creditors' rights generally and equitable principles);

(3) copies of all Governmental Actions referred to in such opinion;

(4) an indenture supplemental to this Indenture which shall, among other things, if the Lessee shall so request, grant to the Indenture Trustee a Lien on all of the Owner Trustee's right, title and interest in and to the Undivided Interest and the Real Property Interest, which supplemental indenture shall, in either case, confirm the release of the Owner Trustee and the Lease Indenture Estate thereby effected and may contain provisions appropriately amending references to the Facility Lease in this Indenture;

(5) a certificate of a Responsible Officer of the Lessee stating that, to the best of his knowledge, (i) the conditions precedent required by this Indenture for such assumption have been complied with, (ii) no Indenture Event of Default has occurred and is continuing, (iii) such assumption is permitted by the provisions of the Lessee's Articles of Incorporation and By-Laws

and (iv) the Lessee is not insolvent within the meaning of any applicable preferential transfer, fraudulent conveyance or bankruptcy law; and

(6) a certificate of a Responsible Officer of the Owner Trustee stating that, to the best of [redacted] knowledge, no Indenture Event of Default has occurred and is continuing.

(c) The Notes shall be prepaid on the date of the termination of the Facility Lease pursuant to Section 14(b) or 14(d) thereof at a price equal to their outstanding principal amount, premium, if any, and accrued interest to, but not including, the date of prepayment.

(d) Notice of any assumption or prepayment of Notes shall be given to the registered Holders of the Notes which have been assumed or are to be prepaid (and any assignee of a registered Holder which has given the Indenture Trustee written notice of such assignment) as promptly as practicable after the Indenture Trustee is notified thereof, and, in the event of the exercise by the Lessee or the Owner Trustee, as the case may be, of its option to terminate the Facility Lease pursuant to Section 14(b) or 14(d) thereof, in no event less than 30 days before the date fixed for prepayment (provided the Indenture Trustee receives such notification at least three Business Days before such 30th day).

(e) If the assumption described in paragraph (b) above has not occurred, then, as required by Section 9(j) of the Facility Lease, not less than 2 Business Days prior to any Special Transfer, the Owner Trustee will execute and deliver to the Indenture Trustee an Undivided Interest Indenture Supplement substantially in the form of Exhibit C hereto.

SECTION 3.10. *Mutilated, Destroyed, Lost or Stolen Notes.*

If any Note shall become mutilated or shall be destroyed, lost or stolen, the Owner Trustee shall, upon the written request of the Holder of such Note, execute, and the Indenture Trustee shall authenticate and deliver in replacement thereof, a new Note, payable in the same original princi[redacted] amount and dated the same date and of the same series as the Note so mutilated, destroyed, lost[redacted] stolen. The Indenture Trustee shall make a notation on each new Note of the amount of all payments of principal theretofore made on the Note so mutilated, destroyed, lost or stolen and the date to which interest on such old Note has been paid. If the Note being replaced has been mutilated, such Note shall be delivered to the Indenture Trustee who shall then deliver a certificate of destruction of the type required by Section 4.3. If the Note being replaced has been destroyed, lost or stolen, the Holder of such Note shall furnish to the Lessee, the Owner Trustee and the Indenture Trustee a bond or surety agreement of such Holder as shall be satisfactory to them to save the Lessee, the Owner Trustee, the Indenture Trustee, the Trust Estate and the Lease Indenture Estate harmless from any loss, however remote, including claims for principal of, and premium, if any, and interest on the purportedly destroyed, lost or stolen Note, together with evidence satisfactory to the Lessee, the Owner Trustee and the Indenture Trustee of the destruction, loss or theft of such Note and of the ownership thereof; *provided, however*, that if the Holder of such Note is the Collateral Trust Trustee, the unsecured written undertaking of the Collateral Trust Trustee, in its individual capacity, shall be sufficient indemnity for purposes of this Section.

SECTION 3.11. *Allocation of Principal and Interest.*

In the case of each Note, each payment of principal thereof and interest thereon shall be applied, *first*, to the payment of accrued but unpaid interest on such Note (as well as any interest on overdue principal or, to the extent permitted by law, interest) to the date of such payment, *second*, to the payment of the principal amount of, and premium, if any, on such Note then due (including any overdue installment of principal) thereunder and *third*, the balance, if any, remaining thereafter, to the balance of the payment of the principal amount of, and premium, if any, on such Note.

SECTION 3.12. *Certain Adjustments to Amortization Schedules of Initial Series Notes.*

The schedules of principal amortization attached to the Initial Series Notes may be adjusted at the discretion of the Owner Trustee at one time prior to June 30, 1990; *provided, however,* that no such adjustment shall be made by the Owner Trustee which will increase or reduce the average life of any stated maturity of principal of the Initial Series Notes (calculated in accordance with generally accepted financial practice from the date of initial issuance) by more than six months; *provided further, however,* such adjustment only may be made in connection with an adjustment to Basic Rent pursuant to Section 3(d) of the Facility Lease. If the Owner Trustee shall elect to make the foregoing adjustment, the Owner Trustee shall deliver to the Indenture Trustee and to the Lessee at least 60 days prior to the first payment date (specified on the schedules thereto) proposed to be affected by such adjustment, a certificate of the Owner Trustee (x) stating that the Owner Trustee has elected to make such adjustment, (y) setting forth the revised schedules of principal amortization and (z) attaching calculations showing that the average life of the Initial Series Notes will not be reduced or increased except as permitted by this Section 3.12. The Indenture Trustee may rely on such Owner Trustee certificate and shall have no duty with respect to the calculations referred to in the foregoing clause (z).

ARTICLE IV

REGISTRATION, TRANSFER, EXCHANGE, CANCELLATION AND OWNERSHIP OF NOTES

SECTION 4.1. *Register of Notes.*

The Indenture Trustee on behalf of the Owner Trustee shall maintain at the Indenture Trustee's office a register for the purpose of registration, and registration of transfer and exchange, of the Notes by series and in which shall be entered the names and addresses of the owners of such Notes and the principal amounts of the Notes owned by them, respectively.

SECTION 4.2. *Registration of Transfer or Exchange of Notes.*

A Holder of a Note intending to register the transfer of any Outstanding Note held by such Holder (including any transfer in the form of a pledge or assignment) or to exchange any Outstanding Note held by such Holder for a new Note or Notes of the same series may surrender such Outstanding Note at the Indenture Trustee's Office, together with the written request of such Holder, or of its attorney duly authorized in writing, in each case with signatures guaranteed, for the registration of such Note in the name of any pledgee or assignee (in the case of a transfer in the form of a pledge or assignment) or for the issuance of a new Note or Notes of the same series, specifying the authorized denomination or denominations of any new Note or Notes to be issued and the name and address of the Person or Persons in whose name or names the Note or Notes are to be registered (either as pledgee or assignee or as owner). Promptly upon receipt by the Indenture Trustee of the foregoing and satisfaction of the requirements of Sections 4.5 and 4.6, the Indenture Trustee shall register such Note or Notes in the name or names of the Person or Persons as shall be specified in the written request and, in the case in which a new Note or Notes are to be issued, the Owner Trustee shall execute and the Indenture Trustee shall authenticate and deliver such new Note or Notes of the same series, in the same aggregate principal amount and dated the same date as the Outstanding Note surrendered, in such authorized denomination or denominations as shall be specified in the written request. The Indenture Trustee shall make a notation on each new Note of the amount of all payments of principal theretofore made on the old Note or Notes in exchange or transfer for which any new Note has been issued and the date to which interest on such old Note or Notes has been paid.

SECTION 4.3. *Cancellation of Notes.*

All Notes surrendered to the Indenture Trustee for payment in full, prepayment in full or registration of transfer or exchange shall be cancelled by it; and no Notes shall be issued in lieu thereof except as expressly permitted by this Indenture. The Indenture Trustee shall destroy cancelled Notes held by it in a manner satisfactory to the Owner Trustee and deliver a certificate of destruction to the Owner Trustee. If the Owner Trustee shall acquire any of the Notes, such acquisition shall not operate as a redemption of or the satisfaction of the indebtedness represented by such Notes unless and until the same shall be delivered to the Indenture Trustee for cancellation.

SECTION 4.4. *Limitation on Timing of Registration of Notes.*

The Indenture Trustee shall not be required to register transfers or exchanges of Notes on any date fixed for the payment or prepayment of principal of or interest on the Notes or during the fifteen days preceding any such date.

SECTION 4.5. *Restrictions on Transfer Resulting from Federal Securities Laws; Legend.*

If not prohibited by the Securities Act, each Note shall be delivered to the initial Holder thereof without registration of such Note under the Securities Act and without qualification of this Indenture under the Trust Indenture Act. Prior to any transfer of any Note, in whole or in part, to any Person other than the Collateral Trust Trustee, the Holder thereof shall furnish to the Lessee, the Indenture Trustee and the Owner Trustee an opinion of counsel, which opinion and which counsel shall be reasonably satisfactory to the Indenture Trustee, the Owner Trustee and the Lessee, to the effect that such transfer will not violate the registration provisions of the Securities Act or require qualification of this Indenture under the Trust Indenture Act, and all Notes issued hereunder shall be endorsed with a legend which shall read substantially as follows:

The Note has not been registered under the Securities Act of 1933 and may not be transferred, sold or offered for sale in violation of such Act.

SECTION 4.6. *Charges upon Transfer or Exchange of Notes.*

As a further condition to registration of transfer or exchange of any Note, the Indenture Trustee and the Owner Trustee may charge the Holder thereof for any stamp taxes or governmental charges required to be paid with respect to such registration of transfer or exchange.

SECTION 4.7. *Inspection of Register of Notes.*

The register of the Holders of the Notes referred to in Section 4.1 shall at all reasonable times be open for inspection by any Holder of a Note. Upon request by any Holder of a Note, or the Owner Trustee or the Lessee, the Indenture Trustee shall furnish such Person, at the expense of such Person, with a list of the names and addresses of all Holders of Notes entered on the register kept by the Indenture Trustee indicating the series, principal amount and number of each Note held by each such Holder.

SECTION 4.8. *Ownership of Notes.*

(a) Prior to due presentment for registration of transfer of any Note, the Owner Trustee and the Indenture Trustee may deem and treat the Holder of record of such Note as the absolute owner of such Note for the purpose of receiving payment of all amounts payable with respect to such Note and for all other purposes, and neither the Owner Trustee nor the Indenture Trustee shall be affected by any notice to the contrary.

(b) The Owner Trustee and the Indenture Trustee may, in their discretion, treat the Holder of record of any Note as the owner thereof without actual production of such Note for any purpose hereunder, except as provided in the last sentence of Section 3.8.

(c) Neither the Owner Trustee nor the Indenture Trustee shall be bound to take notice of or carry out the execution of any trust in respect of any Note, and may register the transfer of the same on the direction of the Holder of record thereof, whether named as trustee or otherwise, as though such Holder were the beneficial owner thereof.

(d) The receipt by the Holder of record of any Note of any payment of principal, premium or interest shall be a good discharge to the Owner Trustee and the Indenture Trustee for the same and neither the Owner Trustee nor the Indenture Trustee shall be bound to inquire into the title of any such Holder.

SECTION 4.9. *Paying Agent.*

The Owner Trustee agrees at all times to have in effect a Paying Agent which shall be a bank or trust company in New York, N.Y., as agent for purposes of making payments on the Notes. Mellon Trust Company has initially been appointed as the Paying Agent. The Paying Agent may not be replaced without the consent of the Indenture Trustee, which consent shall not be unreasonably withheld. The Indenture Trustee will notify the Collateral Trust Trustee of the name and address of any replacement Paying Agent. The making by the Paying Agent of any payment required to be made by the Indenture Trustee pursuant to Article III shall be deemed to be a payment by the Indenture Trustee for the purposes of Article III.

ARTICLE V

RECEIPT, DISTRIBUTION AND APPLICATION OF INCOME AND PROCEEDS FROM THE LEASE INDENTURE ESTATE

SECTION 5.1. *Basic Rent and Interest on Overdue Installments of Basic Rent.*

Except as otherwise provided in Section 5.3 or 5.7 and the fourth sentence of Section 6.8(a), each payment of Basic Rent, as well as any payment of Supplemental Rent representing interest on overdue installments of Basic Rent, received by the Indenture Trustee at any time, shall be distributed by the Indenture Trustee in the following order of priority: *first*, so much of such payment as shall be required to pay in full the aggregate amount of the payment or payments of principal and/or interest (as well as any interest on overdue principal or, to the extent permitted by law, interest) then due and unpaid on all Notes shall be distributed to the Holders of the Notes ratably, without priority of one over the other, in the proportion that the aggregate amount of such payment or payments then due and unpaid on all Notes held by each such Holder on such date bears to the aggregate amount of such payment or payments then due and unpaid on all Notes Outstanding on such date, without priority of interest over principal or principal over interest; and *second*, the balance, if any, of such payment remaining thereafter shall be distributed, concurrently with any distribution pursuant to clause *first* hereof, to the Owner Trustee or as the Owner Trustee may direct. If there shall not otherwise have been distributed on any date (or within any applicable period of grace), pursuant to this Section 5.1, the full amount then distributable pursuant to clause *first* of this Section 5.1, the Indenture Trustee shall distribute other payments of the character referred to in Sections 5.4 and 5.5 then held by it or thereafter received by it, except as otherwise provided in Section 5.3, to the Holders of all Notes to the extent necessary to enable it to make all the distributions then due pursuant to such clause *first*; *provided that* to the extent any distribution is made from amounts held pursuant to Section 5.4 and the Lessee subsequently makes the payment of Basic Rent or Supplemental Rent in respect of which such distribution was made, such payment of Basic Rent or Supplemental Rent shall, unless a Default or Event of Default shall have occurred and be continuing, be applied to the purpose for which such amount held pursuant to Section 5.4 had been held, *subject*, in all cases, to the terms of Section 5.4. The portion of each such payment made to the Indenture Trustee which is to be distributed by the Indenture Trustee in payment of Notes shall be applied in accordance with Section 3.11. Any payment received by the Indenture Trustee pursuant to Section 6.8 shall be distributed to the Holders of the

Notes, ratably, without priority of one over the other, in the proportion that the amount of such payment or payments then due and unpaid on all Notes held by each such Holder bears to the aggregate amount of the payments then due and unpaid on all Notes Outstanding. Amounts distributed by the Indenture Trustee pursuant to this Section 5.1 shall be distributed as promptly as practicable after such amounts are actually received by the Indenture Trustee; in the event the Indenture Trustee shall be directed to make payments to the Holder of any Note by wire transfer in accordance with Section 3.8, any amounts received by the Indenture Trustee after 1:00 p.m., Houston time, may be so distributed on the following Business Day.

SECTION 5.2. *Amounts Received as Result of Event of Loss, Deemed Loss Event, Exercise of Options to Terminate, Exercise of Cure Option.*

If an Event of Loss shall occur or Deemed Loss Event shall be declared or the Lessee shall exercise the Cure Option or the Lessee shall exercise its purchase option under Section 13(c) of the Facility Lease or Section 10(b)(3)(xvii) of the Participation Agreement, and if either the Assumption Agreement or the Undivided Interest Indenture Supplement shall have been executed and delivered, any amounts of Casualty Value, Special Casualty Value, Enhanced Casualty Value, Special Termination Value or Fair Market Sales Value received or held by the Indenture Trustee in respect of such Event of Loss or Deemed Loss Event or exercise of the Cure Option or such purchase option shall be distributed forthwith to the Owner Participant. If the Lessee or the Owner Trustee, as the case may be, shall exercise its option to terminate the Facility Lease pursuant to Section 14 thereof, then there shall be prepaid, on the date payments or proceeds with respect thereto are received by the Indenture Trustee (or as soon thereafter as practicable) under Section 14 of the Facility Lease, the unpaid principal amount of all Notes, together with the premium, if any, and all accrued but unpaid interest thereon to the date of such prepayment. Notice of such prepayment shall be given as provided in Section 3.9(d) and may provide that it is subject to receipt of funds for such prepayment. Except as otherwise provided in Section 5.3 or 5.7, any payments received and amounts realized by the Indenture Trustee upon exercise of the Lessee's or the Owner Trustee's option to terminate the Facility Lease under Section 14 thereof shall in each case be distributed on the date of prepayment provided in clauses *first*, *second* and *fifth* of Section 5.3.

SECTION 5.3. *Amounts Received After, or Held at Time of, Indenture Event of Default under Section 6.2.*

Except as otherwise provided in Section 5.7, all payments received and amounts realized by the Indenture Trustee in respect of the Lease Indenture Estate (including any amounts realized by the Indenture Trustee from the exercise of any remedies pursuant to the Facility Lease or Article VI of this Indenture) after an Indenture Event of Default referred to in Section 6.2 shall have occurred and be continuing and the Notes have been accelerated pursuant to Section 7.1, as well as all payments thereafter received or amounts then held by the Indenture Trustee as part of the Lease Indenture Estate, shall be distributed by the Indenture Trustee in the following order of priority:

first, so much of such payments or amounts as shall be required to reimburse the Indenture Trustee for any Trustee's Expenses (to the extent not previously reimbursed) and to pay the reasonable remuneration of the Indenture Trustee, shall be applied by the Indenture Trustee to such reimbursement and payment;

second, so much of such payments or amounts remaining as shall be required to pay in full the aggregate unpaid principal amount of all Notes, together with premium, if any, plus accrued but unpaid interest (as well as interest on overdue principal and, to the extent permitted by law, on overdue interest) thereon to the date of distribution, shall be distributed to the Holders of such Notes and in case the aggregate amount so to be distributed shall be insufficient to pay all such Notes in full as aforesaid, then ratably, without priority of one over the other, in the proportion that the aggregate unpaid principal amount of all such Notes held by each such Holder, together with premium, if any, plus accrued but unpaid interest thereon to the date of distribution bears

the aggregate unpaid principal amount of all Notes, together with premium. if any, plus accrued but unpaid interest thereon to the date of distribution;

third, so much of such payments or amounts remaining as shall be required to pay the present or former Holders of the Notes the amounts payable to them as Indemnitees (to the extent not previously reimbursed) shall be distributed to such Holders; and in case the aggregate amount so to be paid to all such Holders in accordance with this clause *third* shall be insufficient to pay all such amounts as aforesaid, then ratably, without priority of one over the other. in the proportion that the amount of such indemnity or other payments to which such Person is entitled bears to the aggregate amount of such indemnity or other payments to which all such Persons are entitled:

fourth, the balance, if any, of such payments or amounts remaining shall be applied to the payment of any other indebtedness at the time due and owing to the Indenture Trustee or the Holders of the Notes which this Indenture by its terms secures; and

fifth, the balance, if any, of such payments or amounts remaining thereafter shall be distributed to or upon the direction of the Owner Trustee.

SECTION 5.4. *Amounts Received for Which Provision is Made in a Transaction Document.*

Except as otherwise provided in Section 5.1, 5.3 or 5.7, any payments received by the Indenture Trustee in respect of the Lease Indenture Estate for which provision as to the application thereof is made in a Transaction Document shall be applied to the purpose for which such payment was made in accordance with the terms of such Transaction Document, as determined in the first instance from instructions or other information accompanying such payment or otherwise in accordance with instructions from the payor of such payments.

SECTION 5.5. *Amounts Received for Which No Provision is Made.*

Except as otherwise provided in Section 5.1, 5.3 or 5.7, any payments received and any amounts realized by the Indenture Trustee in respect of the Lease Indenture Estate (a) for which no provision as to the application thereof is made in a Transaction Document or elsewhere in this Article V shall be held by the Indenture Trustee as part of the Lease Indenture Estate, and (b) to the extent received or realized at any time after payment in full of the principal of and premium, if any, and interest on all the Notes, as well as any other amounts remaining as part of the Lease Indenture Estate after payment in full of the principal of and premium, if any, and interest on all the Notes, shall be distributed by the Indenture Trustee in the order of priority set forth in Section 5.3 (omitting clause *second* thereof).

SECTION 5.6. *Payments to Owner Trustee.*

Unless otherwise directed by the Owner Trustee, all payments to be made to the Owner Trustee hereunder shall be made to the Owner Participant by wire transfer of immediately available funds as soon as practicable but in any event no later than the close of business on the date of receipt (assuming the Indenture Trustee (at the office of any bank or trust company in New York, N.Y. specified by the Indenture Trustee in accordance with Section 11(b) of the Facility Lease) has received such funds prior to 12:30 p.m., New York time, on the same day), to such account at such bank or trust company as the Owner Participant shall from time to time designate in writing to the Indenture Trustee.

SECTION 5.7. *Excepted Payments.*

Anything in this Article V or elsewhere in this Indenture to the contrary notwithstanding, any Excepted Payment received at any time by the Indenture Trustee shall be distributed as promptly as practicable to the Person entitled to receive such Payment (such entitlement to be conclusively determined by reference to payment instructions from such Person).

ARTICLE VI

REPRESENTATIONS, WARRANTIES AND COVENANTS OF OWNER TRUSTEE; EVENTS OF DEFAULT; REMEDIES OF THE INDENTURE TRUSTEE

SECTION 6.1. *Representations, Warranties and Covenants of Owner Trustee.*

The Owner Trustee hereby covenants and agrees that (i) it will duly and punctually pay the principal of, and premium, if any, and interest on, the Notes in accordance with the terms thereof and this Indenture, (ii) it will not pledge, create a security interest in or mortgage, so long as this Indenture shall remain in effect, any of its estate, right, title or interest in and to the Lease Indenture Estate or otherwise constituting part of the Trust Estate, to anyone other than the Indenture Trustee, (iii) so long as this Indenture shall remain in effect, it will not purchase or agree to purchase any property or asset other than the Undivided Interest and the Real Property Interest and other than as contemplated by the Transaction Documents, (iv) it will not, except with the prior written concurrence of the Indenture Trustee or as expressly provided in or permitted by, this Indenture, or with respect to the Trust Agreement or any property not constituting part of the Lease Indenture Estate, take any action which would result in an impairment of any Note or the obligation of the Lessee to pay any amount under the Facility Lease which is part of the Lease Indenture Estate (not in any event including in respect of Excepted Payments) or any of the other rights or security created or effected thereby, or (v) issue, or incur any obligation in respect of, indebtedness for borrowed money except for its obligations in respect of Notes.

A signed copy of any amendment or supplement to the Trust Agreement shall be delivered by the Owner Trustee to the Indenture Trustee and the Lessee. This Indenture and the Lease Indenture Estate shall not be affected by any action taken under or in respect of the Trust Agreement except as otherwise provided in or permitted by this Indenture. The Owner Trustee may resign as Owner Trustee, appoint a successor Owner Trustee and take all necessary and proper action to constitute one or more Persons as co-trustee(s) jointly with the Owner Trustee or as separate trustee(s), all in accordance with the terms and conditions of Article IX of the Trust Agreement.

SECTION 6.2. *Indenture Events of Default.*

The term *Indenture Event of Default*, wherever used herein, shall mean any of the following events (whatever the reason for such Indenture Event of Default and whether it shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) any of the Events of Default specified in the following clauses of Section 15 of the Facility Lease: (1) clause (i)(y), except a failure of the Lessee to pay any amount which shall constitute an Excepted Payment; (2) clause (i)(x), except a failure of the Lessee to pay any amount which shall constitute an Excepted Payment or except where the Owner Trustee shall not have rescinded or terminated the Facility Lease pursuant to Section 16(a)(i) of the Facility Lease; or (3) clause (vii); or

(b) the rescission or termination of, or the taking of action by the Owner Trustee or the Owner Participant the effect of which would be to rescind or terminate, the Facility Lease, whether pursuant to Section 16(a)(i) of the Facility Lease or otherwise; or

(c) any failure by the Lessee to perform and observe Section 10(b)(3)(iii) of the Participation Agreement; or

(d) the Owner Trustee shall fail to make any payment in respect of the principal of, or premium, if any, or interest on, the Notes within ten Business Days after the same shall have become due (other than by virtue of any failure by the Lessee to make any payment of Rent therefor); or

(e) the Owner Trustee shall fail to perform or observe any covenant or agreement to be performed or observed by it under Section 6.1, or the Owner Participant shall fail to perform or observe any covenant or agreement to be performed or observed by it under Section 7(b)(1) of the Participation Agreement, and, in any such case, such failure shall continue for a period of 30 days after notice thereof shall have been given to the Owner Trustee and the Owner Participant and the Lessee by the Indenture Trustee, specifying such failure and requiring it to be remedied.

SECTION 6.3. *Enforcement of Remedies.*

(a) In the event that an Indenture Event of Default shall have occurred and be continuing, then and in every such case the Indenture Trustee, subject to paragraph (b) of this Section 6.3 and Section 6.11, may, and when required pursuant to the provisions of Article VII hereof, shall, exercise any or all of the rights and powers and pursue, subject to the rights of the Lessee under the Facility Lease, (x) in the event such Indenture Event of Default is referred to in paragraph (d) or (e) of Section 6.2, any or all of the remedies then available pursuant to this Article VI and Article VII, or (y) in the event such Indenture Event of Default is referred to in paragraph (a), (b) or (c) of Section 6.2, any or all of such remedies concurrently with the exercise and pursuit by the Owner Trustee of any or all of the remedies then available to the Owner Trustee under the Facility Lease.

(b) Any provisions of the Facility Lease or this Indenture to the contrary notwithstanding, if the Lessee shall fail to pay any Excepted Payment to any Person entitled thereto as and when due, such Person shall have the right at all times, to the exclusion of the Indenture Trustee, to demand, collect, sue for, enforce performance of obligations relating to, or otherwise obtain all amounts due in respect of, such Excepted Payment.

SECTION 6.4. *Specific Remedies; Enforcement of Claims without Possession of Notes.*

Subject to Sections 6.2, 6.3 and 6.11 and the terms of the documents constituting a part of the Lease Indenture Estate, upon the occurrence and during the continuance of an Indenture Event of Default:

(a) The Indenture Trustee may, in order to enforce the rights of the Indenture Trustee and of the Holders of the Notes, direct payment to it of all moneys and enforce any agreement or undertaking constituting a part of the Lease Indenture Estate by any action, suit, remedy or proceeding authorized or permitted by this Indenture or by law or by equity, and whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by Applicable Law, and in addition may sell, assign, transfer and deliver, from time to time to the extent permitted by Applicable Law, all or any part of the Lease Indenture Estate or any interest therein, at any private sale or public auction with or without demand, advertisement or notice (except as herein required or as may be required by Applicable Law) of the date, time and place of sale and any adjournment thereof, for cash or credit or other property, for immediate or future delivery and for such price or prices and on such terms as the Indenture Trustee, in its uncontrolled discretion, may determine, or as may be required by Applicable Law, so long as the Owner Participant and the Owner Trustee are afforded a commercially reasonable opportunity to bid for all or such part of the Lease Indenture Estate in connection therewith. It is agreed that 90 days' notice to the Owner Participant, the Owner Trustee and the Lessee of the date, time and place of any proposed sale by the Indenture Trustee of all or any part of the Lease Indenture Estate or interest therein is reasonable. The Indenture Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Indenture Trustee and of the Holders of the Notes asserted or upheld in any bankruptcy, receivership or other judicial proceedings.

(b) Without limiting the foregoing, the Indenture Trustee, its assigns and its legal representatives, subject to the rights of the Lessee under the Facility Lease, shall have as to such of the Lease Indenture Estate as is subject to the Uniform Commercial Code or similar law in each relevant jurisdiction all the remedies of a secured party under the Uniform Commercial Code or similar law in

such jurisdiction and such further remedies as from time to time may hereafter be provided in such jurisdiction for a secured party.

(c) All rights of action and rights to assert claims under this Indenture or under any of the No may be enforced by the Indenture Trustee without the possession of the Notes at any trial or o proceedings instituted by the Indenture Trustee, and any such trial or other proceedings shall be brought in its own name as trustee of an express trust, and any recovery or judgment shall be for the ratable benefit of the Holders of the Notes as herein provided. In any proceedings brought by the Indenture Trustee (and also any proceedings involving the interpretation of any provision of this Indenture to which the Indenture Trustee shall be a party) the Indenture Trustee shall be held to represent all the Holders of the Notes, and it shall not be necessary to make any such Holders parties to such proceedings.

(d) The Indenture Trustee may exercise any other right or remedy that may be available to it under Applicable Law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof.

SECTION 6.5. *Rights and Remedies Cumulative.*

Subject to Sections 6.2, 6.3 and 6.11, (a) each and every right, power and remedy herein specifically given to the Indenture Trustee under this Indenture shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Indenture Trustee, and the exercise or the beginning of the exercise of any right, power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and (b) no delay or omission by the Indenture Trustee in the exercise of any right, power or remedy or in the pursuance of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of th Owner Participant, the Owner Trustee or the Lessee or to be an acquiescence therein.

SECTION 6.6. *Restoration of Rights and Remedies.*

In case the Indenture Trustee shall have proceeded to enforce any right, power or remedy under this Indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Indenture Trustee, then and in every such case the Owner Trustee, the Owner Participant, the Indenture Trustee and the Lessee shall be restored to their former positions and rights hereunder with respect to the Lease Indenture Estate, and all rights, powers and remedies of the Indenture Trustee shall continue as if no such proceedings had been taken.

SECTION 6.7. *Waiver of Past Defaults.*

Any past Indenture Default or Indenture Event of Default and its consequences may be waived by the Indenture Trustee, except an Indenture Default or an Indenture Event of Default (i) in the payment of the principal of or interest on any Note, subject to the provisions of Section 7.1, or (ii) in respect of a covenant or provision hereof which, under Section 10.2, cannot be modified or amended without the consent of each Holder of a Note then Outstanding. Upon any such waiver, such Indenture Default or Indenture Event of Default shall cease to exist, and any other Indenture Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Indenture Default or Indenture Event of Default or impair any right consequent thereon.

SECTION 6.8. *Right of Owner Trustee to Pay Rent; Note Purchase; Substitute Lessee.*

Anything in this Article VI or Article VII to the contrary notwithstanding:

(a) An Indenture Event of Default shall be deemed cured if such Indenture Event of Default results from non-payment of Basic Rent or Supplemental Rent under the Facility Lease, and the Owner Trustee or the Owner Participant shall have paid all principal of and interest on the Notes due (other than by acceleration) on the date such Rent was payable (plus interest on such amount as required hereby) within 15 days after the receipt by the Owner Trustee of notice of such non-payment, such receipt to be evidenced by, among other things, any notice thereof given to the Owner Trustee in accordance with the notice provisions of the Participation Agreement. The Owner Trustee or the Owner Participant, upon exercising cure rights under this paragraph (a), shall not obtain any Lien on any part of the Lease Indenture Estate on account of such payment for the costs and expenses incurred in connection therewith nor, except as expressly provided in the succeeding sentence, shall any claims of the Owner Trustee or the Owner Participant against the Lessee or any other Person for the repayment thereof impair the prior right and security interest of the Indenture Trustee in and to the Lease Indenture Estate. Upon any payment by the Owner Trustee or the Owner Participant pursuant to this Section 6.8, the Owner Trustee or the Owner Participant, as the case may be, shall (to the extent of such payment made by it) be subrogated to the rights of the Indenture Trustee and the Holders of the Notes to receive the payment of Rent with respect to which the Owner Trustee or the Owner Participant made such payment and interest on account of such Rent payment being overdue in the manner set forth in the next sentence. If the Indenture Trustee shall thereafter receive such payment of Rent or such interest, the Indenture Trustee shall, notwithstanding the requirements of Section 5.1, on the date such payment is received by the Indenture Trustee, remit such payment of Rent (to the extent of the payment made by the Owner Trustee or the Owner Participant pursuant to this Section 6.8) and such interest to the Owner Trustee or the Owner Participant, as the case may be, in reimbursement for the funds so advanced by it.

(b) Each Holder of a Note agrees, by acceptance thereof, that if the Notes have been accelerated pursuant to Section 7.1, and the Owner Trustee, within 30 days after receiving notice from the Indenture Trustee pursuant to Section 7.1, shall give written notice to the Indenture Trustee of the Owner Trustee's intention to purchase all of the Notes in accordance with this paragraph, accompanied by assurances of the Owner Trustee to purchase the Notes, then, upon receipt within 10 Business Days after such notice from the Owner Trustee of an amount equal to the aggregate unpaid principal amount of and any premium with respect to any unpaid Notes then held by such Holder, together with accrued but unpaid interest thereon to the date of such receipt (as well as any interest on overdue principal and, to the extent permitted by law, interest), such Holder will forthwith sell, assign, transfer and convey to the Owner Trustee (without recourse or warranty of any kind other than of title to the Notes so conveyed) all of the right, title and interest of such Holder in and to the Lease Indenture Estate, this Indenture and all Notes held by such Holder; *provided*, that no such Holder shall be required so to convey unless (1) the Owner Trustee shall have simultaneously tendered payment for all other Notes issued by the Owner Trustee at the time Outstanding pursuant to this paragraph and (2) such conveyance is not in violation of any Applicable Law.

(c) Each Holder of a Note further agrees by its acceptance thereof that the Owner Trustee shall have the right, pursuant to Section 16 of the Facility Lease, to terminate the Facility Lease and, in connection therewith, to arrange for the substitution of another Person as lessee under a new lease substantially similar to the Facility Lease (hereinafter the *Substituted Lessee)* and, subject to (i) any Indenture Event of Default under paragraphs (d) and (e) of Section 6.2 having been cured by the Owner Trustee and (ii) the Substituted Lessee's assuming all of the obligations of the Lessee under the Facility Lease, the Facility Lease between the Owner Trustee and such Substituted Lessee shall, for all purposes of this Indenture, be deemed to be the Facility Lease subject to the lien of this Indenture. The Owner Trustee shall use its best efforts to obtain a Substituted Lessee having an assigned credit rating by Standard & Poor's Corporation or Moody's Investors Service, Inc. (or, if either of such organizations shall not rate securities issued by such Substituted Lessee, by any other nationally

recognized rating organization in the United States of America) with respect to at least one series of its debt obligations or preferred stock equal to or better than the ratings assigned, immediately prior to such substitution, by such organizations to comparable securities of the Lessee immediately prior to such substitution, but in no event less than the "investment grade" rating assigned by such organizations.

SECTION 6.9. *Further Assurances.*

Subject to Section 7.6, the Owner Trustee covenants and agrees from time to time to do all such acts and execute all such instruments of further assurance as shall be reasonably requested by the Indenture Trustee for the purpose of fully carrying out and effectuating this Indenture and the intent hereof.

SECTION 6.10. *Right of Indenture Trustee to Perform Covenants, etc.*

If the Owner Trustee shall fail to make any payment or perform any act required to be made or performed by it hereunder or under the Facility Lease or if the Owner Trustee shall fail to release any Lien affecting the Lease Indenture Estate which it is required to release by the terms of this Indenture, the Indenture Trustee, without notice to or demand upon the Owner Trustee and without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of the Lease Indenture Estate. All sums so paid by the Indenture Trustee and all costs and expenses (including without limitation reasonable fees and expenses of legal counsel and other professionals) so incurred, together with interest thereon from the date of payment or occurrence, shall constitute additional indebtedness secured by this Indenture and shall be paid from the Lease Indenture Estate to the Indenture Trustee on demand. The Indenture Trustee shall not be liable for any damages resulting from any such payment or action unless such damages shall be a consequence of willful misconduct or gross negligence on the part of the Indenture Trustee.

SECTION 6.11. *Certain Other Rights of the Owner Trustee.*

Notwithstanding any provision to the contrary in this Indenture, the Owner Trustee shall at all times retain, to the exclusion of the Indenture Trustee, all rights of the Owner Trustee to exercise any election or option or to make any decision or determination or to give or receive any notice, consent, waiver or approval or to take any other action under or in respect of the Facility Lease, as well as all rights, powers and remedies on the part of the Owner Trustee, whether arising under the Facility Lease or by statute or at law or in equity or otherwise, arising out of any Default or Event of Default *subject, however,* to Section 10.2. Without the prior written consent of the Indenture Trustee, the exercise of any of the aforesaid rights so retained by the Owner Trustee shall not be exercised in such a manner as to (i) reduce the amounts payable by the Lessee under the Facility Lease below the amounts necessary to provide the Owner Trustee with sufficient moneys to make timely payments in full of amounts due with respect to the principal of and premium, if any, and interest on all Notes or (ii) rescind or terminate the Facility Lease pursuant to Section 16 thereof. The Owner Trustee shall not exercise any other right or remedy under the Facility Lease the effect of which would be to effect such rescission or termination.

ARTICLE VII

CERTAIN DUTIES OF THE OWNER TRUSTEE AND THE INDENTURE TRUSTEE

SECTION 7.1. *Duties in Respect of Events of Default, Deemed Loss Events and Events of Loss; Acceleration of Maturity.*

In the event the Owner Trustee shall have actual knowledge of an Indenture Event of Default, an Event of Default, a Deemed Loss Event or an Event of Loss, the Owner Trustee shall give prompt

written notice thereof to the Owner Participant, the Lessee and the Indenture Trustee. In the event the Indenture Trustee shall have actual knowledge of an Event of Default, an Indenture Event of Default, a Deemed Loss Event or an Event of Loss, the Indenture Trustee shall give prompt written notice thereof to the Owner Participant, the Owner Trustee, the Lessee and each Holder of a Note. Subject to the terms of Sections 6.2, 6.3, 6.4, 6.8, 6.11 and 7.3, (a) the Indenture Trustee shall take such action (including the waiver of past Defaults in accordance with Section 6.7), or refrain from taking such action, with respect to any such Indenture Event of Default, Event of Default, Deemed Loss Event or Event of Loss as the Indenture Trustee shall be instructed by a Directive, (b) if the Indenture Trustee shall not have received instructions as above provided within 20 days after mailing by the Indenture Trustee of notice of such Indenture Event of Default, Event of Default, Deemed Loss Event or Event of Loss to the Persons referred to above, the Indenture Trustee may, subject to instructions thereafter received pursuant to the preceding sentence, take such action, or refrain from taking such action, but shall be under no duty to take or refrain from taking any action, with respect to such Indenture Event of Default, Event of Default, Deemed Loss Event or Event of Loss as it shall determine advisable in the best interests of the Holders of the Notes of all series and (c) in the event that an Indenture Event of Default shall have occurred and be continuing, the Indenture Trustee in its discretion may, or upon receipt of a Directive shall, by written notice to the Owner Trustee, declare the unpaid principal amount of all Notes with accrued interest thereon to be immediately due and payable, upon which declaration such principal amount and such accrued interest shall immediately become due and payable without further act or notice of any kind. For all purposes of this Indenture, in the absence of actual knowledge, neither the Owner Trustee nor the Indenture Trustee shall be deemed to have knowledge of an Indenture Event of Default or Event of Default except that the Indenture Trustee shall be deemed to have knowledge of the failure of the Lessee to pay any installment of Basic Rent within 10 Business Days after the same shall become due. For purposes of this Section 7.1, neither the Owner Trustee nor the Indenture Trustee shall be deemed to have actual knowledge of any Indenture Event of Default, Event of Default, Deemed Loss Event or Event of Loss unless it shall have received notice thereof pursuant to Section 11.6 or such Indenture Event of Default or Event of Default shall actually be known by an officer in the corporate trust department of the Owner Trustee or by an officer in the corporate trust department of the Indenture Trustee, as the case may be.

SECTION 7.2. *Duties in Respect of Matters Specified in Directive.*

Subject to the terms of Sections 6.2, 6.3, 6.4, 6.8, 6.11, 7.1 and 7.3, upon receipt of a Directive, the Indenture Trustee shall take such of the following actions as may be specified in such Directive: (i) give such notice or direction or exercise such right, remedy or power permitted hereunder or permitted with respect to the Facility Lease or in respect of any part or all of the Lease Indenture Estate as shall be specified in such Directive; and (ii) take such action to preserve or protect the Lease Indenture Estate as shall be specified in such Directive, it being agreed that without such a Directive, the Indenture Trustee shall not waive, consent to or approve any such matter as satisfactory to it.

SECTION 7.3. *Indemnification.*

The Indenture Trustee shall not be required to take or refrain from taking any action under Section 7.1 or 7.2 or Article VI which shall require the Indenture Trustee to expend or risk its own funds or otherwise incur any financial liability unless the Indenture Trustee shall have been indemnified by the Holders of the Notes against liability, cost or expense (including counsel fees) which may be incurred in connection therewith, or unless, in the reasonable judgment of the Indenture Trustee, the indemnities of the Lessee shall be adequate for such purpose; provided, however, that if the Holder of such Notes is the Collateral Trust Trustee, the unsecured written undertaking of the Collateral Trust Trustee, in its individual capacity, shall be sufficient indemnity for purposes of this Section. The Indenture Trustee shall not be required to take any action under Section 7.1 or 7.2 or Article VI nor shall any other provision of this Indenture be deemed to impose a duty on the Indenture Trustee to take any action, if the Indenture Trustee shall reasonably determine, or shall

have been advised by counsel, that such action is likely to result in personal liability or is contrary to the terms hereof or of the Facility Lease or is otherwise contrary to law.

SECTION 7.4. *Limitations on Duties; Discharge of Certain Liens Resulting from Claims Aga Indenture Trustee.*

The Indenture Trustee shall have no duty or obligation to take or refrain from taking any action under, or in connection with, this Indenture or the Facility Lease, except as expressly provided by the terms of this Indenture. The Indenture Trustee nevertheless agrees that it will, in its individual capacity and at its own cost and expense, promptly take such action as may be necessary duly to discharge all Liens on any part of the Lease Indenture Estate which result from acts by or claims against it arising out of events or conditions not related to its rights in the Lease Indenture Estate or the administration of the Lease Indenture Estate or the transactions contemplated hereby.

SECTION 7.5. *Restrictions on Dealing with Lease Indenture Estate.*

Except as provided in the Transaction Documents, the Owner Trustee shall not use, operate, store, lease, control, manage, sell, dispose of or otherwise deal with any part of the Lease Indenture Estate.

SECTION 7.6. *Filing of Financing Statements and Continuation Statements.*

Pursuant to Section 10(b)(2) of the Participation Agreement, the Lessee has covenanted to maintain the priority of the lien of this Indenture on the Lease Indenture Estate. The Indenture Trustee shall, at the request and expense of the Lessee as provided in the Participation Agreement, execute and deliver to the Lessee and the Lessee will file, if not already filed, such financing statements or other documents and such continuation statements or other documents with respect to financing statements or other documents previously filed relating to the lien created under this Indenture in the Lease Indenture Estate as may be necessary to protect, perfect and preserve the lie created under this Indenture. At any time and from time to time, upon the request of the Lessee or Indenture Trustee, at the expense of the Lessee as provided in the Participation Agreement (and up receipt of the form of document so to be executed), the Owner Trustee shall promptly and duly execute and deliver any and all such further instruments and documents as the Lessee or the Indenture Trustee may request in order for the Indenture Trustee to obtain the full benefits of the security interest, assignment and mortgage created hereby and of the rights and powers herein granted. Upon the reasonable instructions (which instructions shall be accompanied by the form of document to be filed) at any time and from time to time of the Lessee or the Indenture Trustee, the Owner Trustee shall execute and file any financing statement (and any continuation statement with respect to any such financing statement), any certificate of title or any other document, in each case relating to the security interest, assignment and mortgage created by this Indenture, as may be specified in such instructions. In addition, the Indenture Trustee and the Owner Trustee will execute such continuation statements with respect to financing statements and other documents relating to the lien created under this Indenture in the Lease Indenture Estate as may be reasonably specified from time to time in written instructions of any Holder of a Note (which instructions may, by their terms, be operative only at a future date and which shall be accompanied by the form of such continuation statement or other document so to be filed).

ARTICLE VIII

CONCERNING THE OWNER TRUSTEE AND THE INDENTURE TRUSTEE

SECTION 8.1. *Acceptance of Trusts; Standard of Care.*

The Indenture Trustee accepts the trusts hereby created and applicable to it and agrees to perform the same but only upon the terms of this Indenture and the Participation Agreement and agrees to receive and disburse all moneys constituting part of the Lease Indenture Estate in accordance with the provisions hereof, but no implied duties or obligations shall be read into this Indenture or the Participation Agreement against the Indenture Trustee. The Indenture Trustee shall enter into and perform its obligations under the Participation Agreement, and, at the request of the Owner Trustee, any other agreement relating to any transfer of the Undivided Interest or the Real Property Interest or the assignment of rights under the Assignment and Assumption or, at the request of the Owner Trustee, the purchase by any Person of Notes or Additional Notes issued hereunder, all as contemplated hereby. The Indenture Trustee shall not be liable under any circumstances, except for its own willful misconduct or gross negligence. If any Indenture Event of Default shall have occurred and be continuing, the Indenture Trustee shall exercise such of the rights and remedies vested in it by this Indenture, subject to the provisions hereof, and shall use the same degree of care in their exercise as a prudent man would exercise or use in the circumstances in the conduct of his own affairs, but if in the opinion of the Indenture Trustee such action may tend to involve expense or liability, it shall not be obligated to take such action unless it is furnished with indemnity satisfactory to it.

SECTION 8.2. *No Duties of Maintenance, Etc.*

Except pursuant to Section 7.2 and except as provided in, and without limiting the generality of, Sections 7.1 and 7.4, the Indenture Trustee shall have no duty (i) to see to any recording or filing of any Transaction Document, or to see to the maintenance of any such recording or filing, or (ii) to see to the payment or discharge of any tax, assessment or other governmental charge or any lien or encumbrance of any kind owing with respect to, or assessed or levied against, any part of the Lease Indenture Estate (except such as are required to be paid or discharged by it pursuant to this Indenture or any of the other Transaction Documents) or to make or file any reports or returns related thereto.

SECTION 8.3. *Representations and Warranties of Indenture Trustee and the Owner Trustee.*

NEITHER THE OWNER TRUSTEE NOR THE INDENTURE TRUSTEE MAKES ANY REPRESENTATION OR WARRANTY AS TO THE VALUE, CONDITION, MERCHANTABILITY OR FITNESS FOR USE OF UNIT 2, THE UNDIVIDED INTEREST OR ANY PART OF THE LEASE INDENTURE ESTATE OR AS TO ITS INTEREST THEREIN, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO UNIT 2, THE UNDIVIDED INTEREST OR ANY PART OF THE LEASE INDENTURE ESTATE WHATSOEVER. The Owner Trustee and the Indenture Trustee each represents and warrants, in its individual capacity, as to itself that this Indenture has been executed and delivered by one or more of its officers who are duly authorized to execute and deliver this Indenture on its behalf.

SECTION 8.4. *Moneys Held in Trust; Non-Segregation of Moneys.*

All moneys and securities deposited with and held by the Indenture Trustee under this Indenture for the purpose of paying, or securing the payment of, the principal of or premium or interest on the Notes shall be held in trust. Except as provided in Sections 2.3(c), 8.8 and 11.1, moneys received by the Indenture Trustee under this Indenture need not be segregated in any manner except to the extent required by law, and may be deposited under such general conditions as may be prescribed by law; *provided, however*, that any payments received or applied hereunder by the Indenture Trustee shall be accounted for by the Indenture Trustee so that any portion thereof paid or applied pursuant hereto shall be identifiable as to the source thereof. Except as otherwise expressly provided herein, the Indenture Trustee shall not be liable for any interest on any money held pursuant to this Indenture.

SECTION 8.5. *Reliance on Writings, Use of Agents, Etc.*

The Indenture Trustee shall incur no liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, telegram, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties. In the case of the Lessee, the Indenture Trustee may accept a copy of a resolution of the Board of Directors or any duly constituted and authorized committee of the Board of Directors of the Lessee, certified by the Secretary or an Assistant Secretary of the Lessee as duly adopted and in full force and effect, as conclusive evidence that such resolution has been duly adopted by such Board or Committee and that the same is in full force and effect. As to the aggregate unpaid principal amount of the Notes Outstanding as of any date, the Owner Trustee may for all purposes hereof rely on a certificate signed by any Authorized Officer of the Indenture Trustee. As to any fact or matter the manner of ascertainment of which is not specifically described herein, the Indenture Trustee may for all purposes hereof rely on a certificate, signed by the Chairman of the Board, the President, any Vice President and the Treasurer or the Secretary or any Assistant Treasurer or Assistant Secretary of the Lessee, or a Holder of a Note or any Responsible Officer of the Owner Trustee, as the case may be, as to such fact or matter, and such certificate shall constitute full protection to the Indenture Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon. The Indenture Trustee shall furnish to the Owner Trustee upon request such information and copies of such documents as the Indenture Trustee may have and as are necessary for the Owner Trustee to perform its duties under Article III. In the administration of the trusts hereunder, the Indenture Trustee may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys selected by it in good faith and with reasonable care, and, with respect to matters relating to the Notes, the Lease Indenture Estate and its rights and duties under this Indenture and the other Transaction Documents, may, at the expense of the Lessee, or, if the Lessee shall have failed to pay or provide for the payment thereof, at the expense of the Lease Indenture Estate, consult with counsel, accountants and other skilled persons to be selected and employed by it in good faith and with reasonable care, and the Indenture Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons so selected. Unless otherwise specified herein or in any other Transaction Document, any opinion of counsel referred to in this Indenture or in such other Transaction Document may be relied on by the Indenture Trustee to the extent it is rendered by an attorney or firm of attorneys satisfactory to the Indenture Trustee (which may be counsel to the Owner Participant, the Owner Trustee, the Lessee or any party to any Transaction Document).

SECTION 8.6. *Indenture Trustee to Act Solely as Trustee.*

The Indenture Trustee acts hereunder solely as trustee as herein provided and not in any individual capacity, except as otherwise expressly provided herein; and except as provided in Sections 9(a) and 9(b) of the Participation Agreement or Section 7.4 or 8.1, all Persons having any claim against the Indenture Trustee arising from matters relating to the Notes by reason of the transactions contemplated hereby shall, subject to the lien and priorities of payment as herein provided and to Sections 3.6 and 5.7, look only to the Lease Indenture Estate for payment or satisfaction thereof.

SECTION 8.7. *Limitation on Rights Against Registered Holders, the Owner Trustee or Lease Indenture Estate.*

The Indenture Trustee shall be entitled to be paid or reimbursed for Trustee's Expenses as provided herein and in the other Transaction Documents. Nonetheless, the Indenture Trustee agrees that it shall have no right against the Holders of the Notes, the Owner Trustee (except to the extent included in Transaction Expenses payable by the Owner Participant) or, except as provided in Article V and Section 6.4 or this Article VIII, the Lease Indenture Estate for any fee as compensation for its services hereunder.

SECTION 8.8. *Investment of Certain Payments Held by the Indenture Trustee.*

Any amounts held by the Indenture Trustee hereunder other than pursuant to Section 2.3(c) or 11.1 shall be invested by the Indenture Trustee from time to time as directed in writing by the Owner Trustee or by the Owner Participant as agent of the Owner Trustee and at the expense and risk of the Owner Participant in (i) obligations of, or guaranteed as to interest and principal by, the United States Government maturing not more than 90 days after such investment, (ii) open market commercial paper of any corporation incorporated under the laws of the United States of America or any State thereof rated "prime-1" or its equivalent by Moody's Investors Service, Inc. or "A-1" or its equivalent by Standard & Poor's Corporation or (iii) certificates of deposit maturing within 90 days after such investment issued by commercial banks organized under the laws of the United States of America or of any political subdivision thereof having a combined capital and surplus in excess of $500,000,000; *provided, however,* that the aggregate amount at any one time so invested (a) in open market commercial paper of any corporation shall not exceed $2,000,000 and (b) in certificates of deposit issued by any one bank shall not exceed $10,000,000. Any income or gain realized as a result of any such investment shall be applied to make up any losses resulting from any such investment to the extent such losses shall not have been paid by the Owner Trustee or the Owner Participant pursuant to this Section 8.8. Any further income or gain so realized shall be promptly distributed (in no event later than the next Business Day) to the Owner Trustee or the Owner Participant, except after the occurrence and during the continuance of an Indenture Event of Default. The Indenture Trustee shall have no liability for any loss resulting from any investment made in accordance with this Section. Any such investment may be sold (without regard to maturity date) by the Indenture Trustee whenever necessary to make any distribution required by Article V.

SECTION 8.9. *No Responsibility for Recitals, etc.*

The Indenture Trustee makes no representation or warranty as to the correctness of any statement, recital or representation made by any Person other than the Indenture Trustee in this Indenture, any other Transaction Document or the Notes.

SECTION 8.10. *Indenture Trustee May Engage in Certain Transactions.*

The Indenture Trustee may engage in or be interested in any financial or other transaction with the Lessee, the Owner Participant, the Owner Trustee and any other party to a Transaction Document, provided that if the Indenture Trustee determines that any such relation is in conflict with its duties under this Indenture, it shall eliminate the conflict or resign as Indenture Trustee.

SECTION 8.11. *Construction of Ambiguous Provisions.*

The Indenture Trustee, subject to Section 8.1, may construe any ambiguous or inconsistent provisions of this Indenture, and any such construction by the Indenture Trustee shall be binding upon the Noteholders. In construing any such provision, the Indenture Trustee will be entitled to rely upon opinions of counsel and will not be responsible for any loss or damage resulting from reliance in good faith thereon, except for its own gross negligence or willful misconduct.

ARTICLE IX

SUCCESSOR TRUSTEES

SECTION 9.1. *Resignation and Removal of Indenture Trustee; Appointment of Successor.*

(a) The Indenture Trustee may resign at any time without cause by giving at least 30 days' prior written notice to the Owner Participant, the Owner Trustee, the Lessee and to each Holder of a Note, such resignation to be effective upon the acceptance of such trusteeship by a successor. In addition, the Indenture Trustee may be removed without cause by a Directive delivered to the Owner Participant, the Owner Trustee, the Lessee and the Indenture Trustee, and the Indenture Trustee shall

promptly give notice thereof in writing to each Holder of a Note. In the case of the resignation or removal of the Indenture Trustee, a successor trustee may be appointed by such a Directive. If a successor trustee shall not have been appointed within 30 days after such notice of resignation or removal, the Indenture Trustee, the Owner Trustee or any Holder of a Note may apply to any court of competent jurisdiction to appoint a successor to act until such time, if any, as a successor shall have been appointed as above provided. The successor so appointed by such court shall immediately and without further act be superseded by any successor appointed as above provided within one year from the date of the appointment by such court.

(b) Any successor trustee, however appointed, shall execute and deliver to its predecessor and to the Owner Trustee an instrument accepting such appointment, and thereupon such successor, without further act, shall become vested with all the estates, properties, rights, powers and duties of its predecessor hereunder in the trusts under this Indenture applicable to it with like effect as if originally named the Indenture Trustee; but, nevertheless, upon the written request of such successor trustee or receipt of a Directive, its predecessor shall execute and deliver an instrument transferring to such successor trustee, upon the trusts herein expressly applicable to it, all the estates, properties, rights and powers of such predecessor under this Indenture, and such predecessor shall duly assign, transfer, deliver and pay over to such successor trustee all moneys or other property then held by such predecessor under this Indenture.

(c) Any successor trustee, however appointed, shall be a bank or trust company organized under the laws of the United States or any jurisdiction thereof having a combined capital and surplus of at least $100,000,000, if there be such an institution willing, able and legally qualified to perform the duties of the Indenture Trustee hereunder upon reasonable or customary terms.

(d) Any corporation into which the Indenture Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Indenture Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Indenture Trustee may be transferred, shall, subject to the terms of paragraph (c) of this Section 9.1, be the Indenture Trustee under this Indenture without further

ARTICLE X

SUPPLEMENTS AND AMENDMENTS TO THIS INDENTURE AND OTHER DOCUMENTS

SECTION 10.1. *Supplements, Amendments and Modifications to This Indenture Without Consent of Holders of Notes.*

The Indenture Trustee may, with the written consent of the Owner Trustee, from time to time and at any time execute a supplement to this Indenture without the consent of the Holders of Notes Outstanding in order to (i) cure any defect, omission or ambiguity in this Indenture or for any other purpose if such action does not adversely affect the interests of such Holders, (ii) grant or confer upon the Indenture Trustee for the benefit of such Holders any additional rights, remedies, powers, authority or security which may be lawfully granted or conferred and which are not contrary to or inconsistent with this Indenture, (iii) add to the covenants or agreements to be observed by the Owner Trustee and which are not contrary to this Indenture or surrender any right or power of the Owner Trustee, (iv) confirm or amplify, as further assurance, any pledge under, and the subjection to any lien or pledge created or to be created by, this Indenture, of the properties covered hereby, or subject to the lien or pledge of this Indenture additional revenues, properties or other collateral, including pursuant to an Undivided Interest Indenture Supplement, (v) qualify this Indenture under the provisions of the Trust Indenture Act, (vi) evidence the appointment of any successor Indenture Trustee pursuant to the terms hereof, (vii) evidence the assumption and release effected by the Assumption Agreement, or (viii) execute supplemental indentures to evidence the issuance of and to provide the terms of, Additional Notes to be issued hereunder in accordance with the terms hereof.

SECTION 10.2. *Supplements and Amendments to this Indenture and the Facility Lease With Consent of Holders of Notes.*

Except as provided in Section 10.1, at any time and from time to time, (i) upon receipt of a Directive, the Indenture Trustee shall execute a supplement to this Indenture for the purpose of adding provisions to, or changing or eliminating provisions of, this Indenture, but only as specified in such Directive, and (ii) upon receipt of a written instruction from the Lessee and the Owner Trustee, the Indenture Trustee shall consent to any amendment of or supplement to the Facility Lease or execute and deliver such written waiver or modification of the terms of the Facility Lease to which the Owner Trustee may agree; *provided, however*, that, without the consent of the Holders of all the Notes then Outstanding no such supplement or amendment to this Indenture or the Facility Lease, or waiver or modification of the terms of either thereof, shall (x) modify any of the provisions of this Section or of Section 7.1 or 7.2 or Section 4 of the Facility Lease or of the definition of Directive contained in Appendix A hereto or the definition of Indenture Event of Default herein, reduce the amount of the Basic Rent, Casualty Value, Termination Value or any payment under or pursuant to Section 16 of the Facility Lease as set forth in the Facility Lease below such amount as is required to pay the full principal of, and premium, if any, and interest on, the Notes when due, or extend the time of payment thereof, (y) except as permitted by clause (x) above, modify, amend or supplement the Facility Lease or consent to the termination or any assignment thereof, in any case reducing the Lessee's obligations in respect of the payment of the Basic Rent, Casualty Value, Termination Value or any payment under or pursuant to Section 16 of the Facility Lease below the amount referred to in clause (x) above, or (z) deprive the Holder of any Note of the lien of this Indenture on the Lease Indenture Estate (except as contemplated by Section 3.9(b)) or materially adversely affect the rights and remedies for the benefit of such Holder provided in Article VI; and, *provided further*, that, without the consent of the Holders of all the Notes then Outstanding and affected thereby, no such supplement or amendment to this Indenture or the Facility Lease, or waiver or modification of the terms of either thereof, shall reduce the amount or extend the time of payment of any amount payable under any Note, reduce or modify the provisions for the computation of the rate of interest owing or payable thereon, adversely alter or modify the provisions of Article V with respect to the order of priorities in which distributions thereunder with respect to the Notes shall be made, or reduce, modify or amend any indemnities in favor of the Holders of the Notes. Anything to the contrary contained herein notwithstanding, without the necessity of the consent of the Holders of Notes or the Indenture Trustee, (a) any indemnities in favor of the Owner Trustee or the Owner Participant may be modified, amended or changed and (b) the Owner Trustee may enter into any agreement with respect to the Lease Indenture Estate which by its terms does not become effective prior to the satisfaction and discharge of this Indenture, but any agreement entered into by the Owner Trustee pursuant to this clause (b) shall not materially adversely affect the Indenture Trustee or the Holder of any Note. Notwithstanding the foregoing, the Indenture Trustee shall, upon receipt of a written instruction from the Lessee and the Owner Trustee, consent to an amendment of any definitions contained in or appended to this Indenture which are being changed pursuant to the amendments referred to in Section 10(b)(3)(xiii) of the Participation Agreement. The Owner Trustee shall deliver to the Indenture Trustee a copy of each amendment to the Facility Lease whether or not the Indenture Trustee is required to consent or otherwise act with respect thereto.

SECTION 10.3. *Certain Limitations on Supplements and Amendments.*

If in the opinion of the Owner Trustee or the Indenture Trustee, each of which shall be entitled to rely on counsel for purposes of this Section 10.3, any document required to be executed by either of them pursuant to the terms of Section 10.1 or 10.2 does not comply with the provisions of this Indenture or adversely affects any right, immunity or indemnity in favor of, or increases any duty of, the Owner Trustee or the Indenture Trustee under this Indenture, the Facility Lease or the Participation Agreement, the Owner Trustee or the Indenture Trustee, as the case may be, may in its discretion decline to execute such document.

SECTION 10.4. *Directive Need Not Specify Particular Form of Supplement or Amendment.*

It shall not be necessary for any Directive furnished pursuant to Section 10.2 to specify the particular form of the proposed documents to be executed pursuant to such Section, but it shall be sufficient if such request shall indicate the substance thereof.

SECTION 10.5. *Trustee to Furnish Copies of Supplement or Amendment.*

Promptly after the execution by the Owner Trustee or the Indenture Trustee of any document entered into pursuant to Section 10.2, the Indenture Trustee shall mail, by first-class mail, postage prepaid, a conformed copy thereof to each Holder of an Outstanding Note at the address of such Person set forth in the register kept pursuant to Section 4.1 but the failure of the Indenture Trustee to mail such conformed copies shall not impair or affect the validity of such document.

ARTICLE XI

MISCELLANEOUS

SECTION 11.1. *Moneys for Payments in Respect of Notes to be Held in Trust.*

In case the Holder of any Note shall fail to present the same for payment on any date on which the principal thereof or interest thereon becomes payable, the Indenture Trustee may set aside in trust the moneys then due thereon uninvested and shall pay such moneys to the Holder of such Note or such Person upon due presentation or surrender thereof in accordance with the provisions of this Indenture, *subject always, however, to the provisions of Sections 3.8 and 11.2.*

SECTION 11.2. *Disposition of Moneys Held for Payments of Notes.*

Any moneys set aside under Section 11.1 and not paid to Holders of Notes as provided in Section 11.1 shall be held by the Indenture Trustee in trust until the latest of (i) the date three years after the date of such setting aside, (ii) the date all other Holders of the Notes shall have received full payment of all principal of and interest and other sums payable to them on such Notes or the Indenture Trustee shall hold (and shall have notified such Persons that it holds) in trust for that purpose an amount sufficient to make full payment thereof when due and (iii) the date the Owner Trustee shall have fully performed and observed all its covenants and obligations contained in this Indenture with respect to the Notes; and thereafter shall be paid to the Owner Trustee by the Indenture Trustee on demand; and thereupon the Indenture Trustee shall be released from all further liability with respect to such moneys; and thereafter the Holders of the Notes in respect of which such moneys were so paid to the Owner Trustee shall have no rights in respect thereof except to obtain payment of such moneys from the Owner Trustee. Upon the setting aside of such moneys, interest shall cease to accrue on the Notes.

SECTION 11.3. *Transfers Not to Affect Indenture or Trusts.*

No Holder of a Note shall have legal title to any part of the Lease Indenture Estate. No transfer, by operation of law or otherwise, of any Note or other right, title and interest of any Holder of a Note in and to the Lease Indenture Estate or hereunder shall operate to terminate this Indenture or the trusts hereunder with respect to such Note or entitle any successor or transferee of such Holder to an accounting or to the transfer to it of legal title to any part of the Lease Indenture Estate.

SECTION 11.4. *Binding Effect of Sale of Lease Indenture Estate.*

Any sale or other conveyance of the Lease Indenture Estate or any part thereof by the Indenture Trustee made pursuant to the terms of this Indenture or the Facility Lease shall bind the Holders of the Notes and shall be effective to transfer or convey all rights, title and interest of the Indenture Trustee, the Owner Trustee and such Holders in and to the same. No purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such sale or

conveyance or as to the application of any sale or other proceeds with respect thereto by the Indenture Trustee.

SECTION 11.5. *Limitation as to Enforcement of Rights, Remedies and Claims.*

Nothing in this Indenture, whether express or implied, shall be construed to give to any Person, other than the Owner Trustee, the Owner Participant, the Lessee (to the extent the Lessee's consent or other action by the Lessee is expressly provided for), the Indenture Trustee and the Holders of the Notes, any legal or equitable right, remedy or claim under or in respect of this Indenture or any Note.

SECTION 11.6. *Notices.*

Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices given hereunder to the Lessee, the Owner Trustee, the Owner Participant or the Indenture Trustee shall be given in the manner provided in Section 18 of the Participation Agreement. Notices by the Indenture Trustee to any Holder of a Note shall be in writing and shall be given in person or by means of telex, telecopy or other wire transmission (with request for assurance of receipt in a manner typical with respect to communications of that type), or mailed by registered or certified mail, addressed to such Holder at the address set forth in the register kept pursuant to Section 4.1. Whenever any notice in writing is required to be given by the Indenture Trustee to any Holder of a Note such notice shall be effective (x) if sent by telex, telecopy or other wire transmission, on the date of transmission thereof, or (y) if sent by mail, three Business Days after being mailed.

SECTION 11.7. *Separability of Provisions.*

In case any one or more of the provisions of this Indenture or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof and any other application thereof shall not in any way be affected or impaired.

SECTION 11.8. *Benefit of Parties, Successors and Assigns.*

All representations, warranties, covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Owner Trustee, the Indenture Trustee and their respective successors and assigns and each Holder of a Note, all as herein provided. Any request, notice, direction, consent, waiver or other instrument or action by any Holder of a Note shall bind the successors and assigns of such Holder and any Holder of a Note issued in transfer or exchange of such Note.

SECTION 11.9. *Survival of Representations and Warranties.*

All representations and warranties made with respect to the Notes shall survive the execution and delivery of this Indenture and the issue, sale and delivery of any Notes and shall continue in effect so long as any Note issued hereunder is Outstanding and unpaid.

SECTION 11.10. *Bankruptcy of the Owner Trustee.*

If (a) the Owner Trustee becomes a debtor subject to the reorganization provisions of the Bankruptcy Code, or any successor provision, (b) pursuant to such reorganization provisions the Owner Trustee is required, by reason of the Owner Trustee being held to have recourse liability directly or indirectly to the Holder of any Note or the Indenture Trustee, to make payment on account of any amount payable as principal or interest on such Note and (c) such Holder or the Indenture Trustee actually receives any Excess Amount (as hereinafter defined) which reflects any payment by the Owner Trustee on account of clause (b) of this Section, then such Holder or the Indenture Trustee, as the case may be, shall promptly refund to the Owner Trustee such Excess Amount. For purposes of this Section, "*Excess Amount*" means the amount by which such payment exceeds the

amount which would have been received on or prior to the date of such payment by such Holder or the Indenture Trustee if the Owner Trustee had not become subject to the recourse liability referred to in clause (b) of this Section.

SECTION 11.11. *Bankruptcy of the Owner Participant.*

The Indenture Trustee and the Holders of the Notes shall be bound by the provisions of Section 19(f) of the Participation Agreement.

SECTION 11.12. *Counterpart Execution.*

This Indenture and any amendment or supplement to this Indenture may be executed in any number of counterparts and by the different parties hereto and thereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument.

SECTION 11.13. *Dating of Indenture.*

Although this Indenture is dated for convenience and for the purpose of reference as of the date mentioned, the actual date or dates of execution by the Owner Trustee and the Indenture Trustee are as indicated by their respective acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Owner Trustee and the Indenture Trustee have each caused this Indenture to be duly executed by their respective officers thereunto duly authorized, all as of the date first set forth above.

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as Owner Trustee under the Trust Agreement dated as of December 1, 1986, with Chrysler Financial Corporation

By: _____
Assistant Vice President

FIRST CITY NATIONAL BANK OF HOUSTON

By: _____
Assistant Vice President

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

On the 16th day of December, 1986, before me personally came MARTIN P. HENRY, to me known, who, being by me duly sworn, did acknowledge, depose and say that he resides at Boston, Massachusetts; that he is Assistant Vice President of THE FIRST NATIONAL BANK OF BOSTON, a national banking association, described in and which executed the foregoing instrument; and that he signed his name thereto on behalf of said association by authority of the Board of Directors of said association.

David A. Spivak

Notary Public

DAVID A. SPIVAK
Notary Public, State of New York
No. 31-4693468
Qualified in New York County
Commission Expires March 30, 1987

[NOTARIAL SEAL] Term Expires:

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

On the 11th day of December, 1986, before me personally came JOHN CHASE III, to me known, who, being by me duly sworn, did acknowledge, depose and say that he resides at Houston, Texas; that he is Assistant Vice President of FIRST CITY NATIONAL BANK OF HOUSTON, a national banking association, described in and which executed the foregoing instrument; and that he signed his name thereto on behalf of said association by authority of the Board of Directors of said association.

David A. Spivak

Notary Public

DAVID A. SPIVAK
Notary Public, State of New York
No. 31-4693468
Qualified in New York County
Commission Expires March 30, 1987

[NOTARIAL SEAL] Term Expires:

EXHIBIT A-1

FORM OF INITIAL SERIES NOTE
(DUE JULY 2, 1992)

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED, SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT

Nonrecourse Promissory Note, Initial Series
(DUE July 2, 1992)
Issue Date: December 18, 1986

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as Owner Trustee (the Owner Trustee) under a Trust Agreement dated as of December 1, 1986 with Chrysler Financial Corporation (the *Owner Participant*), hereby promises to pay to EL PASO FUNDING CORPORATION, or registered assigns, the principal sum of eight million fifty-nine thousand dollars ($8,059,000) on July 2, 1992 together with interest (computed on the basis of a 360-day year of twelve 30-day months) on the aggregate amount of such principal sum remaining unpaid from time to time from the date of this Initial Series Note until due and payable, in arrears, at the rate of 8.10% per annum. Payments of principal installments of this Initial Series Note shall be made in the "Principal Amount Payable" and on the "Payment Dates" specified in Schedule 1 hereto. Payments of accrued interest on this Initial Series Note shall be made on each January 2 and July 2, commencing July 2, 1987, until the principal amount of this Initial Series Note shall have been paid in full.

Capitalized terms used in this Initial Series Note which are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture (as hereinafter defined).

Interest on any overdue principal and premium, if any, and (to the extent permitted by applicable law) any overdue interest shall be paid, on demand, from the due date thereof at the rate of interest per annum (computed on the basis of a 360-day year of twelve 30-day months) equal to 1% above the interest rate stated above for this Initial Series Note for the period during which any such principal, premium or interest shall be overdue.

In the event any date on which a payment is due under this Initial Series Note is not a Business Day, then payment thereof may be made on the next succeeding Business Day with the same force and effect as if made on the date on which such payment was due.

All payments of principal, premium, if any, and interest to be made by the Owner Trustee hereunder and under the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents dated as of December 1, 1986, as at any time amended or supplemented in accordance with the provisions thereof (the *Indenture)* between the Owner Trustee and First City National Bank of Houston, as Trustee (the *Indenture Trustee*), shall be made only from the Lease Indenture Estate and the Trust Estate and the Indenture Trustee shall have no obligation for the payment thereof except to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Lease Indenture Estate to make such payments in accordance with the terms of Article V of the Indenture. The Holder hereof, by its acceptance of this Initial Series Note, agrees that such Holder will look solely to the Trust Estate and the income and proceeds from the Lease Indenture Estate to the extent available for distribution to the Holder hereof as above provided, and that neither the Owner Participant nor, except as expressly provided in the Indenture, the Owner Trustee nor the Indenture Trustee is or shall be personally liable to the Holder hereof for any amounts payable under this Initial Series Note or for any performance to be rendered under the Indenture or any other Transaction Document or for any liability thereunder; *provided, however,* that in the event the Lessee shall assume all the obligations of the Owner Trustee hereunder and under the Indenture pursuant to Section 3.9(b) of the Indenture, then all payments to be made under this Initial Series Note shall be made only from payments made by the Lessee under this Initial Series Note in accordance with the

Assumption Agreement referred to in said Section 3.9(b) and the Holder of this Initial Series Note agrees that in such event it will look solely to the Lessee for such payment.

Principal, premium, if any, and interest shall be payable, in the manner provided in the Indentu on presentment of this Initial Series Note at the Indenture Trustee's Office, or as otherwise provided the Indenture.

In the manner and to the extent provided in the Indenture, Schedule 1 hereto may be adjusted once at the discretion of the Owner Trustee prior to June 30, 1990, in connection with an adjustment to Basic Rent under Section 3(d) of the Facility Lease.

The Holder hereof, by its acceptance of this Initial Series Note, agrees that each payment received by it hereunder shall be applied in the manner set forth in Section 3.11 of the Indenture. The Holder of this Initial Series Note agrees, by its acceptance hereof, that it will duly note by appropriate means all payments of principal or interest made hereon and that it will not in any event transfer or otherwise dispose of this Initial Series Note unless and until all such notations have been duly made.

This Initial Series Note is one of the Initial Series Notes referred to in the Indenture. The Indenture permits the issuance of additional series of Notes, as provided in Section 3.5 of the Indenture, and the several series may be for varying aggregate principal amounts and may have different maturity dates, interest rates, redemption provisions and other terms. The properties of the Owner Trustee included in the Lease Indenture Estate are pledged to the Indenture Trustee to the extent provided in the Indenture as security for the payment of the principal of and premium, if any, and interest on this Initial Series Note and all other Notes issued and outstanding from time to time under the Indenture. Reference is hereby made to the Indenture for a statement of the rights of the Holders of, and the nature and extent of the security for, this Initial Series Note and of the rights of, and the nature and extent of the security for, the Holders of the other Notes and of certain rights of the Owner Trustee, as well as for a statement of the terms and conditions of the trust created by the Indenture, to all of which terms and conditions the Holder hereof agrees by its acceptance of this Initial Series Note.

This Initial Series Note is subject to purchase by the Owner Trustee as provided in Section 6.8(of the Indenture. This Initial Series Note is not subject to prepayment in whole or in part.

In case an Indenture Event of Default shall occur and be continuing, the unpaid balance of the principal of this Initial Series Note and any other Notes, together with all accrued but unpaid interest thereon, may, subject to certain rights of the Owner Trustee or the Owner Participant contained or referred to in the Indenture, be declared or may become due and payable in the manner and with the effect provided in the Indenture.

The lien upon the Lease Indenture Estate is subject to being legally discharged prior to the maturity of this Initial Series Note upon the deposit with the Indenture Trustee of cash or certain securities sufficient to pay this Initial Series Note when due or an assumption by the Lessee of the obligation of the Owner Trustee under this Initial Series Note and the Indenture, in each case in accordance with the terms of the Indenture.

There shall be maintained at the Indenture Trustee's Office a register for the purpose of registering transfers and exchanges of Notes in the manner provided in the Indenture. The transfer of this Initial Series Note is registrable, as provided in the Indenture, upon surrender of this Initial Series Note for registration of transfer duly accompanied by a written instrument of transfer duly executed by or on behalf of the registered Holder hereof with signature guaranteed, together with the amount of any applicable transfer taxes. Prior to due presentment for registration of transfer of this Initial Series Note, the Owner Trustee and the Indenture Trustee may treat the person in whose name this Initial Series Note is registered as the owner hereof for the purpose of receiving payments of principal of and premium, if any, and interest on this Initial Series Note and for all other purposes whatsoever, whether or not this Initial Series Note be overdue, and neither the Owner Trustee nor the Indenture Trustee shall be affected by notice to the contrary.

This Initial Series Note shall be governed by, and construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, the Owner Trustee has caused this Initial Series Note to be duly executed as of the date hereof.

THE FIRST NATIONAL BANK OF
BOSTON, not in its individual capacity,
but solely as *Owner Trustee* under a
Trust Agreement dated as of December 1,
1986, with Chrysler Financial Corporation

By: _____
Assistant Vice President

ASSIGNMENT

Date: December 18, 19

For value received, EL PASO FUNDING CORPORATION hereby sells, assigns and transfers to FIRST CITY NATIONAL BANK OF HOUSTON as Collateral Trust Trustee pursuant to the Collateral Trust Indenture dated as of August 1, 1986, as amended and supplemented, among EL PASO FUNDING CORPORATION, El Paso Electric Company and said Collateral Trust Trustee, without recourse, the Initial Series Note to which this Assignment is annexed and all rights thereunder.

EL PASO FUNDING CORPORATION

By: _____
Vice President

SCHEDULE 1

TO THE INITIAL SERIES NOTE
(DUE JULY 2, 1992)

SCHEDULE OF PRINCIPAL AMORTIZATION

Payment Date (month/day/year)	Principal Amount Payable	Principal Amount Paid
7/2/1987	$0.0000000	
1/2/1988	670000.00	
7/2/1988	697000.00	
1/2/1989	725000.00	
7/2/1989	754000.00	
1/2/1990	785000.00	
7/2/1990	817000.00	
1/2/1991	850000.00	
7/2/1991	884000.00	
1/2/1992	920000.00	
7/2/1992	957000.00	
	$ 8,059,000	

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EXHIBIT A-2

FORM OF INITIAL SERIES NOTE
(DUE JULY 2, 1997)

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED, SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT

NONRECOURSE PROMISSORY NOTE, INITIAL SERIES
(DUE JULY 2, 1997)

Issue date: December 18, 1986

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as Owner Trustee (the *Owner Trustee*) under a Trust Agreement dated as of December 1, 1986 with Chrysler Financial Corporation, (the *Owner Participant*), hereby promises to pay to EL PASO FUNDING CORPORATION, or registered assigns, the principal sum of twelve million two hundred ninety-five thousand dollars ($12,295,000) on July 2, 1997 together with interest (computed on the basis of a 360-day year of twelve 30-day months) on the aggregate amount of such principal sum remaining unpaid from time to time from the date of this Initial Series Note until due and payable, in arrears, at the rate of 9.20% per annum. Payments of principal installments of this Initial Series Note shall be made in the "Principal Amount Payable" and on the "Payment Dates" specified in Schedule 1 hereto. Payments of accrued interest on this Initial Series Note shall be made on each January 2 and July 2 commencing July 2, 1987 until the principal amount of this Initial Series Note shall have been paid in full.

Capitalized terms used in this Initial Series Note which are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture (as hereinafter defined).

Interest on any overdue principal and premium, if any, and (to the extent permitted by applicable law) any overdue interest shall be paid, on demand, from the due date thereof at the rate of interest per annum (computed on the basis of a 360-day year of twelve 30-day months) equal to 1% above the interest rate stated above for this Initial Series Note for the period during which any such principal, premium or interest shall be overdue.

In the event any date on which a payment is due under this Initial Series Note is not a Business Day, then payment thereof may be made on the next succeeding Business Day with the same force and effect as if made on the date on which such payment was due.

All payments of principal, premium, if any, and interest to be made by the Owner Trustee hereunder and under the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents dated as of December 1, 1986, as at any time amended or supplemented in accordance with the provisions thereof (the *Indenture*), between the Owner Trustee and First City National Bank of Houston, as Trustee (the *Indenture Trustee*), shall be made only from the Lease Indenture Estate and the Trust Estate and the Indenture Trustee shall have no obligation for the payment thereof except to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Lease Indenture Estate to make such payments in accordance with the terms of Article V of the Indenture. The Holder hereof, by its acceptance of this Initial Series Note, agrees that such Holder will look solely to the Trust Estate and the income and proceeds from the Lease Indenture Estate to the extent available for distribution to the Holder hereof as above provided, and that neither the Owner Participant nor, except as expressly provided in the Indenture, the Owner Trustee nor the Indenture Trustee is or shall be personally liable to the Holder hereof for any amounts payable under this Initial Series Note or for any performance to be rendered under the Indenture or any other Transaction Document or for any liability thereunder; *provided, however*, that in the event the Lessee shall assume all the obligations of the Owner Trustee hereunder and under the Indenture pursuant to Section 3.9(b) of the Indenture, then all payments to be made under this Initial Series Note shall be made

only from payments made by the Lessee under this Initial Series Note in accordance with the Assumption Agreement referred to in said Section 3.9(b) and the Holder of this Initial Series Note agrees that in such event it will look solely to the Lessee for such payment.

Principal, premium, if any, and interest shall be payable, in the manner provided in the Indenture, on presentment of this Initial Series Note at the Indenture Trustee's Office, or as otherwise provided in the Indenture.

In the manner and to the extent provided in the Indenture, Schedule I hereto may be adjusted once at the discretion of the Owner Trustee prior to June 30, 1990, in connection with an adjustment to Basic Rent under Section 3(d) of the Facility Lease.

The Holder hereof, by its acceptance of this Initial Series Note, agrees that each payment received by it hereunder shall be applied in the manner set forth in Section 3.11 of the Indenture. The Holder of this Initial Series Note agrees, by its acceptance hereof, that it will duly note by appropriate means all payments of principal or interest made hereon and that it will not in any event transfer or otherwise dispose of this Initial Series Note unless and until all such notations have been duly made.

This Initial Series Note is one of the Initial Series Notes referred to in the Indenture. The Indenture permits the issuance of additional series of Notes, as provided in Section 3.5 of the Indenture, and the several series may be for varying aggregate principal amounts and may have different maturity dates, interest rates, redemption provisions and other terms. The properties of the Owner Trustee included in the Lease Indenture Estate are pledged to the Indenture Trustee to the extent provided in the Indenture as security for the payment of the principal of and premium, if any, and interest on this Initial Series Note and all other Notes issued and outstanding from time to time under the Indenture. Reference is hereby made to the Indenture for a statement of the rights of the Holders of, and the nature and extent of the security for, this Initial Series Note and of the rights of, and the nature and extent of the security for, the Holders of the other Notes and of certain rights of the Owner Trustee, as well as for a statement of the terms and conditions of the trust created by t Indenture, to all of which terms and conditions the Holder hereof agrees by its acceptance of t Initial Series Note.

This Initial Series Note is subject to purchase by the Owner Trustee as provided in Section 6.8(b) of the Indenture. This Initial Series Note may be prepaid in whole or in part at any time on and after January 2, 1992 by the Owner Trustee as follows: upon the giving of not less than 30 days' notice as provided in the Indenture and at the following prepayment prices (expressed as a percentage of the unpaid principal amount hereof), together with interest accrued to the date fixed for prepayment:

Twelve Month Period Beginning January 2,	Prepayment Price
1992	102.63%
1993	101.31

and thereafter at the principal amount thereof, together with interest accrued to the prepayment date. This Initial Series Note is not otherwise subject to prepayment in whole or in part.

In case an Indenture Event of Default shall occur and be continuing, the unpaid balance of the principal of this Initial Series Note and any other Notes, together with all accrued by unpaid interest thereon, may, subject to certain rights of the Owner Trustee or the Owner Participant contained or referred to in the Indenture, be declared or may become due and payable in the manner and with the effect provided in the Indenture.

The lien upon the Lease Indenture Estate is subject to being legally discharged prior to the maturity of this Initial Series Note upon the deposit with the Indenture Trustee of cash or certain securities sufficient to pay this Initial Series Note when due or an assumption by the Lessee of the obligation of the Owner Trustee under this Initial Series Note and the Indenture, in each case in accordance with the terms of the Indenture.

There shall be maintained at the Indenture Trustee's Office a register for the purpose of registering transfers and exchanges of Notes in the manner provided in the Indenture. The transfer of this Initial Series Note is registrable, as provided in the Indenture, upon surrender of this Initial Series Note for registration of transfer duly accompanied by a written instrument of transfer duly executed by or on behalf of the registered Holder hereof with signature guaranteed, together with the amount of any applicable transfer taxes. Prior to due presentment for registration of transfer of this Initial Series Note, the Owner Trustee and the Indenture Trustee may treat the person in whose name this Initial Series Note is registered as the owner hereof for the purpose of receiving payments of principal of and premium, if any, and interest on this Initial Series Note and for all other purposes whatsoever, whether or not this Initial Series Note be overdue, and neither the Owner Trustee nor the Indenture Trustee shall be affected by notice to the contrary.

This Initial Series Note shall be governed by, and construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, the Owner Trustee has caused this Initial Series Note to be duly executed as of the date hereof.

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as *Owner Trustee* under a Trust Agreement, dated as of December 1, 1986, with Chrysler Financial Corporation

By: _____
Assistant Vice President

ASSIGNMENT

Date: December 18, 19[redacted]

For value received, EL PASO FUNDING CORPORATION hereby sells, assigns and transfers to FI[redacted] CITY NATIONAL BANK OF HOUSTON as Collateral Trust Trustee pursuant to the Collateral Trust Indenture dated as of August 1, 1986, as amended and supplemented, among EL PASO FUNDING CORPORATION, El Paso Electric Company and said Collateral Trust Trustee, without recourse, the Initial Series Note to which this Assignment is annexed and all rights thereunder.

EL PASO FUNDING CORPORATION

By: _____
Vice President

SCHEDULE 1

TO THE INITIAL SERIES NOTE
(DUE JULY 2, 1997)

SCHEDULE OF PRINCIPAL AMORTIZATION

Payment Date (month/day/year)	Principal Amount Payable	Principal Amount Paid
7/2/1987	$ 0.0000000	
1/2/1988	0.0000000	
7/2/1988	0.0000000	
1/2/1989	0.0000000	
7/2/1989	0.0000000	
1/2/1990	0.0000000	
7/2/1990	0.0000000	
1/2/1991	0.0000000	
7/2/1991	0.0000000	
1/2/1992	0.0000000	
7/2/1992	0.0000000	
1/2/1993	.996000.00	
7/2/1993	1042000.00	
1/2/1994	1090000.00	
7/2/1994	1140000.00	
1/2/1995	1192000.00	
7/2/1995	1247000.00	
1/2/1996	1304000.00	
7/2/1996	1364000.00	
1/2/1997	1427000.00	
7/2/1997	1493000.00	
	$12,295,000	

EXHIBIT A-3

FORM OF INITIAL SERIES NOTE
(DUE JANUARY 2, 2011)
THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED, SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT

NONRECOURSE PROMISSORY NOTE, INITIAL SERIES
(DUE JANUARY 2, 2011)

Issue date: December 18, 1986

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as Owner Trustee (the *Owner Trustee*) under a Trust Agreement dated as of December 1, 1986 with Chrysler Financial Corporation (the *Owner Participant*), hereby promises to pay to EL PASO FUNDING CORPORATION, or registered assigns, the principal sum of Fifty-six million forty-six thousand dollars ($56,046,000) on January 2, 2011, together with interest (computed on the basis of a 360-day year of twelve 30-day months) on the aggregate amount of such principal sum remaining unpaid from time to time from the date of this Initial Series Note until due and payable, in arrears, at the rate of 10.375% per annum. Payments of principal installments of this Initial Series Note shall be made in the "Principal Amount Payable" and on the "Payment Dates" specified in Schedule 1 hereto. Payments of accrued interest on this Initial Series Note shall be made on each January 2 and July 2, commencing July 2, 1987, until the principal amount of this Initial Series Note shall have been paid in full.

Capitalized terms used in this Initial Series Note which are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture (as hereinafter defined).

Interest on any overdue principal and premium, if any, and (to the extent permitted by applicable law) any overdue interest shall be paid, on demand, from the due date thereof at the rate of interest per annum (computed on the basis of a 360-day year of twelve 30-day months) equal to 1% above the interest rate stated above for this Initial Series Note for the period during which any such principal, premium or interest shall be overdue.

In the event any date on which a payment is due under this Initial Series Note is not a Business Day, then payment thereof may be made on the next succeeding Business Day with the same force and effect as if made on the date on which such payment was due.

All payments of principal, premium, if any, and interest to be made by the Owner Trustee hereunder and under the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents dated as of December 1, 1986, as at any time amended or supplemented in accordance with the provisions thereof (the *Indenture*), between the Owner Trustee and First City National Bank of Houston, as Trustee (the *Indenture Trustee*), shall be made only from the Lease Indenture Estate and the Trust Estate and the Indenture Trustee shall have no obligation for the payment thereof except to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Lease Indenture Estate to make such payments in accordance with the terms of Article V of the Indenture. The Holder hereof, by its acceptance of this Initial Series Note, agrees that such Holder will look solely to the Trust Estate and the income and proceeds from the Lease Indenture Estate to the extent available for distribution to the Holder hereof as above provided, and that neither the Owner Participant nor, except as expressly provided in the Indenture, the Owner Trustee nor the Indenture Trustee is or shall be personally liable to the Holder hereof for any amounts payable under this Initial Series Note or for any performance to be rendered under the Indenture or any other Transaction Document or for any liability thereunder; *provided, however*, that in the event the Lessee shall assume all the obligations of the Owner Trustee hereunder and under the Indenture pursuant to Sec-

tion 3.9(b) of the Indenture, then all payments to be made under this Initial Series Note shall be made only from payments made by the Lessee under this Initial Series Note in accordance with the Assumption Agreement referred to in said Section 3.9(b) and the Holder of this Initial Series N[illegible] agrees that in such event it will look solely to the Lessee for such payment.

Principal, premium, if any, and interest shall be payable, in the manner provided in the Indenture, on presentment of this Initial Series Note at the Indenture Trustee's Office, or as otherwise provided in the Indenture.

In the manner and to the extent provided in the Indenture, Schedule 1 hereto may be adjusted once at the discretion of the Owner Trustee prior to June 30, 1990, in connection with an adjustment to Basic Rent under Section 3(d) of the Facility Lease.

The Holder hereof, by its acceptance of this Initial Series Note, agrees that each payment received by it hereunder shall be applied in the manner set forth in Section 3.11 of the Indenture. The Holder of this Initial Series Note agrees, by its acceptance hereof, that it will duly note by appropriate means all payments of principal or interest made hereon and that it will not in any event transfer or otherwise dispose of this Initial Series Note unless and until all such notations have been duly made.

This Initial Series Note is one of the Initial Series Notes referred to in the Indenture. The Indenture permits the issuance of additional series of Notes, as provided in Section 3.5 of the Indenture, and the several series may be for varying aggregate principal amounts and may have different maturity dates, interest rates, redemption provisions and other terms. The properties of the Owner Trustee included in the Lease Indenture Estate are pledged to the Indenture Trustee to the extent provided in the Indenture as security for the payment of the principal of and premium, if any, and interest on this Initial Series Note and all other Notes issued and outstanding from time to time under the Indenture. Reference is hereby made to the Indenture for a statement of the rights of the Holders of, and the nature and extent of the security for, this Initial Series Note and of the rights of, and the nature and extent of the security for, the Holders of the other Notes and of certain rights of the Owner Trustee, as well as for a statement of the terms and conditions of the trust created by th[illegible] Indenture, to all of which terms and conditions the Holder hereof agrees by its acceptance of t[illegible] Initial Series Note.

This Initial Series Note is subject to purchase by the Owner Trustee as provided in Section 6.8(b) of the Indenture and to mandatory prepayment in full as provided in Section 5.2 of the Indenture, such prepayment being without premium but including accrued interest to the date of prepayment. In addition, this Initial Series Note may be prepaid in whole or in part at any time on and after January 2, 1992 by the Owner Trustee as follows: upon the giving of not less than 30 days' notice as provided in the Indenture and at the following prepayment prices (expressed as a percentage of the unpaid principal amount hereof), together with interest accrued to the date fixed for prepayment:

Twelve Month Period Beginning January 2,	Prepayment Price	Twelve Month Period Beginning January 2,	Prepayment Price
1992	107.78%	2000	103.63%
1993	107.26	2001	103.11
1994	106.74	2002	102.59
1995	106.23	2003	102.08
1996	105.71	2004	101.56
1997	105.19	2005	101.04
1998	104.67	2006	100.52
1999	104.15		

and thereafter at the principal amount thereof, together with interest accrued to the prepayment date. This Initial Series Note is not otherwise subject to prepayment in whole or in part.

In case an Indenture Event of Default shall occur and be continuing, the unpaid balance of the principal of this Initial Series Note and any other Notes, together with all accrued but unpaid inter[illegible]

thereon, may, subject to certain rights of the Owner Trustee or the Owner Participant contained or referred to in the Indenture, be declared or may become due and payable in the manner and with the effect provided in the Indenture.

The lien upon the Lease Indenture Estate is subject to being legally discharged prior to the maturity of this Initial Series Note upon the deposit with the Indenture Trustee of cash or certain securities sufficient to pay this Initial Series Note when due or an assumption by the Lessee of the obligation of the Owner Trustee under this Initial Series Note and the Indenture, in each case in accordance with the terms of the Indenture.

There shall be maintained at the Indenture Trustee's Office a register for the purpose of registering transfers and exchanges of Notes in the manner provided in the Indenture. The transfer of this Initial Series Note is registrable, as provided in the Indenture, upon surrender of this Initial Series Note for registration of transfer duly accompanied by a written instrument of transfer duly executed by or on behalf of the registered Holder hereof with signature guaranteed, together with the amount of any applicable transfer taxes. Prior to due presentment for registration of transfer of this Initial Series Note, the Owner Trustee and the Indenture Trustee may treat the person in whose name this Initial Series Note is registered as the owner hereof for the purpose of receiving payments of principal of and premium, if any, and interest on this Initial Series Note and for all other purposes whatsoever, whether or not this Initial Series Note be overdue, and neither the Owner Trustee nor the Indenture Trustee shall be affected by notice to the contrary.

This Initial Series Note shall be governed by, and construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, the Owner Trustee has caused this Initial Series Note to be duly executed as of the date hereof.

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as *Owner Trustee* under a Trust Agreement, dated as of December 1, 1986, with Chrysler Financial Corporation

By: _____
Assistant Vice President

ASSIGNMENT

Date: December 18, 198[redacted]

For value received, EL PASO FUNDING CORPORATION hereby sells, assigns and transfers to F[redacted] CITY NATIONAL BANK OF HOUSTON as Collateral Trust Trustee pursuant to the Collateral Trust Indenture dated as of August 1, 1986, as amended and supplemented, among EL PASO FUNDING CORPORATION, El Paso Electric Company and said Collateral Trust Trustee, without recourse, the Initial Series Note to which this Assignment is annexed and all rights thereunder.

EL PASO FUNDING CORPORATION

By: _____
Vice President

SCHEDULE 1

TO THE INITIAL SERIES NOTE
(DUE JANUARY 2, 2011)
SCHEDULE OF PRINCIPAL AMORTIZATION

Payment Date (month/day/year)	Principal Amount Payable	Principal Amount Paid
7/2/1987	$ 0.0000000	
1/2/1988	0.0000000	
7/2/1988	0.0000000	
1/2/1989	0.0000000	
7/2/1989	0.0000000	
1/2/1990	0.0000000	
7/2/1990	0.0000000	
1/2/1991	0.0000000	
7/2/1991	0.0000000	
1/2/1992	0.0000000	
7/2/1992	0.0000000	
1/2/1993	0.0000000	
7/2/1993	0.0000000	
1/2/1994	0.0000000	
7/2/1994	0.0000000	
1/2/1995	0.0000000	
7/2/1995	0.0000000	
1/2/1996	0.0000000	
7/2/1996	0.0000000	
1/2/1997	0.0000000	
7/2/1997	0.0000000	
1/2/1998	1561000.00	
7/2/1998	1642000.00	
1/2/1999	1383000.00	
7/2/1999	1128000.00	
1/2/2000	1300000.00	
7/2/2000	1204000.00	
1/2/2001	1390000.00	
7/2/2001	1287000.00	
1/2/2002	1486000.00	
7/2/2002	1376000.00	
1/2/2003	1588000.00	
7/2/2003	1470000.00	
1/2/2004	1698000.00	
7/2/2004	1572000.00	
1/2/2005	1815000.00	
7/2/2005	1996000.00	
1/2/2006	2801000.00	
7/2/2006	2946000.00	
1/2/2007	3099000.00	
7/2/2007	3260000.00	
1/2/2008	3429000.00	
7/2/2008	3607000.00	
1/2/2009	3794000.00	
7/2/2009	3991000.00	
1/2/2010	4198000.00	
7/2/2010	1025000.00	
1/2/2011	0.0000000	
	$56,046,000	

EXHIBIT B

ASSUMPTION AGREEMENT

TO: The Holders (as defined below) from time to time of the Notes (as defined below) of The First National Bank of Boston, not in its individual capacity, but solely as owner trustee under a Trust Agreement dated as of December 1, 1986 with Chrysler Financial Corporation (in such capacity, the "Issuer") under the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents (the "Indenture") dated as of December 1, 1986 between the Issuer and First City National Bank of Houston, as trustee (the "Trustee").

The undersigned, EL PASO ELECTRIC COMPANY, a Texas corporation (the "Obligor "), for the purpose of satisfying in part its obligation to make certain payments under that certain Facility Lease dated as of December 1, 1986 between the Issuer and the Obligor (the "Facility Lease"), does hereby covenant and agree with the Holders (as defined in the Indenture) from time to time of the Notes (as defined in the Indenture) as follows:

SECTION 1. The Obligor does hereby agree to, and does hereby, assume unconditionally the payment of the principal of the Notes and of the interest and premium, if any, thereon, at the rates provided in the Notes, when and as the same shall become due and payable, whether at maturity or upon mandatory prepayment or upon declaration or otherwise, according to the terms of the Notes and of the Indenture.

SECTION 2. The assumption herein contained shall be binding upon the Obligor, its successors and assigns, and shall remain in full force and effect irrespective of the power or authority of the Issuer to issue the Notes or to execute, acknowledge and deliver the Indenture or the validity of the Notes, or the Indenture, or of any defense whatsoever that the Issuer may or might have to the payment of the Notes (principal, interest or premium), or to the performance or observance of any of the provisions or conditions of the Indenture or any Note, or of the existence or continuance of the Issuer as a legal entity; nor shall said assumption be affected by the merger, consolidation, or other dissolution of the Issuer or the sale or other transfer of the property of the Issuer as an entirety, or substantially so, to any other person; nor shall the assumption be discharged or impaired by any act, failure or omission whatsoever on the part of any Holder of any Notes or the Trustee, including, among other such acts, failures and omissions, the following:

(a) any failure to present any Note for payment or to demand payment thereof, or to give to the Obligor notice of dishonor and non-payment of any Note when and as the same may become due and payable, or notice of any failure on the part of the Issuer to do any act or thing or to perform or keep any covenant or agreement by it to be done, kept or performed under the terms of the Notes or the Indenture;

(b) any extension of the obligation of any Note, either indefinitely or for any period of time, or any other modification in the obligations under any Note or the Indenture or of the Issuer thereon or in connection therewith;

(c) any act or failure to act with regard to any Note or the Indenture or anything which might vary the risk of the Obligor; and

(d) any action taken under the Indenture and the Notes in the exercise of any right or power thereby conferred or any failure or omission on the part of the Trustee or the Holder of any Note to enforce any right or security given under the Indenture or any Note, or any waiver of any right or any failure or omission on the part of the Trustee or any Holder of any Note to enforce any right of any Holder of any Note against the Issuer;

provided, always, that the specific enumeration of the above mentioned acts, failures, waivers or omissions shall not be deemed to exclude any other acts, failures, waivers or omissions though not specifically mentioned herein, it being the purpose and intent of this Assumption Agreement that the obligation of the Obligor shall be absolute and unconditional to the extent herein specified and shall

not be discharged, impaired or varied except by the payment of the principal of and interest on any Note and any premium thereon in case of prepayment, and then only to the extent of such payments.

SECTION 3. (a) Subject to the requirements of Sections 10(b)(3)(iii) and 10(b)(3)(iv) of the Participation Agreement and to the provisions of paragraph (b) of this Section, nothing contained in this Assumption Agreement shall prevent any consolidation or merger of the Obligor with or into any other corporation or corporations (whether or not affiliated with the Obligor), or successive consolidations or mergers in which the Obligor or its successor or successors shall be a party or parties, or shall prevent any sale, conveyance or lease of all or substantially all the property of the Obligor, to any other corporation authorized to acquire and operate the same; *provided, however*, and the Obligor hereby covenants and agrees, that upon any such consolidation, merger, sale, conveyance or lease, all obligations of the Obligor under this Assumption Agreement on or in respect of any Note, and the due and punctual performance and observance of all of the covenants and conditions of this Assumption Agreement to be performed by the Obligor, shall be expressly and duly assumed, by an agreement reasonably satisfactory in form and substance to the Trustee, executed and delivered by the corporation (if other than the Obligor) formed by such consolidation, or into which the Obligor shall have been merged, or by the corporation which shall have acquired such property.

(b) The Trustee, subject to applicable provisions of the Indenture, may rely upon an opinion of counsel to the Obligor as conclusive evidence that any such merger, consolidation, sale or conveyance complies with the provisions of this Section.

SECTION 4. The Obligor does hereby consent to all of the terms and conditions of each series of Notes and of the Indenture, and hereby waives any and all rights of notice of any fact or facts or circumstance or circumstances whatsoever and consents to any extension or extensions of time of any payment or payments, or of any other act or thing which any Holder or Holders of any Note or the Issuer may agree to consent to, either expressly, by acquiescence or otherwise, and hereby agrees not to claim or enforce any rights of subrogation or any other right or privilege which might otherwise arise on account of any payment made by it or act or thing done by it on account of or in accordance with its assumption herein contained, unless and until all of the Notes have been fully paid and discharged.

SECTION 5. The assumption herein expressed may be transferred or assigned at any time or from time to time and shall be considered to be transferred and assigned upon the transfer of any Note, whether with or without the consent of or notice to the Obligor or the Issuer. The Obligor hereby agrees to execute and deliver such instruments and to do such acts and things requested by the Trustee as shall be reasonably necessary to carry out and effectuate the purposes and intents of this Assumption Agreement. This Assumption Agreement may not be amended or modified in any respect without the prior written consent (evidenced as provided in the Indenture) of the Holders of not less than a majority in principal amount of the Notes Outstanding (as defined in the Indenture); provided, however, that without the written consent of the Holders of all of the Notes Outstanding, no such amendment or modification shall be effective which will change any of the provisions of Sections 1, 2, 4 or 5 of this Assumption Agreement. The Obligor agrees to file with the Indenture Trustee a duplicate original of each such consent.

SECTION 6. Capitalized terms used herein, but which are not defined herein, shall have the meanings set forth in Appendix A to the Indenture.

EL PASO ELECTRIC COMPANY

By: _____
Title:

ATTEST:

_____
Title:

EXHIBIT C

UNDIVIDED INTEREST SUPPLEMENTAL INDENTURE

SUPPLEMENTAL INDENTURE NO. dated as of , to the TRUST INDENTURE, MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS (hereinafter, together with supplements thereto, the *Indenture*) dated as of December 1, 1986, between THE FIRST NATIONAL BANK OF BOSTON (FNB), not in its individual capacity, but solely as trustee (the *Owner Trustee*) under a Trust Agreement, dated as of December 1, 1986, between FNB, whose address is 100 Federal Street, Boston, Massachusetts 02110, and Chrysler Financial Corporation, and FIRST CITY NATIONAL BANK OF HOUSTON, a national banking association (the *Indenture Trustee*), whose address is First City Financial Center, 1301 Fannin Street, 21st Floor, Houston, Texas 77002.

WITNESSETH:

WHEREAS, in accordance with Section 9(j) of the Facility Lease, the Owner Trustee is obligated, in certain cases, to cause the Undivided Interest and the Real Property Interest to be subjected to the lien of the Indenture; and

WHEREAS, in order to further secure the obligations referred to in the Indenture, the Owner Trustee desires to grant to the Indenture Trustee the security interest and realty mortgage herein provided and the parties hereto desire that the Indenture be regarded (i) to the extent that the Undivided Interest constitutes personal property, as a "security agreement" and as a "financing statement" under the Uniform Commercial Code and (ii) to the extent that the Undivided Interest and the Real Property Interest constitute fixtures or real property, as a realty mortgage;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1.1. *The Indenture.* This Supplemental Indenture shall be construed as supplemental to and amendatory of the Indenture and shall form a part thereof, and the Indenture is hereby incorporated by reference herein and is hereby ratified, approved and confirmed.

SECTION 1.2. *Definitions.* Capitalized terms used herein, but which are not otherwise defined herein, shall have the meanings set forth in Appendix A to the Indenture.

SECTION 1.3. *Recording Information.* The Indenture was recorded on December , 1986, in Maricopa County, Arizona [describe] [specify other recorded documents] [specify other places of recordation].

SECTION 1.4. *Governing Law.* This Supplemental Indenture and the Indenture shall, for all purposes, be construed in accordance with and governed by the laws of the State of New York except to the extent that the laws of the State of Arizona shall be mandatorily applicable thereto.

SECTION 1.5. *Security Interest and Realty Mortgage.* As further security for the due and punctual payment of the principal of and premium, if any, and interest on the Notes according to their respective terms and effect and the performance and observance by the Owner Trustee of all the covenants and agreements made by it or on its behalf in the Notes, the Participation Agreement and the Indenture, the Owner Trustee does, by its execution and delivery hereof, hereby grant a security interest in, bargain, convey, warrant, assign, transfer, mortgage, pledge and set over unto the Indenture Trustee, and to its successors and assigns in trust, the following (which shall be a part of the Lease Indenture Estate for all purposes of the Indenture and the other Transaction Documents):

(1) the Undivided Interest and the Real Property Interest, including, without limitation, the Owner Trustee's interest in all Capital Improvements (including any which constitute fixtures under Applicable Law) now existing or which hereafter may become part of the Undivided Interest;

(2) all right, title and interest of the Owner Trustee in, to and under (a) the Bill of Sale, (b) the ANPP Participation Agreement and (c) [the Deed and the Assignment of Beneficial Interest] [the ground lease described in Section 10(b)(3)(xiv) of the Participation Agreement], including, without limitation, all amounts of Rent, insurance proceeds and condemnation, requisition and other awards and payments of any kind for or with respect to any part of the Lease Indenture Estate as contemplated in such documents;

(3) all other property of every kind and description, real, personal and mixed, and interests therein now held or hereafter acquired by the Owner Trustee pursuant to any term of any Transaction Document, whether or not subjected to the lien of the Indenture by an indenture supplemental hereto; and

(4) all proceeds of the foregoing;

but excluding, however, from the Lease Indenture Estate any and all Excepted Payments; and *subject, however*, to (i) the terms and provisions of the Indenture and (ii) the rights of the Lessee under the Facility Lease.

TO HAVE AND TO HOLD all the aforesaid properties, rights and interests unto the Indenture Trustee, its successors and assigns, forever, but in trust, nevertheless, for the use and purposes and with the power and authority and subject to the terms and conditions mentioned and set forth in the Indenture.

UPON CONDITION that, unless and until an Indenture Event of Default shall have occurred and be continuing, the Owner Trustee shall be permitted, to the exclusion of the Indenture Trustee, to possess and use the Lease Indenture Estate and exercise all rights with respect thereto and, without limitation of the foregoing, the Owner Trustee may exercise all of its rights under the documents specified in clause (2) above to the same extent as if its right, title and interest therein had not been assigned to the Indenture Trustee to the extent set forth above, except that the Indenture Trustee shall receive all payments of Assigned Payments and all moneys and securities required to be held by or deposited with the Indenture Trustee hereunder.

The Owner Trustee hereby warrants and represents that it has not assigned or pledged any of its right, title or interest in and to the Lease Indenture Estate to anyone other than the Indenture Trustee.

SECTION 1.6. *Real Estate Remedies.* In addition to the remedies specified in the Indenture (including but without limitation Section 6.4 thereof) or otherwise available pursuant to Applicable Law, to the extent that any portion of the Lease Indenture Estate constitutes fixtures or real property, the Indenture and this Supplemental Indenture shall be, and shall be deemed to be, a realty mortgage and assignment of rents with respect to all items of real property and fixtures and the Indenture Trustee shall have, to the extent not inconsistent with the Indenture, all the rights, remedies and benefits of a mortgagee of real property under Applicable Law (including, but without limitation, rights and remedies pursuant to Arizona Revised Statutes Section 33-702.B, or any comparable successor provision) and the Owner Trustee shall be and be deemed to be a mortgagor with respect to such fixtures and real property.

SECTION 1.7. *Certain Releases.* In case a release from the security and other interests created by Section 1.5 hereof by the Indenture Trustee of a portion of the Undivided Interest shall be necessary in order to enable the Owner Trustee or the Lessee to perform its covenants and agreements set forth in the Transaction Documents or in the ANPP Participation Agreement or the Owner Trustee or the Lessee to carry out any action required by Section 8 of the Facility Lease, the Indenture Trustee shall execute and deliver to, or as directed by, the Owner Trustee or the Lessee an appropriate instrument or instruments provided to the Indenture Trustee by the Owner Trustee or the Lessee (in due form for filing or recording), so releasing a portion of the Undivided Interest, *provided, however*, that the Indenture Trustee shall have first received an Officer's Certificate, executed by the Lessee, accompanied by an opinion of counsel, each of which shall be to the effect that all necessary actions have been

or are being taken simultaneously with such release in connection with the proposed action to comply with the terms of the Indenture and Section 8 of the Facility Lease.

SECTION 1.8. *Severance.* The parties hereto understand and agree that Unit 2 and the Common Facilities (including the Undivided Interest), each Capital Improvement and each part thereof is or shall be severed, and shall be and remain severed, from the real estate constituting the PVNGS Site and even if physically attached thereto, shall retain the character of personal property, shall be treated as personal property with respect to the rights of all persons whomsoever, shall not be or become fixtures or otherwise part of the real estate constituting the PVNGS Site, and, by virtue of its nature as personal property, shall not be affected in any way by any instrument dealing with the real estate constituting the PVNGS Site.

SECTION 1.9. *Appointment of Co-Trustees or Separate Trustees.*

(a) At any time or times, when necessary or prudent or for the purpose of meeting the legal requirements of any jurisdiction in which any part of the Lease Indenture Estate may, at any time, be located, the Indenture Trustee, except as set forth in subsection (b)(6) of this Section 1.9, may, and upon receipt of a Directive shall, appoint one or more Persons to act as co-trustee of all or any such part of the Lease Indenture Estate or to act as separate trustee of any property constituting part thereof, in either case with such powers as may be provided in the instrument of appointment, and to vest in such Person or Persons any property, title, right or power deemed necessary or desirable, subject to the remaining provisions of this Section 1.9. Except as set forth in subsection (b)(6) of this Section 1.9 the Owner Trustee shall join in any such appointment upon the request of the Indenture Trustee, but such joining will not be necessary for the effectiveness of such appointment.

(b) Every separate trustee or co-trustee shall be appointed subject to the following terms:

(1) The rights, powers, duties and obligations conferred or imposed upon any such separate trustee or co-trustee shall not be greater than those conferred or imposed upon the Indenture Trustee, and such rights and powers shall be exercisable only jointly with the Indenture Trustee, except to the extent that, under any law of any jurisdiction in which any particular act or acts are to be performed, the Indenture Trustee shall be incompetent or unqualified to perform such act or acts, in which event, except as set forth in subsection (b)(6) of this Section 1.9, such rights and powers shall be exercised by such separate trustee or co-trustee subject to the provisions of subsection (b)(4) of this Section 1.9.

(2) The Indenture Trustee may at any time, by an instrument in writing executed by it, accept the resignation of, and may (and upon the receipt of a Directive, shall) remove any separate trustee or co-trustee appointed under this Section 1.9.

(3) No trustee under the Indenture and this Supplemental Indenture shall be liable by reason of any act or omission of any other trustee or co-trustee under this Indenture.

(4) Except as set forth in subsection (b)(6) of this Section 1.9, no power given to such separate trustee or co-trustee shall be separately exercised hereunder by such separate trustee or co-trustee except with the consent in writing of the Indenture Trustee.

(5) The Indenture Trustee shall maintain custody of all money and securities.

(6) Notwithstanding anything contained to the contrary in this Section 1.9, to the extent the laws of any jurisdiction preclude the Indenture Trustee from taking any action hereunder either alone, jointly or through a separate trustee under the direction and control of the Indenture Trustee, the Owner Trustee, at the instruction of the Indenture Trustee, shall appoint a separate trustee for such jurisdiction, which separate trustee shall have full power and authority to take all action hereunder as to matters relating to such jurisdiction without the consent of the Indenture Trustee, but subject to the same limitations in any exercise of his power and authority as those to which the Indenture Trustee is subject.

(c) Upon the acceptance in writing of such appointment by any such separate trustee or co-trustee, it shall be vested with the estates or property to which its appointment relates as specified in the instrument of appointment, subject to all the terms of the Indenture and this Supplemental Indenture.

(d) Any separate trustee or co-trustee may, at any time, constitute the Indenture Trustee, agent or attorney-in-fact, with full power and authority, to the extent not prohibited by law, to do any lawful act under or in respect of the Indenture and this Supplemental Indenture on its behalf and in its name. If a separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Indenture Trustee, to the extent permitted by law, without the appointment of a new or successor trustee.

SECTION 1.10. *Separability of Provisions.* In case any one or more of the provisions of this Supplemental Indenture or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof and the Indenture and any other application hereof and thereof shall not in any way be affected or impaired.

SECTION 1.11. *Counterpart Execution.* This Supplemental Indenture may be executed in any number of counterparts and by the different parties hereto and thereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Owner Trustee and the Indenture Trustee have each caused this Indenture to be duly executed by their respective officers thereunto duly authorized, all as of the date first set forth above.

THE FIRST NATIONAL BANK OF BOSTON,
not in its individual capacity,
but solely as Owner Trustee under the
Trust Agreement dated as of December 1,
1986, with Chrysler Financial Corporation

By: _____
Title:

FIRST CITY NATIONAL BANK OF HOUSTON

By: _____
Title:

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED, SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT

Nonrecourse Promissory Note, Initial Series
(DUE July 2, 1992)
Issue Date: December 18, 1986

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as Owner Trustee (the Owner Trustee) under a Trust Agreement dated as of December 1, 1986 with Chrysler Financial Corporation (the *Owner Participant*), hereby promises to pay to EL PASO FUNDING CORPORATION, or registered assigns, the principal sum of eight million fifty-nine thousand dollars ($8,059,000) on July 2, 1992 together with interest (computed on the basis of a 360-day year of twelve 30-day months) on the aggregate amount of such principal sum remaining unpaid from time to time from the date of this Initial Series Note until due and payable, in arrears, at the rate of 8.10% per annum. Payments of principal installments of this Initial Series Note shall be made in the "Principal Amount Payable" and on the "Payment Dates" specified in Schedule 1 hereto. Payments of accrued interest on this Initial Series Note shall be made on each January 2 and July 2, commencing July 2, 1987, until the principal amount of this Initial Series Note shall have been paid in full.

Capitalized terms used in this Initial Series Note which are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture (as hereinafter defined).

Interest on any overdue principal and premium, if any, and (to the extent permitted by applicable law) any overdue interest shall be paid, on demand, from the due date thereof at the rate of interest per annum (computed on the basis of a 360-day year of twelve 30-day months) equal to 1% above the interest rate stated above for this Initial Series Note for the period during which any such principal, premium or interest shall be overdue.

In the event any date on which a payment is due under this Initial Series Note is not a Business Day, then payment thereof may be made on the next succeeding Business Day with the same force and effect as if made on the date on which such payment was due.

All payments of principal, premium, if any, and interest to be made by the Owner Trustee hereunder and under the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents dated as of December 1, 1986, as at any time amended or supplemented in accordance with the provisions thereof (the *Indenture)* between the Owner Trustee and First City National Bank of Houston, as Trustee (the *Indenture Trustee*), shall be made only from the Lease Indenture Estate and the Trust Estate and the Indenture Trustee shall have no obligation for the payment thereof except to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Lease Indenture Estate to make such payments in accordance with the terms of Article V of the Indenture. The Holder hereof, by its acceptance of this Initial Series Note, agrees that such Holder will look solely to the Trust Estate and the income and proceeds from the Lease Indenture Estate to the extent available for distribution to the Holder hereof as above provided, and that neither the Owner Participant nor, except as expressly provided in the Indenture, the Owner Trustee nor the Indenture Trustee is or shall be personally liable to the Holder hereof for any amounts payable under this Initial Series Note or for any performance to be rendered under the Indenture or any other Transaction Document or for any liability thereunder; *provided, however*, that in the event the Lessee shall assume all the obligations of the Owner Trustee hereunder and under the Indenture pursuant to Section 3.9(b) of the Indenture, then all payments to be made under this Initial Series Note shall be made only from payments made by the Lessee under this Initial Series Note in accordance with the

Assumption Agreement referred to in said Section 3.9(b) and the Holder of this Initial Series Note agrees that in such event it will look solely to the Lessee for such payment.

Principal, premium, if any, and interest shall be payable, in the manner provided in the Indenture, on presentment of this Initial Series Note at the Indenture Trustee's Office, or as otherwise pro[illegible] in the Indenture.

In the manner and to the extent provided in the Indenture, Schedule 1 hereto may be adjusted once at the discretion of the Owner Trustee prior to June 30, 1990, in connection with an adjustment to Basic Rent under Section 3(d) of the Facility Lease.

The Holder hereof, by its acceptance of this Initial Series Note, agrees that each payment received by it hereunder shall be applied in the manner set forth in Section 3.11 of the Indenture. The Holder of this Initial Series Note agrees, by its acceptance hereof, that it will duly note by appropriate means all payments of principal or interest made hereon and that it will not in any event transfer or otherwise dispose of this Initial Series Note unless and until all such notations have been duly made.

This Initial Series Note is one of the Initial Series Notes referred to in the Indenture. The Indenture permits the issuance of additional series of Notes, as provided in Section 3.5 of the Indenture, and the several series may be for varying aggregate principal amounts and may have different maturity dates, interest rates, redemption provisions and other terms. The properties of the Owner Trustee included in the Lease Indenture Estate are pledged to the Indenture Trustee to the extent provided in the Indenture as security for the payment of the principal of and premium, if any, and interest on this Initial Series Note and all other Notes issued and outstanding from time to time under the Indenture. Reference is hereby made to the Indenture for a statement of the rights of the Holders of, and the nature and extent of the security for, this Initial Series Note and of the rights of, and the nature and extent of the security for, the Holders of the other Notes and of certain rights of the Owner Trustee, as well as for a statement of the terms and conditions of the trust created by the Indenture, to all of which terms and conditions the Holder hereof agrees by its acceptance of this Initial Series Note.

This Initial Series Note is subject to purchase by the Owner Trustee as provided in Section [illegible] of the Indenture. This Initial Series Note is not subject to prepayment in whole or in part.

In case an Indenture Event of Default shall occur and be continuing, the unpaid balance of the principal of this Initial Series Note and any other Notes, together with all accrued but unpaid interest thereon, may, subject to certain rights of the Owner Trustee or the Owner Participant contained or referred to in the Indenture, be declared or may become due and payable in the manner and with the effect provided in the Indenture.

The lien upon the Lease Indenture Estate is subject to being legally discharged prior to the maturity of this Initial Series Note upon the deposit with the Indenture Trustee of cash or certain securities sufficient to pay this Initial Series Note when due or an assumption by the Lessee of the obligation of the Owner Trustee under this Initial Series Note and the Indenture, in each case in accordance with the terms of the Indenture.

There shall be maintained at the Indenture Trustee's Office a register for the purpose of registering transfers and exchanges of Notes in the manner provided in the Indenture. The transfer of this Initial Series Note is registrable, as provided in the Indenture, upon surrender of this Initial Series Note for registration of transfer duly accompanied by a written instrument of transfer duly executed by or on behalf of the registered Holder hereof with signature guaranteed, together with the amount of any applicable transfer taxes. Prior to due presentment for registration of transfer of this Initial Series Note, the Owner Trustee and the Indenture Trustee may treat the person in whose name this Initial Series Note is registered as the owner hereof for the purpose of receiving payments of principal of and premium, if any, and interest on this Initial Series Note and for all other purposes whatsoever, whether or not this Initial Series Note be overdue, and neither the Owner Trustee nor the Indenture Trustee shall be affected by notice to the contrary.

SPECIMEN COPY

This Initial Series Note shall be governed by, and construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, the Owner Trustee has caused this Initial Series Note to be duly executed as of the date hereof.

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as *Owner Trustee* under a Trust Agreement dated as of December 1, 1986, with Chrysler Financial Corporation

By: _____
Assistant Vice President

SPECIMEN

SPECIMEN

This Note is one of the series of Notes referred to therein and in the within-mentioned Indenture.

FIRST CITY NATIONAL BANK OF HOUSTON
as Indenture Trustee,

BY: _____
Authorized Officer

SCHEDULE 1

TO THE INITIAL SERIES NOTE
(DUE JULY 2, 1992)

SCHEDULE OF PRINCIPAL AMORTIZATION

Payment Date (month/day/year)	Principal Amount Payable	Principal Amount Paid
7/2/1987	$0.0000000	
1/2/1988	670000.00	
7/2/1988	697000.00	
1/2/1989	725000.00	
7/2/1989	754000.00	
1/2/1990	785000.00	
7/2/1990	817000.00	
1/2/1991	850000.00	
7/2/1991	884000.00	
1/2/1992	920000.00	
7/2/1992	957000.00	
	$ 8,059,000	

SPECIMEN

1 ##

ASSIGNMENT

Date: December 18, 1986

For value received, EL PASO FUNDING CORPORATION hereby sells, assigns and transfers to FIRST CITY NATIONAL BANK OF HOUSTON as Collateral Trust Trustee pursuant to the Collateral Trust Indenture dated as of August 1, 1986, as amended and supplemented, among EL PASO FUNDING CORPORATION, El Paso Electric Company and said Collateral Trust Trustee, without recourse, the Initial Series Note to which this Assignment is annexed and all rights thereunder.

EL PASO FUNDING CORPORATION

By: _____
Vice President

SPECIMEN

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED. SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT

NONRECOURSE PROMISSORY NOTE, INITIAL SERIES
(DUE JULY 2, 1997)

Issue date: December 18, 1986

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as Owner Trustee (the *Owner Trustee*) under a Trust Agreement dated as of December 1, 1986 with Chrysler Financial Corporation, (the *Owner Participant*), hereby promises to pay to EL PASO FUNDING CORPORATION, or registered assigns, the principal sum of twelve million two hundred ninety-five thousand dollars ($12,295,000) on July 2, 1997 together with interest (computed on the basis of a 360-day year of twelve 30-day months) on the aggregate amount of such principal sum remaining unpaid from time to time from the date of this Initial Series Note until due and payable, in arrears, at the rate of 9.20% per annum. Payments of principal installments of this Initial Series Note shall be made in the "Principal Amount Payable" and on the "Payment Dates" specified in Schedule 1 hereto. Payments of accrued interest on this Initial Series Note shall be made on each January 2 and July 2 commencing July 2, 1987 until the principal amount of this Initial Series Note shall have been paid in full.

Capitalized terms used in this Initial Series Note which are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture (as hereinafter defined).

Interest on any overdue principal and premium, if any, and (to the extent permitted by applicable law) any overdue interest shall be paid, on demand, from the due date thereof at the rate of interest per annum (computed on the basis of a 360-day year of twelve 30-day months) equal to 1% above the interest rate stated above for this Initial Series Note for the period during which any such principal, premium or interest shall be overdue.

In the event any date on which a payment is due under this Initial Series Note is not a Business Day, then payment thereof may be made on the next succeeding Business Day with the same force and effect as if made on the date on which such payment was due.

All payments of principal, premium, if any, and interest to be made by the Owner Trustee hereunder and under the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents dated as of December 1, 1986, as at any time amended or supplemented in accordance with the provisions thereof (the *Indenture*), between the Owner Trustee and First City National Bank of Houston, as Trustee (the *Indenture Trustee*), shall be made only from the Lease Indenture Estate and the Trust Estate and the Indenture Trustee shall have no obligation for the payment thereof except to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Lease Indenture Estate to make such payments in accordance with the terms of Article V of the Indenture. The Holder hereof, by its acceptance of this Initial Series Note, agrees that such Holder will look solely to the Trust Estate and the income and proceeds from the Lease Indenture Estate to the extent available for distribution to the Holder hereof as above provided, and that neither the Owner Participant nor, except as expressly provided in the Indenture, the Owner Trustee nor the Indenture Trustee is or shall be personally liable to the Holder hereof for any amounts payable under this Initial Series Note or for any performance to be rendered under the Indenture or any other Transaction Document or for any liability thereunder; *provided, however*, that in the event the Lessee shall assume all the obligations of the Owner Trustee hereunder and under the Indenture pursuant to Section 3.9(b) of the Indenture, then all payments to be made under this Initial Series Note shall be made

only from payments made by the Lessee under this Initial Series Note in accordance with the Assumption Agreement referred to in said Section 3.9(b) and the Holder of this Initial Series Note agrees that in such event it will look solely to the Lessee for such payment.

Principal, premium, if any, and interest shall be payable, in the manner provided in the Ind[illegible], on presentment of this Initial Series Note at the Indenture Trustee's Office, or as otherwise provi[illegible] in the Indenture.

In the manner and to the extent provided in the Indenture, Schedule 1 hereto may be adjusted once at the discretion of the Owner Trustee prior to June 30, 1990, in connection with an adjustment to Basic Rent under Section 3(d) of the Facility Lease.

The Holder hereof, by its acceptance of this Initial Series Note, agrees that each payment received by it hereunder shall be applied in the manner set forth in Section 3.11 of the Indenture. The Holder of this Initial Series Note agrees, by its acceptance hereof, that it will duly note by appropriate means all payments of principal or interest made hereon and that it will not in any event transfer or otherwise dispose of this Initial Series Note unless and until all such notations have been duly made.

This Initial Series Note is one of the Initial Series Notes referred to in the Indenture. The Indenture permits the issuance of additional series of Notes, as provided in Section 3.5 of the Indenture, and the several series may be for varying aggregate principal amounts and may have different maturity dates, interest rates, redemption provisions and other terms. The properties of the Owner Trustee included in the Lease Indenture Estate are pledged to the Indenture Trustee to the extent provided in the Indenture as security for the payment of the principal of and premium, if any, and interest on this Initial Series Note and all other Notes issued and outstanding from time to time under the Indenture. Reference is hereby made to the Indenture for a statement of the rights of the Holders of, and the nature and extent of the security for, this Initial Series Note and of the rights of, and the nature and extent of the security for, the Holders of the other Notes and of certain rights of the Owner Trustee, as well as for a statement of the terms and conditions of the trust created by the Indenture, to all of which terms and conditions the Holder hereof agrees by its acceptance [illegible] Initial Series Note.

This Initial Series Note is subject to purchase by the Owner Trustee as provided in Section 6.5(b) of the Indenture. This Initial Series Note may be prepaid in whole or in part at any time on and after January 2, 1992 by the Owner Trustee as follows: upon the giving of not less than 30 days' notice as provided in the Indenture and at the following prepayment prices (expressed as a percentage of the unpaid principal amount hereof), together with interest accrued to the date fixed for prepayment:

Twelve Month Period Beginning January 2,	Prepayment Price
1992	102.63%
1993	101.31

and thereafter at the principal amount thereof, together with interest accrued to the prepayment date. This Initial Series Note is not otherwise subject to prepayment in whole or in part.

In case an Indenture Event of Default shall occur and be continuing, the unpaid balance of the principal of this Initial Series Note and any other Notes, together with all accrued by unpaid interest thereon, may, subject to certain rights of the Owner Trustee or the Owner Participant contained or referred to in the Indenture, be declared or may become due and payable in the manner and with the effect provided in the Indenture.

The lien upon the Lease Indenture Estate is subject to being legally discharged prior to the maturity of this Initial Series Note upon the deposit with the Indenture Trustee of cash or certain securities sufficient to pay this Initial Series Note when due or an assumption by the Lessee of the obligation of the Owner Trustee under this Initial Series Note and the Indenture, in each case in accordance with the terms of the Indenture.

There shall be maintained at the Indenture Trustee's Office a register for the purpose of registering transfers and exchanges of Notes in the manner provided in the Indenture. The transfer of this Initial Series Note is registrable, as provided in the Indenture, upon surrender of this Initial Series Note for registration of transfer duly accompanied by a written instrument of transfer duly executed by or on behalf of the registered Holder hereof with signature guaranteed, together with the amount of any applicable transfer taxes. Prior to due presentment for registration of transfer of this Initial Series Note, the Owner Trustee and the Indenture Trustee may treat the person in whose name this Initial Series Note is registered as the owner hereof for the purpose of receiving payments of principal of and premium, if any, and interest on this Initial Series Note and for all other purposes whatsoever, whether or not this Initial Series Note be overdue, and neither the Owner Trustee nor the Indenture Trustee shall be affected by notice to the contrary.

This Initial Series Note shall be governed by, and construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, the Owner Trustee has caused this Initial Series Note to be duly executed as of the date hereof.

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as *Owner Trustee* under a Trust Agreement, dated as of December 1, 1986, with Chrysler Financial Corporation

By: _____
Assistant Vice President

SPECIMEN

SPECIMEN

This Note is one of the series of Notes referred to therein and in the within-mentioned Indenture.

FIRST CITY NATIONAL BANK OF HOUSTON
as Indenture Trustee,

BY: _____
Authorized Officer

SCHEDULE 1

To The Initial Series Note
(Due July 2, 1997)

Schedule of Principal Amortization

Payment Date (month/day/year)	Principal Amount Payable	Principal Amount Paid
7/2/1987	$ 0.0000000	
1/2/1988	0.0000000	
7/2/1988	0.0000000	
1/2/1989	0.0000000	
7/2/1989	0.0000000	
1/2/1990	0.0000000	
7/2/1990	0.0000000	
1/2/1991	0.0000000	
7/2/1991	0.0000000	
1/2/1992	0.0000000	
7/2/1992	0.0000000	
1/2/1993	.996000.00	
7/2/1993	1042000.00	
1/2/1994	1090000.00	
7/2/1994	1140000.00	
1/2/1995	1192000.00	
7/2/1995	1247000.00	
1/2/1996	1304000.00	
7/2/1996	1364000.00	
1/2/1997	1427000.00	
7/2/1997	1493000.00	
	$12,295,000	

SPECIMEN

ASSIGNMENT

Date: December 18, 1986

For value received, EL PASO FUNDING CORPORATION hereby sells, assigns and transfers to FIRST CITY NATIONAL BANK OF HOUSTON as Collateral Trust Trustee pursuant to the Collateral Trust Indenture dated as of August 1, 1986, as amended and supplemented, among EL PASO FUNDING CORPORATION, El Paso Electric Company and said Collateral Trust Trustee, without recourse, the Initial Series Note to which this Assignment is annexed and all rights thereunder.

EL PASO FUNDING CORPORATION

By: _____
Vice President

SPECIMEN

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED, SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT

NONRECOURSE PROMISSORY NOTE, INITIAL SERIES
(DUE JANUARY 2, 2011)

Issue date: December 18, 1986

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as Owner Trustee (the *Owner Trustee*) under a Trust Agreement dated as of December 1, 1986 with Chrysler Financial Corporation (the *Owner Participant*), hereby promises to pay to EL PASO FUNDING CORPORATION, or registered assigns, the principal sum of Fifty-six million forty-six thousand dollars ($56,046,000) on January 2, 2011, together with interest (computed on the basis of a 360-day year of twelve 30-day months) on the aggregate amount of such principal sum remaining unpaid from time to time from the date of this Initial Series Note until due and payable, in arrears at the rate of 10.375% per annum. Payments of principal installments of this Initial Series Note shall be made in the "Principal Amount Payable" and on the "Payment Dates" specified in Schedule I hereto. Payments of accrued interest on this Initial Series Note shall be made on each January 2 and July 2, commencing July 2, 1987, until the principal amount of this Initial Series Note shall have been paid in full.

Capitalized terms used in this Initial Series Note which are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture (as hereinafter defined).

Interest on any overdue principal and premium, if any, and (to the extent permitted by applicable law) any overdue interest shall be paid, on demand, from the due date thereof at the rate of interest per annum (computed on the basis of a 360-day year of twelve 30-day months) equal to 1% above the interest rate stated above for this Initial Series Note for the period during which any such principal, premium or interest shall be overdue.

In the event any date on which a payment is due under this Initial Series Note is not a Business Day, then payment thereof may be made on the next succeeding Business Day with the same force and effect as if made on the date on which such payment was due.

All payments of principal, premium, if any, and interest to be made by the Owner Trustee hereunder and under the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents dated as of December 1, 1986, as at any time amended or supplemented in accordance with the provisions thereof (the *Indenture*), between the Owner Trustee and First City National Bank of Houston, as Trustee (the *Indenture Trustee*), shall be made only from the Lease Indenture Estate and the Trust Estate and the Indenture Trustee shall have no obligation for the payment thereof except to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Lease Indenture Estate to make such payments in accordance with the terms of Article V of the Indenture. The Holder hereof, by its acceptance of this Initial Series Note, agrees that such Holder will look solely to the Trust Estate and the income and proceeds from the Lease Indenture Estate to the extent available for distribution to the Holder hereof as above provided, and that neither the Owner Participant nor, except as expressly provided in the Indenture, the Owner Trustee nor the Indenture Trustee is or shall be personally liable to the Holder hereof for any amounts payable under this Initial Series Note or for any performance to be rendered under the Indenture or any other Transaction Document or for any liability thereunder; *provided, however*, that in the event the Lessee shall assume all the obligations of the Owner Trustee hereunder and under the Indenture pursuant to Sec-

tion 3.9(b) of the Indenture, then all payments to be made under this Initial Series Note shall be made only from payments made by the Lessee under this Initial Series Note in accordance with the Assumption Agreement referred to in said Section 3.9(b) and the Holder of this Initial Series Note agrees that in such event it will look solely to the Lessee for such payment.

Principal, premium, if any, and interest shall be payable, in the manner provided in the Indenture, on presentment of this Initial Series Note at the Indenture Trustee's Office, or as otherwise provided in the Indenture.

In the manner and to the extent provided in the Indenture, Schedule 1 hereto may be adjusted once at the discretion of the Owner Trustee prior to June 30, 1990, in connection with an adjustment to Basic Rent under Section 3(d) of the Facility Lease.

The Holder hereof, by its acceptance of this Initial Series Note, agrees that each payment received by it hereunder shall be applied in the manner set forth in Section 3.11 of the Indenture. The Holder of this Initial Series Note agrees, by its acceptance hereof, that it will duly note by appropriate means all payments of principal or interest made hereon and that it will not in any event transfer or otherwise dispose of this Initial Series Note unless and until all such notations have been duly made.

This Initial Series Note is one of the Initial Series Notes referred to in the Indenture. The Indenture permits the issuance of additional series of Notes, as provided in Section 3.5 of the Indenture, and the several series may be for varying aggregate principal amounts and may have different maturity dates, interest rates, redemption provisions and other terms. The properties of the Owner Trustee included in the Lease Indenture Estate are pledged to the Indenture Trustee to the extent provided in the Indenture as security for the payment of the principal of and premium, if any, and interest on this Initial Series Note and all other Notes issued and outstanding from time to time under the Indenture. Reference is hereby made to the Indenture for a statement of the rights of the Holders of, and the nature and extent of the security for, this Initial Series Note and of the rights of, and the nature and extent of the security for, the Holders of the other Notes and of certain rights of the Owner Trustee, as well as for a statement of the terms and conditions of the trust created by the Indenture, to all of which terms and conditions the Holder hereof agrees by its acceptance of this Initial Series Note.

This Initial Series Note is subject to purchase by the Owner Trustee as provided in Section 6.5(b) of the Indenture and to mandatory prepayment in full as provided in Section 5.2 of the Indenture, such prepayment being without premium but including accrued interest to the date of prepayment. In addition, this Initial Series Note may be prepaid in whole or in part at any time on and after January 2, 1992 by the Owner Trustee as follows: upon the giving of not less than 30 days' notice as provided in the Indenture and at the following prepayment prices (expressed as a percentage of the unpaid principal amount hereof), together with interest accrued to the date fixed for prepayment:

Twelve Month Period Beginning January 2,	Prepayment Price	Twelve Month Period Beginning January 2,	Prepayment Price
1992	107.78%	2000	103.63%
1993	107.26	2001	103.11
1994	106.74	2002	102.59
1995	106.23	2003	102.08
1996	105.71	2004	101.56
1997	105.19	2005	101.04
1998	104.67	2006	100.52
1999	104.15		

and thereafter at the principal amount thereof, together with interest accrued to the prepayment date. This Initial Series Note is not otherwise subject to prepayment in whole or in part.

In case an Indenture Event of Default shall occur and be continuing, the unpaid balance of the principal of this Initial Series Note and any other Notes, together with all accrued but unpaid interest

thereon, may, subject to certain rights of the Owner Trustee or the Owner Participant contained or referred to in the Indenture, be declared or may become due and payable in the manner and with the effect provided in the Indenture.

The lien upon the Lease Indenture Estate is subject to being legally discharged prior to the maturity of this Initial Series Note upon the deposit with the Indenture Trustee of cash or certain securities sufficient to pay this Initial Series Note when due or an assumption by the Lessee of the obligation of the Owner Trustee under this Initial Series Note and the Indenture, in each case in accordance with the terms of the Indenture.

There shall be maintained at the Indenture Trustee's Office a register for the purpose of registering transfers and exchanges of Notes in the manner provided in the Indenture. The transfer of this Initial Series Note is registrable, as provided in the Indenture, upon surrender of this Initial Series Note for registration of transfer duly accompanied by a written instrument of transfer duly executed by or on behalf of the registered Holder hereof with signature guaranteed, together with the amount of any applicable transfer taxes. Prior to due presentment for registration of transfer of this Initial Series Note, the Owner Trustee and the Indenture Trustee may treat the person in whose name this Initial Series Note is registered as the owner hereof for the purpose of receiving payments of principal of and premium, if any, and interest on this Initial Series Note and for all other purposes whatsoever, whether or not this Initial Series Note be overdue, and neither the Owner Trustee nor the Indenture Trustee shall be affected by notice to the contrary.

This Initial Series Note shall be governed by, and construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, the Owner Trustee has caused this Initial Series Note to be duly executed as of the date hereof.

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as *Owner Trustee* under a Trust Agreement, dated as of December 1, 1986, with Chrysler Financial Corporation

By: _____
Assistant Vice President

SPECIMEN

SPECIMEN

This Note is one of the series of Notes referred to therein and in the within-mentioned Indenture.

FIRST CITY NATIONAL BANK OF HOUSTON
as Indenture Trustee,

BY: John Chase
Authorized Officer

SCHEDULE 1
TO THE INITIAL SERIES NOTE
(DUE JANUARY 2, 2011)
SCHEDULE OF PRINCIPAL AMORTIZATION

Payment Date (month/day/year)	Principal Amount Payable	Principal Amount Paid
7/2/1987	$ 0.0000000	
1/2/1988	0.0000000	
7/2/1988	0.0000000	
1/2/1989	0.0000000	
7/2/1989	0.0000000	
1/2/1990	0.0000000	
7/2/1990	0.0000000	
1/2/1991	0.0000000	
7/2/1991	0.0000000	
1/2/1992	0.0000000	
7/2/1992	0.0000000	
1/2/1993	0.0000000	
7/2/1993	0.0000000	
1/2/1994	0.0000000	
7/2/1994	0.0000000	
1/2/1995	0.0000000	
7/2/1995	0.0000000	
1/2/1996	0.0000000	
7/2/1996	0.0000000	
1/2/1997	0.0000000	
7/2/1997	0.0000000	
1/2/1998	1561000.00	
7/2/1998	1642000.00	
1/2/1999	1383000.00	
7/2/1999	1128000.00	
1/2/2000	1300000.00	
7/2/2000	1204000.00	
1/2/2001	1390000.00	
7/2/2001	1287000.00	
1/2/2002	1486000.00	
7/2/2002	1376000.00	
1/2/2003	1588000.00	
7/2/2003	1470000.00	
1/2/2004	1698000.00	
7/2/2004	1572000.00	
1/2/2005	1815000.00	
7/2/2005	1996000.00	
1/2/2006	2801000.00	
7/2/2006	2946000.00	
1/2/2007	3099000.00	
7/2/2007	3260000.00	
1/2/2008	3429000.00	
7/2/2008	3607000.00	
1/2/2009	3794000.00	
7/2/2009	3991000.00	
1/2/2010	4198000.00	
7/2/2010	1025000.00	
1/2/2011	0.0000000	
	$56,046,000	

SPECIMEN

ASSIGNMENT

Date: December 18, 1986

For value received, EL PASO FUNDING CORPORATION hereby sells, assigns and transfers to FIRST CITY NATIONAL BANK OF HOUSTON as Collateral Trust Trustee pursuant to the Collateral Trust Indenture dated as of August 1, 1986, as amended and supplemented, among EL PASO FUNDING CORPORATION, El Paso Electric Company and said Collateral Trust Trustee, without recourse, the Initial Series Note to which this Assignment is annexed and all rights thereunder.

EL PASO FUNDING CORPORATION

By: _____
Vice President

SPECIMEN

COLLATERAL TRUST INDENTURE

dated as of August 1, 1986

Among

EL PASO FUNDING CORPORATION,

EL PASO ELECTRIC COMPANY

and

FIRST CITY NATIONAL BANK OF HOUSTON,

as Trustee

Providing for the Issuance from Time to Time of Securities To Be Issued in One or More Series

---

PALO VERDE NUCLEAR GENERATING STATION

EL PASO FUNDING CORPORATION

EL PASO ELECTRIC COMPANY

Reconciliation and tie between Indenture dated as of August 1, 1986

and

Trust Indenture Act of 1939

Section of Act	Section of Indenture
310(a)(1)	9.09
(2)	9.09
(3)	Inapplicable
(4)	Inapplicable
(b)	9.08, 9.10(a), 9.10(d), 9.10(e), 9.11
(c)	Inapplicable
311(a)	9.13
(b)	9.13
(c)	Inapplicable
312(a)	10.01 10.02(a)
(b)	10.02(b)
(c)	10.02(c)
313(a)	10.03(a)
313(b)(1)	10.03(b)(1)
(2)	10.03(b)
(c)	10.03(a) & (b)
(d)	10.03(c)
314(a)	10.04
(b)	5.06
(c)(1)	1.02
(2)	1.02
(3)	Inapplicable
(d)(1)	Inapplicable
(2)	Inapplicable
(3)	Inapplicable
(e)	1.02
315(a)(1)	9.01(a)(1)
(2)	9.01(a)(2)

Section of Act	Section of Indenture
315(a)(last clause)	9.01(a)(2)
(b)	9.02
(c)	9.01(b)
(d)(1)	9.01(c)(1)
(2)	9.01(c)(2)
(3)	9.01(c)(3)
(e)	8.10
316(a)(1)(A)	8.07
(B)	8.08
(2)	Inapplicable
(a)(last sentence)	1.01 ("Outstanding")
(b)	8.11
317(a)(1)	8.05(a)
(2)	8.05(d)
(b)	5.03 9.14(c)(2)
318(a)	1.07

NOTE: This reconciliation and tie shall not, for any purpose, be deemed to constitute a part of the Indenture.

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COLLATERAL TRUST INDENTURE, dated as of August 1, 1986, among **EL PASO FUNDING CORPORATION**, a Delaware corporation (hereinafter called the Company), having its principal office and mailing address at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, **EL PASO ELECTRIC COMPANY**, a Texas corporation, having its principal office and mailing address at 303 North Oregon Street, El Paso, Texas 79901 (hereinafter called El Paso), and **FIRST CITY NATIONAL BANK OF HOUSTON**, a national banking association, as Trustee (hereinafter called the Trustee), having its corporate trust office at First City Financial Center, 1301 Fannin Street, 21st Floor, Houston, Texas 77002.

RECITALS

WHEREAS, the Company has duly authorized the creation of an issue of its debentures, notes or other evidences of indebtedness to be issued in one or more series (the Securities) up to such principal amount or amounts as may from time to time be authorized in accordance with the terms of this Indenture; and to secure the Securities and to provide for the authentication and delivery thereof by the Trustee, the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, all acts necessary to make this Indenture a valid instrument for the security of the Securities, in accordance with its and their terms, have been done;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that, to secure the payment of the principal of, premium (if any) and interest on all the Securities authenticated and delivered hereunder and issued by the Company and outstanding, and the performance of the covenants therein and herein contained, and in consideration of the premises and of the covenants herein contained and of the purchase of the Securities by the holders thereof, and of the sum of one dollar ($1.00) paid to the Company by the Trustee at or before the delivery hereof, the receipt whereof is hereby acknowledged, the Company by these presents does grant, bargain, sell, release, convey, assign, pledge, transfer, mortgage, hypothecate, and confirm unto the Trustee all and singular the following (which collectively are hereinafter called the Pledged Property), excluding, in any event, any moneys which are specifically stated herein not to constitute part of the Pledged Property, to wit:

CLAUSE FIRST

All Pledged Lessor Notes (as hereinafter defined) as shall be actually pledged and assigned by the Company to the Trustee, together with the interest of the Company (if any) in the Lease Indentures (as hereinafter defined) securing said Lessor Notes, pursuant to the Series Supplemental Indentures or other supplemental

indentures to be executed and delivered as provided in this Indenture.

CLAUSE SECOND

All right, title and interest of the Company in, to and under any agreements with respect to commitment fees or other amounts payable by El Paso entered into between El Paso and the Company in connection with the issuance and sale of any series of Securities, if actually assigned by the Company to the Trustee pursuant to a Series Supplemental Indenture or other supplemental indentures to be executed and delivered as provided in this Indenture.

CLAUSE THIRD

All the proceeds received by the Company from the sale of the Securities, all the tolls, rents, issues, profits, products, revenues and other income of the property subjected or required to be subjected to the lien of this Indenture, and all the estate, right, title and interest of every nature whatsoever of the Company in and to the same and every part thereof.

CLAUSE FOURTH

Any property, including cash, that may, from time to time hereafter be subjected to the lien and/or pledge hereof by the Company or which pursuant to any provision of this Indenture or any Series Supplemental Indenture or other supplemental indentures to be executed and delivered as provided in this Indenture may become subjected to the lien and/or pledge hereof; and the Trustee is hereby authorized to receive the same at any time as additional security hereunder. Such subjection to the lien hereof of any such property as additional security may be made subject to any reservations, limitations or conditions which shall be set forth in a written instrument executed by the Company and/or by the Trustee respecting the scope or priority of such lien and/or pledge or the use and disposition of such property or the proceeds thereof.

TO HAVE AND TO HOLD the Pledged Property unto the Trustee and its successors and assigns forever subject to the terms of this Indenture, including, without limitation, Section 12.01.

BUT IN TRUST, NEVERTHELESS, for the equal and proportionate benefit and security of the holders from time to time of all the Securities authenticated and delivered hereunder and issued by the Company and outstanding, without any priority of any one Security over any other.

AND UPON THE TRUSTS and subject to the covenants and conditions hereinafter set forth.

ARTICLE ONE

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION.

SECTION 1.01. Definitions.

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

(1) the terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;

(2) all other terms used herein which are defined in the Trust Indenture Act (as hereinafter defined), either directly or by reference therein, have the meanings assigned to them therein;

(3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles;

(4) all reference in this Indenture to designated "Articles", "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this Indenture; and

(5) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

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

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

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control," when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the

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

"Authorized Agent" means any Paying Agent or Security Registrar.

"Authorized Officer" shall mean any officer of the Trustee or any other individual who shall be duly authorized by appropriate corporate action on the part of the Trustee to authenticate Securities.

"Board of Directors" means the board of directors of the Company, when used with respect to the Company, and either the board of directors, or any committee of that board duly authorized to act for it hereunder, when used with respect to El Paso.

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

"Business Day" means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in The City of New York, New York, the City of Boston, Massachusetts, the City of El Paso, Texas or the City of Houston, Texas are authorized by law to remain closed.

"Change" with respect to any instrument means any consent, amendment, waiver, approval, notice or direction or the execution, grant or giving of any thereof.

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

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

"Company Request" and "Company Order" mean, respectively, a written request or order signed in the name of the Company by its President or one of its Vice Presidents, and by its Treasurer, Secretary, or one of its Assistant Treasurers or Assistant Secretaries, and delivered to the Trustee.

"**Corporate Trust Office**" means the principal office of the Trustee at which at any particular time corporate trust business of the Trustee shall be administered, which at the date of this Indenture is First City Financial Center, 1301 Fannin Street, 21st Floor, Houston, Texas 77002: Attention of Corporate Trust Department.

"**El Paso**" means El Paso Electric Company, a Texas corporation, and, subject to the provisions hereof, its successors and assigns.

"**Equity Investor**" means any Equity Investor identified in a Schedule to a Series Supplemental Indenture, until a successor or assignees thereof shall have become such pursuant to the applicable provisions of the Participation Agreement to which such Equity Investor is a party, and thereafter "**Equity Investor**" means such successor or assignees; "**Equity Investors**" means each and every Equity Investor.

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

"**Extension Letter**" means the Extension Letter, to be dated the date of issue of a Pledged Lessor Note and addressed to the Trustee by the parties to the Participation Agreement, extending to the Trustee the representations, warranties and covenants of such parties set forth in the Participation Agreement.

"**Holder**" or "**Securityholder**" means a Person in whose name a Security is registered in the Security Register.

"**Indenture**" means this instrument as originally executed and as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof.

"**Initial Interest Date**" with respect to any series of Securities means the date of the Stated Maturity for the initial installment of interest on Securities of such series.

"**Lease Indenture**" means any Lease Indenture and any Lease Indenture Supplement identified in a Schedule to a Series Supplemental Indenture, as such Lease Indenture and Lease Indenture Supplement may be amended or supplemented from time to time pursuant to the applicable provisions thereof and of this Indenture; "**Lease Indentures**" means each and every Lease Indenture.

"**Leases**" means any Lease and any Lease Supplement identified in a Schedule to a Series Supplemental Indenture, as such Lease and Lease Supplement may be amended from time to time pursuant

to the applicable provisions thereof and of this Indenture; **"Leases"** means each and every Lease.

"Lease Indenture Trustee" means the Lease Indenture Trustee identified in a Schedule to a Series Supplemental Indenture, until a successor Lease Indenture Trustee shall have become such pursuant to the applicable provisions of the Lease Indenture to which such Lease Indenture Trustee is a party, and thereafter **"Lease Indenture Trustee"** means the successor Lease Indenture Trustee; **"Lease Indenture Trustees"** means each and every Lease Indenture Trustee.

"Lease Payments" with respect to any Lease shall mean amounts payable by El Paso under such lease in respect of (i) interim rent (if any), (ii) basic rent, (iii) casualty value, (iv) special casualty value, (v) termination value or (vi) any other amounts payable in connection with termination of the Lease, in each case as more fully described in and assigned pursuant to the related Lease Indenture; **"Lease Payments"** with respect to all Leases means the aggregate of Lease Payments under any and all Leases.

"Lessee Request" and **"Lessee Order"** mean, respectively, a written request and a written order signed in the name of El Paso by its President or one of its Vice Presidents or Assistant Vice Presidents and by its Treasurer or Secretary or one of its Assistant Treasurers or Assistant Secretaries, or by any authorized agent of El Paso, and delivered to the Trustee.

"Lessor" or **"Owner Trustee"** means any Lessor or Owner Trustee identified in a Schedule to a Series Supplemental Indenture, until a successor shall have become such pursuant to the applicable provisions of the related Trust Agreement identified in said Schedule, and thereafter **"Lessor"** or **"Owner Trustee"** means such successor; **"Lessors"** or **"Owner Trustees"** means each and every Lessor or Owner Trustee.

"Lien of this Indenture" or **"lien hereof"** means the lien and security interest created by these presents, or created by any concurrent or subsequent conveyance to the Trustee (whether made by the Company or any other Person and whether pursuant to a Series Supplemental Indenture or otherwise), or otherwise created, constituting any property a part of the Pledged Property held by the Trustee for the benefit of the Securities Outstanding hereunder.

"Obligor", when used with reference to the Securities or this Indenture, means El Paso and any successor to the obligations of El Paso under a Lease, and does not include the Trustee, the Lease Indenture Trustee, an Owner Trustee or an Equity Investor so long as they have not assumed such obligations; **provided, however,** that no reference to El Paso as an Obligor herein shall be construed as implying any guaranty by El Paso of the Securities.

"Officers' Certificate" means a certificate signed by the President or a Vice President, and by the Treasurer, the Secretary, or one of the Assistant Treasurers or Assistant Secretaries, of El Paso, any Lessor or the Company, as the case may be, and delivered to the Trustee.

"Opinion of Counsel" means a written opinion of counsel for any Person either expressly referred to herein or otherwise satisfactory to the Trustee which may include, without limitation, counsel to the Company, any Lessor, the Lease Indenture Trustee, any Equity Investor or El Paso, whether or not such counsel is an employee of any of them.

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

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

(ii) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee in trust for the Holders of such Securities as provided in Section 12.01, provided that, if such Securities are to be redeemed (otherwise than through the operation of the Sinking Fund), notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(iii) Securities paid in full or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture unless held by a Holder in whose hands such Securities constitute valid obligations of the Company;

provided, however, that in determining whether the Holders of the requisite principal amount of Securities Outstanding have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or owned by El Paso, any Lessor or any Equity Investor, or any Affiliate of El Paso, of any Lessor or of any Equity Investor, shall be disregarded and deemed not to be Outstanding, unless such Persons own 100% of the Securities owned by all Persons, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which the Trustee knows to be so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or El Paso, any Lessor or any

Equity Investor or any Affiliate of the Company, of El Paso, of any Lessor or of any Equity Investor.

"Participation Agreement" means any Participation Agreement or other similar Lessor Note purchase document to which the Company is a party identified in a Schedule to a Series Supplemental Indenture, as such Participation Agreement or other purchase document may be amended from time to time pursuant to the applicable provisions thereof and of this Indenture; "Participation Agreements" means each and every Participation Agreement.

"Paying Agent" means any Person acting as Paying Agent hereunder pursuant to Section 9.14.

"Paying Agent's Office" means the principal office of the Paying Agent at which at any particular time corporate trust business of the Paying Agent shall be administered, which at the date of this Indenture is 120 Broadway, New York, New York.

"Permitted Investment" means (i) direct obligations of the United States of America, or (ii) obligations fully guaranteed by the United States of America, or (iii) certificates of deposit issued by, or bankers' acceptances of, or time deposits with, any bank, trust company or national banking association incorporated or doing business under the laws of the United States of America or one of the States thereof (but not exceeding $15,000,000 in principal amount of all certificates of deposit and time deposits at any given time for any one bank, trust company or national banking association) having a combined capital and surplus of at least $300,000,000 (including the Trustee, any Lease Indenture Trustee, any Lessor and any Paying Agent if such conditions are met), or (iv) commercial paper of companies incorporated or doing business under the laws of the United States of America or one of the States thereof (but not exceeding $15,000,000 in principal amount at any given time for any one company) and in each case having a rating assigned to such commercial paper by Standard & Poor's Corporation or Moody's Investors Service, Inc. (or, if neither such organization shall rate such commercial paper at any time, by any nationally recognized rating organization in the United States of America) equal to the highest rating assigned by such organization, or (v) repurchase agreements fully collateralized by an obligation of the type described in clause (i) or (iv) above, pursuant to which a bank, trust company or national banking association referred to in clause (iii) above or another financial institution having a net worth of at least $200,000,000 is obligated to repurchase any such obligation not later than 90 days after the purchase of any such obligation.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust,

unincorporated organization or government or any agency or political subdivision thereof.

"Place of Payment", when used with respect to the Securities of any series, means the office or agency maintained pursuant to Section 5.02 hereof and such other place or places, if any, where the principal of (and premium, if any) and interest on the Securities of that series are payable as specified in the Series Supplemental Indenture setting forth the terms of the Securities of such series.

"Pledged Lessor Note" means any Lessor Note identified in a Schedule to a Series Supplemental Indenture, as such Lessor Note may be amended or supplemented from time to time pursuant to the applicable provisions thereof, of the related Lease Indenture and of this Indenture; "Pledged Lessor Notes" means each and every Pledged Lessor Note.

"Pledged Property" has the meaning set forth in the Granting Clauses.

"Predecessor Securities" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 2.09 in lieu of a lost, destroyed or stolen Security shall be deemed to evidence the same debt as the lost, destroyed or stolen Security.

"Principal Instruments" means the Pledged Lessor Notes, the Lease Indentures, the Participation Agreements and the Leases.

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

"Redemption Price" when used with respect to any Security to be redeemed means the price (inclusive of accrued interest) at which it is to be redeemed pursuant to this Indenture and the terms of such Security.

"Regular Record Date" for the Stated Maturity of any installment of interest means the 15th day (whether or not a Business Day) next preceding such Stated Maturity.

"Responsible Officer" when used with respect to the Trustee means any officer of the Trustee customarily performing corporate trust functions.

"Security Register" has the meaning specified in Section 2.08.

"Security Registrar" means any Person acting as Security Registrar hereunder pursuant to Section 9.14.

"Series Supplemental Indenture" means an indenture supplemental to this Indenture, for the purpose of specifying, in accordance with Article Two hereof, the form of the Securities of any series, and/or for the purpose of subjecting to the Lien of this Indenture the Pledged Lessor Notes related to such series; "Series Supplemental Indentures" means each and every Series Supplemental Indenture.

"Sinking Fund" has the meaning specified in Section 7.01.

"Special Record Date" for the payment of any defaulted interest means a date fixed by the Trustee pursuant to Section 2.10.

"Stated Maturity" when used with respect to any Security or any installment of interest thereon means the date specified in such Security as the fixed date on which the principal of such Security or such installment of interest is due and payable.

"Trust Indenture Act" or "TIA" means the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed, except as provided in Section 11.06.

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

SECTION 1.02. Compliance Certificates and Opinions.

Upon any application or request by the Company, any Lessor or El Paso to the Trustee to take any action under any provision of this Indenture, the Company, such Lessor or El Paso, as the case may be, shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished; provided that any action which may be taken under any provision of this Indenture by a Lessor may be taken by El Paso on behalf of such

Lessor pursuant to the agency granted to El Paso pursuant to the Participation Agreement unless and until the Trustee has been notified of the revocation of such agency.

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

(1) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

SECTION 1.03. Form of Documents Delivered to Trustee.

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company, of any Lessor or of El Paso may be based, in so far as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, in so far as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company, of any Lessor or of El Paso, as the case may be, stating that the information with respect to such factual matters is in the possession of the Company, such Lessor or El Paso, respectively, unless such counsel knows that the

certificate or opinion or representations with respect to such matters are erroneous.

Any Opinion of Counsel stated to be based on the opinion of other counsel shall be accompanied by a copy of such other opinion.

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

SECTION 1.04. Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company and to El Paso. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 9.01) conclusive in favor of the Trustee, the Company and El Paso, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction authorized to take acknowledgments of deeds or administer oaths that the Person executing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or other such officer and where such execution is by an officer of a corporation or association or a member of a partnership, on behalf of such corporation, association or partnership, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

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

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Security shall

bind the Holder of every Security issued upon the transfer thereof or in exchange therefor or in lieu thereof, whether or not notation of such action is made upon such Security.

SECTION 1.05. Notices, etc., to Trustee, El Paso and Company.

Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

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

(2) the Company by the Trustee, by any Holder, by El Paso or by an Authorized Agent shall be sufficient for every purpose hereunder if in writing and mailed, first-class postage prepaid, to the Company addressed to it at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee and El Paso by the Company for such purpose, or

(3) El Paso by the Trustee, by any Holder, by the Company or by an Authorized Agent shall be sufficient for every purpose hereunder if in writing and mailed, first-class postage prepaid, to El Paso addressed to it at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee and the Company by El Paso for such purpose.

SECTION 1.06. Notices to Holders; Waiver.

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder, at his address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. 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 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, and any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given.

SECTION 1.07. Conflict with Trust Indenture Act.

If any provision hereof limits, qualifies or conflicts with another provision hereof which is required to be included in this Indenture by any of the provisions of the TIA, such required provision shall control. Notwithstanding the foregoing, the provisions of the TIA contained in Sections 9.08, 9.13 and 10.03 shall not become operative under this Indenture until this Indenture shall have been qualified under the TIA.

SECTION 1.08. Effect of Heading and Table of Contents.

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

SECTION 1.09. Successors and Assigns.

All covenants, agreements, representations and warranties in this Indenture by the Trustee, El Paso and the Company shall bind and, to the extent permitted hereby, shall inure to the benefit of and be enforceable by their respective successors and assigns, whether so expressed or not.

SECTION 1.10. Separability Clause.

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

SECTION 1.11. Benefits of Indenture.

Nothing in this Indenture or in the Securities, expressed or implied, shall give to any Person, other than the parties hereto and their successors hereunder, the Holders of Securities, and the Lessors and the Equity Investors as expressly provided herein, any benefit or any legal or equitable right, remedy or claim under this Indenture.

SECTION 1.12. Governing Law.

This Indenture and each Security are being executed and delivered in the State of New York, shall be deemed to be contracts made in such State and for all purposes shall be construed in accordance with and governed by the laws of the State of New York.

SECTION 1.13. Legal Holidays.

In any case where the Redemption Date or the Stated Maturity of any Security or of any installment of interest, or any date on which any defaulted interest is proposed to be paid, shall not be a Business Day, then (notwithstanding any other provision of this Indenture) payment of interest and/or principal (and premium, if any) need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the Redemption Date or at the Stated Maturity, or on the date on which the defaulted interest is proposed to be paid, and no interest shall accrue for the period from and after such Redemption Date or Stated Maturity, or date for the payment of defaulted interest, as the case may be.

ARTICLE TWO

THE SECURITIES

SECTION 2.01. Forms Generally.

The Securities of each series shall be in the form (not inconsistent with this Indenture) as shall be established in one or more Series Supplemental Indentures, in each case with such appropriate insertions, omissions, substitutions and other variations in and to such form as are required or permitted by this Indenture and may have imprinted or otherwise reproduced thereon such legend or legends, not inconsistent with the provisions of this Indenture, as may be required to comply with any law or with any rules or regulations pursuant thereto, or with any rules of any securities exchange or to conform to general usage, all as may be determined by the officers executing such Securities, as evidenced by their execution thereof.

SECTION 2.02. Form of Trustee's Authentication.

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

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

FIRST CITY NATIONAL BANK OF HOUS
as Trustee

By_____
Authorized Officer

SECTION 2.03. Amount Unlimited; Issuable in Series; Limitations on Issuance.

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited. Securities may be issued hereunder up to the aggregate principal amount which may be authorized from time to time by the Board of Directors of the Company.

The terms of any series of Securities relative to payment of principal thereof, and premium (if any) and interest thereon, need not correspond exactly to the schedule for such payments under the related Pledged Lessor Notes.

The Securities may be issued in one or more series. There shall be established in one or more Series Supplemental Indentures, prior to the issuance of Securities of any series,

(1) the title of the Securities of the series (which shall distinguish the Securities of the series from all other Securities) and the form or forms of Securities of such series;

(2) any limit upon the aggregate principal amount of the Securities of such series that may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of, other Securities of such series pursuant to Section 2.07, 2.08, 2.09, 6.06 or 11.07);

(3) the date or dates on which the principal of the Securities of such series is payable;

(4) the rate or rates at which the Securities of such series shall bear interest, or the method by which such rate shall be determined, the date or dates from which such interest shall accrue, the interest payment dates on which such interest shall be payable and the record dates

for the determination of Holders to whom interest is payable;

(5) the place or places where the principal and interest on Securities of such series shall be payable (if other than as provided in Section 5.02);

(6) the price or prices at which, the period or periods within which and the terms and conditions upon which Securities of such series may be redeemed, in whole or in part, at the option of the Company, pursuant to any sinking fund or otherwise;

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

(8) if other than denominations of $1,000 and any multiple thereof, the denominations in which Securities of such series shall be issuable;

(9) any other terms of such series (which terms shall not be inconsistent with the provisions of this Indenture); and

(10) any trustees, authenticating or paying agents, warrant agents, transfer agents or registrars with respect to the Securities of such series;

provided, however, that, after giving effect to the issuance of a new series of the Securities and the subjection to the Lien of this Indenture of the related Pledged Lessor Notes, the average of the daily balance of Excess Funds for each fiscal year of the Company shall not exceed 10% of the average of the aggregate principal amount of Securities Outstanding on each day in such fiscal year. For purposes of the foregoing proviso, "Excess Funds" shall mean, for any day, amounts actually paid to the Trustee under the Pledged Lessor Notes in excess of amounts then due and payable in respect of Securities.

SECTION 2.04. Authentication and Delivery of Securities.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee shall thereupon authenticate and deliver such Securities in accordance with such Company Order, without any further action by the Company. In authenticating such Securities and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and (subject to Section 9.01) shall be fully protected in relying upon:

(1) an executed Series Supplemental Indenture;

(2) an Officers' Certificate of the Company (a) certifying as to resolutions of the Board of Directors of the Company by or pursuant to which the terms of the Securities of such series were established, (b) certifying that all conditions precedent under this Indenture to the Trustee's authentication and delivery of such Securities have been complied with and (c) certifying that (x) the terms of the documents referred to in clauses (3) and (4) below are not inconsistent with the terms of this Indenture as then and theretofore supplemented and (y) such documents comply with Exhibit A hereto (if applicable);

(3) fully executed counterparts (but not the original thereof) of (a) the Lease Indentures under which were issued the Pledged Lessor Notes relating to such series of Securities and (b) the Leases relating to such Pledged Lessor Notes;

(4) the original of the Pledged Lessor Notes relating to such series of Securities;

(5) signed copies, either addressed to the Trustee or accompanied by statements that the Trustee may rely on such documents, of all certificates and opinions of counsel delivered to the Company in connection with its purchase pursuant to the applicable Participation Agreements of the Pledged Lessor Notes relating to such series of Securities and, to the extent not covered by such opinions, Opinions of Counsel (x) to the effect that: (a) the form or forms and the terms of such Securities have been established by a Series Supplemental Indenture as permitted by Sections 2.01 and 2.03 in conformity with the provisions of this Indenture; (b) such Securities, when authenticated and delivered by the Trustee and issued by the Company in the

manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Company; and (c) all laws and requirements in respect of the execution and delivery by the Company of the Securities have been complied with; and (y) covering such other matters as the Trustee may reasonably request; and

(6) duly executed Extension Letters relating to the Pledged Lessor Notes;

provided, however, that if a series of Securities is to be authenticated by the Trustee in advance of the actual delivery to the Trustee of the Pledged Lessor Notes relating thereto, (X) the documents described in the foregoing clauses (2)(c), (3), (4), (5) (other than the opinion described in subclauses (x) and (y)) and (6) need not be delivered in connection with such authentication, but shall be delivered in connection with the release of the proceeds of the sale of such series of Securities in accordance with Sections 2.15 and 13.01 hereof and (Y) the form of the Series Supplemental Indenture shall be appropriately modified to reflect the later delivery and pledge of the related Pledged Lessor Notes.

Receipt by the Trustee of the Officer's Certificate referred to in clause (2) above shall be conclusively presumed for all purposes of this Indenture to establish that the Lease Indentures, the Leases and the Pledged Lessor Notes referred to in such certification comply with the requirements of Exhibit A hereto.

The Trustee shall have the right to decline to authenticate and deliver any Securities under this Section if the Trustee, being advised by counsel, determines that such action may not lawfully be taken by the Company or if the Trustee in good faith by its board of directors or board of trustees, executive committee, or a trust committee of directors or trustees and/or responsible officers shall determine that such action would expose the Trustee to personal liability.

SECTION 2.05. Form and Denominations.

The Securities of each series shall be in registered form and may have such letters, numbers or other marks of identification and such legends or endorsements printed, lithographed or engraved thereon, as may be required to comply with the rules of any securities exchange or to conform to any usage in respect thereof, or as may, consistently herewith, be prescribed by the Board of Directors of the Company or by the officers executing such Securities, such determination by said officers to be evidenced by their signing the Securities.

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

All Securities of any one series shall be substantially identical except as to denomination and Stated Maturity and except as may otherwise be provided herein or in the Series Supplemental Indenture setting forth the terms of the Securities of such series.

SECTION 2.06. Execution of Securities.

The Securities shall be executed on behalf of the Company by its President or one of its Vice Presidents under its corporate seal reproduced thereon and attested by its Secretary or one of its Assistant Secretaries. The signature of any such officers on the Securities may be manual or facsimile.

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

SECTION 2.07. Temporary Securities.

Pending the preparation of definitive Securities of any series, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities of such series which are printed, lithographed, typewritten, photocopied or otherwise produced, in any denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

If temporary Securities of any series are issued, the Company will cause definitive Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company, for such purpose, in the Place of Payment, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like aggregate principal amount of definitive

Securities of such series of authorized denominations. Until so exchanged such temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

SECTION 2.08. Registration, Transfer and Exchange.

The Trustee shall cause to be kept at the Corporate Trust Office a register in which, subject to such reasonable regulations as the Company may prescribe, the Company shall provide for the registration of Securities and of registration of transfers and exchanges of Securities. This register and, if there shall be more than one Security Registrar, the combined registers maintained by all such Security Registrars, are herein sometimes referred to as the "Security Register".

Upon surrender for registration of transfer of any Security of any series at the Corporate Trust Office, or at any office or agency maintained for such purpose pursuant to Section 9.14(a), the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of the same series and of the same Stated Maturity for principal and interest and of a like aggregate principal amount.

At the option of the Holders, Securities of any series may be exchanged for an equal aggregate principal amount of Securities of the same series and of the same Stated Maturity for principal and interest and of any authorized denominations, upon surrender of the Securities to be exchanged at the Corporate Trust Office, or at any office or agency maintained for such purpose pursuant to Section 9.14(a). Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee or any other Authenticating Agent shall authenticate and deliver, the Securities which the Securityholder making the exchange is entitled to receive.

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

Every Security presented or surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Security Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be required of any Securityholders participating in any transfer or exchange of Securities in respect of

such transfer or exchange, but the Security Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Securities, other than exchanges pursuant to Sections 2.07, 6.06 or 11.07 not involving any transfer.

The Security Registrar shall not be required (i) to issue, transfer or exchange any Security of any series during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Securities of such series selected for redemption under Section 6.02 or 7.02 and ending at the close of business on the day of such mailing, or (ii) to transfer or exchange any Security so selected for redemption in whole or in part except the unredeemed portion of any Security selected for redemption in part.

SECTION 2.09. Mutilated, Destroyed, Lost and Stolen Securities.

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

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company may, upon satisfaction of the conditions set forth in clauses (i) and (ii) of the preceding paragraph, instead of issuing a new Security, pay such Security.

Upon the issuance of any new Security under this Section, the Security Registrar 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.

Every new Security issued pursuant to this Section in lieu of any destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the security and

benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

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

SECTION 2.10. Payment of Interest; Interest Rights Preserved.

Interest on any Security which is payable, and is punctually paid or duly provided for, at any Stated Maturity of an installment of interest shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest. At the option of the Company, payment of interest on any Security may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register.

Any interest on any Security of any series which is payable, but is not punctually paid or duly provided for, at any Stated Maturity of an installment of interest shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder; and such defaulted interest may be paid by the Company, at its election in each case, as provided in paragraph (1) or paragraph (2) below:

(1) The Company may elect, which election shall be at the direction of any Lessor whose Pledged Lessor Note is in default in respect of the payment of interest and who is proposing to make payment of all or part of such defaulted interest, to make payment of any defaulted interest to the Persons in whose names the Securities of such series in respect of which interest is in default (or their respective Predecessor 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. Such Lessor shall notify the Trustee and the Paying Agent in writing of the amount of defaulted interest proposed to be paid on each such Security and the date of the proposed payment, and at the same time there shall be deposited with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such defaulted interest or there shall be made 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 paragraph provided. Thereupon the Trustee shall fix a Special Record Date for

the payment of such defaulted interest which shall be not more than 15 nor 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 and the Security Registrar of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such defaulted interest and the Special Record Date therefor to be mailed, first class postage prepaid, to each holder of a Security of such series at his address as it appears in the Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such defaulted interest and the Special Record Date therefor having been mailed as aforesaid, such defaulted interest shall be paid to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered on such Special Record Date and shall no longer be payable pursuant to the following paragraph (2).

(2) The Company may make, or cause to be made, payment of any defaulted interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities in respect of which interest is in default 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 paragraph, such payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section, each Security delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security, and each such Security shall bear interest from whatever date shall be necessary so that neither gain nor loss in interest shall result from such transfer, exchange or replacement.

SECTION 2.11. Persons Deemed Owners.

Prior to due presentment for registration of transfer, the Person in whose name any Security is registered shall be deemed to be the owner of such Security for the purpose of receiving payment of principal of (and premium, if any), and (subject to Section 2.10) interest on, such Security and for all other purposes whatsoever, whether or not such Security be overdue, regardless of any notice to anyone to the contrary.

SECTION 2.12. Cancellation.

All Securities surrendered for payment, redemption, credit against any Sinking Fund payment or redemption payment, transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee for cancellation. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly cancelled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by this Indenture. All cancelled Securities held by the Trustee shall be destroyed and certification of their destruction delivered to the Company unless, by Company Request, the Company otherwise directs.

SECTION 2.13. Dating of Securities; Authentication.

Each Security of any series shall be dated the date of the original issuance of the Securities of such series by the Company, which date shall be specified by the Company in the Company Order delivered to the Trustee pursuant to Section 2.04 in connection with the original authentication and delivery of the Securities of such series. No Security shall be secured by or entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication, in the form provided for herein, executed by the Trustee by the manual signature of one of its Responsible Officers or any Authorized Officer, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder.

SECTION 2.14. Source of Payments: Rights and Liabilities of Lessors and Equity Investors.

All payments of principal and premium (if any) and interest to be made under the Securities and this Indenture (other than payments made in connection with an optional redemption by a Lessor) shall be made only from assets subject to the lien of this Indenture or the income and proceeds received by the Trustee therefrom. Each Holder, by its acceptance of a Security, agrees that (x) it will look solely to the assets subject to the lien of this Indenture or the income and proceeds received by the Trustee therefrom to the extent available for distribution to such Holder as herein provided and (y) none of any Equity Investor, any Lessor, any Lease Indenture Trustee or the Trustee is liable to any Holder or, in the case of any Equity Investor, Lessor and Lease Indenture Trustee, to the Trustee for any amounts payable under any Security or, except as provided herein with respect to the Trustee, for any liability under this Indenture. An Equity Investor, Lessor or Lease Indenture Trustee shall not have any

duty or responsibility under this Indenture or the Securities to any Holder or to the Trustee.

SECTION 2.15. Sale of Securities; and Application of Proceeds from the Sale of Securities.

(a) Promptly upon receipt by the Company of the proceeds from any sale of a series of the Securities, the Company shall deposit such proceeds with the Trustee. The funds so deposited shall be held by the Trustee in a separate account as part of the Pledged Property and shall be invested, applied and distributed by the Trustee as provided herein.

(b) Subject to the provisions of Section 13.01, upon the issuance of the Pledged Lessor Notes related to any series of Securities and the delivery thereof to the Trustee to be subjected to the Lien of this Indenture pursuant to a Series Supplemental Indenture, the Trustee shall pay to the Lessor obligated in respect of any such Pledged Lessor Note, out of funds held by the Trustee in such separate account as Pledged Property, an amount equal to the principal amount of such Pledged Lessor Note in respect of which such Lessor is obligated. All payments to be made by the Trustee to any Lessor shall be made in immediately available funds at the respective offices designated by such Lessor.

ARTICLE THREE

PROVISIONS AS TO PLEDGED PROPERTY

SECTION 3.01. Holding of Pledged Securities.

The Trustee is authorized in its discretion to cause to be registered in its name, as Trustee, or in the name of its nominee, any and all coupon bonds which it may receive as part of the Pledged Property, or it may cause the same to be exchanged for registered bonds without coupons of any denomination. The Trustee may cause to be transferred into its name, as Trustee, or into the name of its nominee, any and all registered bonds which it may receive as part of the Pledged Property, or may cause such registered bonds to be exchanged for coupon bonds. All Pledged Lessor Notes assigned to and pledged with the Trustee pursuant to any provision of this Indenture or any Series Supplemental Indenture shall be endorsed in blank for transfer or be accompanied by proper instruments of assignment satisfactory to the Trustee, duly executed by the Company. The Company will deliver promptly to the Trustee such documents, certificates and opinions as the Trustee may reasonably request in connection with subjection of any securities to the Lien of this Indenture to the extent contemplated hereby.

SECTION 3.02. Disposition of Payments on Pledged Property.

Unless and until all Outstanding Securities have been paid in full or provision for the payment of such Securities has been made in accordance with this Indenture, the Trustee shall be entitled to receive all principal, premium (if any) and interest paid in respect of any Pledged Lessor Notes and interest paid on bonds or other obligations or indebtedness which may be subject to the lien of this Indenture and shall apply the same to the payment of the principal of, and premium (if any) and interest on, the Securities when and as they become due and payable pursuant to, and in accordance with, this Indenture. The Trustee shall duly note on the Schedules attached to the Pledged Lessor Notes or by other appropriate means all payments of principal, premium, if any, and interest made on the Pledged Lessor Notes.

SECTION 3.03. Exercise of Rights and Powers Under Pledged Lessor Notes and Lease Indentures.

The Trustee shall not take any action as the holder of the Pledged Lessor Notes to direct any Lease Indenture Trustee in any respect or to vote any Pledged Lessor Note or any portion thereof except as specified in this Section. The Trustee shall give notice to the Securityholders of the occurrence of any Indenture Event of Default or Indenture Default under any Lease Indenture (as defined therein), and of every Event of Loss, Deemed Loss Event, or Special Loss Event occurring under a Lease, but only to the extent the same shall actually be known by an officer in the corporate trust department of the Trustee. The Trustee may, at any time, and shall, upon the request of any Lease Indenture Trustee made to the Trustee to give any direction or to vote its interest in the Pledged Lessor Notes, request from Securityholders directions as to (i) whether or not to direct such Lease Indenture Trustee to take or refrain from taking any action which holders of a Pledged Lessor Note have the option to direct and (ii) how to vote any Pledged Lessor Note if a vote has been called for with respect thereto. In addition, any Securityholder may at any time request the Trustee to direct, or to participate in the direction of, any action under any Lease Indenture to the extent that the Trustee may do so under such Lease Indenture. In directing any action or casting any vote as the holder of a Pledged Lessor Note, the Trustee shall specify to the Lease Indenture Trustee the principal amount of the Pledged Lessor Note which is in favor of the action or vote, the principal amount of the Pledged Lessor Note which is opposed to the action or vote, and the principal amount of the Pledged Lessor Note which is not taking any position for the action or vote. Such principal amounts shall be determined by allocating the total principal amount of the Pledged Lessor Note with respect to which direction was requested in accordance with the principal amount of Securities taking corresponding positions or not taking any position. In addition, the Trustee shall certify to the

Lease Indenture Trustee that the principal amounts of Securities taking such corresponding positions or not taking any position was determined in accordance with the provisions of this Indenture.

SECTION 3.04. Certain Actions in Case of Judicial Proceedings.

In case all or any part of the property of any Lessor or any other Person which may be deemed an obligor in respect of the Pledged Lessor Notes shall be sold at any judicial or other involuntary sale, the Trustee shall receive any portion of the proceeds of such sale accruing on the Pledged Property held hereunder, and such proceeds shall be held as provided in Section 3.05.

SECTION 3.05. Cash Held by Trustee Treated as a Deposit.

Any and all cash held by the Trustee under any provision of this Indenture may be treated by the Trustee, until required to be paid out hereunder, as a deposit, in trust, without any liability for interest.

ARTICLE FOUR

WITHDRAWAL OF COLLATERAL.

SECTION 4.01. Withdrawal of Collateral.

Except as provided in Section 4.02 and Article Thirteen, none of the Pledged Property shall be subject to withdrawal unless and until all Outstanding Securities have been paid in full or provision for such payment has been made in accordance with the terms of this Indenture and the Trustee shall have received the documents and opinions required by Article Twelve.

SECTION 4.02. Reassignment of Pledged Lessor Notes upon Payment.

Upon receipt of payment in full of the principal of, and premium (if any) and interest on, any Pledged Lessor Note held by the Trustee, the Trustee shall deliver to the Company said Pledged Lessor Note and any instrument of transfer or assignment necessary to reassign to the Company said Pledged Lessor Note and the interest of the Company (if any) in the Lease Indenture relating thereto; provided that nothing herein contained shall prevent the Trustee from presenting any Pledged Lessor Note to a Lease Indenture Trustee for final payment in accordance with the applicable provisions of the related Lease Indenture.

ARTICLE FIVE

COVENANTS

SECTION 5.01. Payment of Principal, Premium (if any) and Interest.

The Company will duly and punctually pay, or cause to be paid, the principal of, and premium, if any, and interest on, the Securities in accordance with the terms of the Securities and this Indenture.

SECTION 5.02. Maintenance of Office or Agency.

The Company will maintain in the Borough of Manhattan, The City of New York, an office or agency where Securities may be presented or surrendered for payment, where Securities may be surrendered for transfer or exchange and where notices and demands to or upon the Company in respect of Securities and this Indenture may be served. The Paying Agent's Office is hereby designated as such office or agency. El Paso will give prompt written notice to the Trustee of the location, and of any change in the location, of each such office or agency. If at any time the Company shall fail to maintain any such office or agency or the Company or El Paso shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee its agent to receive all such presentations, surrenders, notices and demands.

SECTION 5.03. Money for Security Payments to be Held in Trust.

All moneys deposited with the Trustee or with any Paying Agent for the purpose of paying the principal of or premium, if any, or interest on Securities shall be deposited and held in trust for the benefit of the Holders of the Securities entitled to such principal, premium, if any, or interest, subject to the provisions of this Section. Moneys so deposited and held in trust shall not be a part of the Pledged Property but shall constitute a separate trust fund for the benefit of the Holders of the relevant Securities.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or direct any Paying Agent to pay, to the Trustee all sums held in trust by such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent in trust for the payment of the principal of or premium, if any, or interest on any Security and remaining unclaimed for three years (or such lesser period as may be required by law to give effect to this provision) after such principal, premium or interest has become due and payable shall be paid to the Company on Company Request (to the extent such monies shall have been deposited by the Company) or to any other Person on its request (to the extent such monies shall have been deposited by such other Person); and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company or such other Person, to the extent such monies shall have been paid to the Company or such other Person, as the case may be, for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company or, to the extent such monies are to be paid to another Person, such other Person cause to be mailed to each such Holder notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such mailing, any unclaimed balance of such money then remaining will be repaid to the Company or such other Person.

SECTION 5.04. Maintenance of Corporate Existence.

The Company, at its own cost and expense, will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights and franchises, except as otherwise specifically permitted in this Indenture; provided, however, that the Company shall not be required to preserve any right or franchise if the Board of Directors of the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not disadvantageous in any material respect to the Securityholders.

SECTION 5.05. Protection of Pledged Property.

The Company and El Paso will from time to time execute and deliver all such supplements and amendments hereto and all such financing statements, continuation statements, instruments of further assurance, and other instruments necessary to

(i) grant more effectively all or any portion of the Pledged Property,

(ii) maintain or preserve the lien of this Indenture or carry out more effectively the purposes hereof,

(iii) perfect, publish notice of, or protect the validity of, any grant made or to be made by this Indenture,

(iv) enforce any of the Securities, or

(v) preserve and defend title to any Securities or other instrument included in the Pledged Property and the rights of the Trustee, and of the Securityholders, in such Securities or other instrument against the claims of all persons and parties.

The Company hereby designates the Trustee its agent and attorney-in-fact to execute any financing statement, continuation statement or other instrument required pursuant to this Section.

SECTION 5.06. Opinions as to Pledged Property.

Promptly after the execution and delivery of this Indenture and of each Series Supplemental Indenture or other supplemental indenture or other instrument of further assurance, the Company shall furnish to the Trustee an Opinion of Counsel stating that, in the opinion of such Counsel, this Indenture and all such Series Supplemental Indentures, other supplemental indentures and other instruments of further assurance have been properly recorded, registered and filed to the extent necessary to make effective the lien intended to be created by this Indenture, and reciting the details of such action or referring to prior Opinions of Counsel in which such details are given, and stating that all financing statements and continuation statements have been executed and filed that are necessary fully to preserve and protect the rights of the Securityholders and the Trustee, or stating that, in the opinion of such Counsel, no such action is necessary to make such lien effective.

On or before May 1, in each calendar year, beginning with the first calendar year commencing more than three months after the date of authentication and delivery of any Securities, the Company shall furnish to the Trustee an Opinion of Counsel either stating that, in the opinion of such counsel, such action has been taken with respect to the recording, filing, re-recording and re-filing of this Indenture, any Series Supplemental Indenture and any other requisite documents and with respect to the execution and filing of any financing statements and continuation statements as is necessary to maintain the lien and security interest created by this Indenture with respect to the Pledged Property and reciting the details of such action or stating that in the opinion of such counsel no such action is necessary to maintain such lien and security interest. Such Opinion of Counsel shall also describe the recording, filing, re-recording and re-filing of this Indenture, any Series Supplemental Indenture and any other requisite documents and the execution and

filing of any financing statements and continuation statements that will, in the opinion of such counsel, be required to maintain the lien and security interest of this Indenture with respect to the Pledged Property until May 1 in the following calendar year.

SECTION 5.07. Performance of Obligations

(a) Neither the Company nor El Paso will take any action or permit any action to be taken by others which would release any Person from any of such Person's covenants or obligations under any instrument included in the Pledged Property, or which would result in the amendment, hypothecation, subordination, termination or discharge of, or impair the validity or effectiveness of, any such instrument, except as expressly provided in this Indenture.

(b) El Paso will fully perform all of its obligations under the Leases.

SECTION 5.08. Negative Covenants

During such time as any Security issued hereunder is Outstanding, the Company will not:

(i) sell, transfer, exchange or otherwise dispose of any portion of the Pledged Property except as expressly permitted by this Indenture;

(ii) engage in any business or activity other than in connection with, or relating to, the issuance of Securities pursuant to this Indenture or amend Article Third, Fourth or Sixth of its Certificate of Incorporation as in effect on the date of execution and delivery of this Indenture, without, in each case, the consent of the Holders of not less than 66 2/3% of the aggregate principal amount of the Securities then Outstanding; notwithstanding the foregoing, however, the Company may, with respect to one or more series of Securities (or one or more Stated Maturities within any series), enter into credit or liquidity support facilities (including, but without limitation, bank letters of credit, bank lines of credit and bonds of insurance) and may engage in interest rate swaps;

(iii) issue bonds, notes or other evidences of indebtedness other than (i) Securities issued hereunder or (ii) bonds, notes or other evidences of indebtedness secured by a pledge of Securities issued hereunder or evidencing indebtedness permitted by clause (ii) above;

(iv) incur, assume or guaranty any indebtedness of any Person;

(v) dissolve or liquidate in whole or in part;

(vi) take any action which would (1) permit the validity or effectiveness of this Indenture or any grant of any of the Pledged Property to be impaired, or permit the Lien of this Indenture to be amended, hypothecated, subordinated, terminated or discharged, or permit any Person to be released from any covenant or obligation under this Indenture, (2) permit any Lien, charge, security, mortgage or other encumbrance (other than the lien of this Indenture) to be created on or extend to or otherwise arise upon or burden the Pledged Property or any part thereof or any interest therein or the proceeds thereof, or (3) permit the Lien of this Indenture not to constitute a valid first priority security interest in the Pledged Property; or

(vii) institute any proceedings to be adjudicated a bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against it, or file a petition or answer or consent seeking reorganization or relief under the Federal Bankruptcy Act or any other applicable federal or state law or law of the District of Columbia, or consent to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or any substantial part of its property, or make an assignment for the benefit of its creditors, or admit in writing its inability to pay its debts generally as they become due, or take any corporate action in furtherance of the foregoing.

SECTION 5.09. Administration of Principal Instruments.

(a) Without the consent of the Holders of a majority in principal amount of Outstanding Securities (or, in the case of Changes to a Support Facility, the series (or the Stated Maturity Dates within a series) of outstanding Securities benefiting from such Support Facility), the Trustee shall not consent to any Change in any Principal Instrument; provided, however, that the Trustee may consent to any Change in any Principal Instrument if such Change is permitted by subsection (b) of this Section 5.09.

(b) Subject to the provisions of subsection (c) of this Section 5.09, the Trustee may consent to any Change in any Principal Instrument if such Change is:

(1) to cure any ambiguity, to correct or supplement any provision in such Principal Instrument which may be defective or inconsistent with any other provision in such Principal Instrument or any related Principal Instrument,

or to make any other provisions with respect to matters arising under any such Principal Instrument, provided, in each instance, that such action shall not materially adversely affect the interests of Holders of Securities; or

(2) to add to the covenants and agreements of the parties to such Principal Instrument other covenants and agreements thereafter to be observed by any such party, or to surrender any right or power therein reserved to or conferred upon the Company; or

(3) to amend or supplement such Principal Instrument, or to give any consent or grant any waiver thereunder, so long as thereafter such Principal Instrument will comply with the requirements (if any) of Exhibit A hereto; provided that such action does not materially adversely affect the interests of Holders of Securities; or

(4) in any other manner not inconsistent with Exhibit A hereto; provided that such action does not materially adversely affect the interests of Holders of Securities; or

(5) a Change in the Lease permitted by applicable provisions of the related Lease Indenture; or

(6) to describe more fully and to amplify or correct the description of any property or rights assigned or pledged by such Principal Instrument or intended so to be, or to assign, pledge, mortgage or grant a security interest in any additional property, rights and interests, subject to such liens, restrictions or other encumbrances, if any, as shall be therein specifically described; or

(7) in the case of a Lease Indenture, to enable the Lease Indenture Trustee thereunder to confer upon holders of Pledged Lessor Notes any additional rights, remedies, powers or authorities that may lawfully be granted or conferred upon such holders; or

(8) to evidence the appointment of a separate or co-Lease Indenture Trustee or the succession of a new Lease Indenture Trustee; or

(9) to evidence the succession of or assumption by a successor or assignee Lessee under the Leases and the Participation Agreements or to evidence the succession of a new Lessor or Owner Trustee under any Principal Document to which it is a party; or

(10) permitted by the terms of such Principal Instrument to be made without the consent of or notice to the holders of the related Pledged Lessor Notes; or

(11) to provide for the issuance of Lessor Notes in addition to the Pledged Lessor Notes relating to such Principal Instruments in accordance with the applicable provisions of the related Principal Instruments.

(c) No Change with respect to a Principal Instrument, whether effected pursuant to subsection (a) or pursuant to subsection (b) of this Section 5.09, and anything in such subsections or elsewhere in this Indenture to the contrary notwithstanding, shall, without the consent of the Holder of each Outstanding Security affected thereby:

(1) except as provided in any Lease, change such Lease in such a way as to change the timing or reduce the amount of any Lease Payment, or otherwise to release, except as provided in such Lease, El Paso from its obligation under such Lease in respect of payment of Lease Payments; or

(2) modify, amend or supplement the Participation Agreements in such a way as to, or give any consent, waiver, authorization or approval which would, release any Equity Investor from its payment obligations contained in said Participation Agreements.

(d) Except during the continuance of an Event of Default hereunder, upon request of the Company or El Paso, the Trustee shall consent to any Change described in this Section 5.09, and shall execute any instrument requested by the Company or El Paso, as the case may be, for the purpose of confirming such consent, but only upon receipt by the Trustee of an Officers' Certificate and an Opinion of Counsel of the Company or El Paso, as the case may be, each stating that such Change is authorized by this Indenture and that execution of such instrument is appropriate to confirm such consent, unless such Change adversely affects the Trustee's rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may, in its discretion, but shall not be obligated to, give such consent and the Trustee shall be fully protected in relying on such Officers' Certificate and Opinion of Counsel.

SECTION 5.10. Annual Statement as to Compliance.

(a) El Paso and the Company each will deliver to the Trustee, on or before 120 days after the end of each of its fiscal years, a written statement (which need not comply with Section 1.02) signed by its President or one of its Vice Presidents and by its

Treasurer or one of its Assistance Treasurers or its Comptroller or one of its Assistant Comptrollers, stating, as to each signer thereof, that

(1) a review of the activities of El Paso or the Company, as the case may be, required during such year of El Paso or the Company, as the case may be, under this Indenture has been made under his supervision; and

(2) to the best of his knowledge, based on such review, El Paso or the Company, as the case may be, has fulfilled all its obligations under this Indenture throughout such year, or, if there has been a default in the fulfillment of any such obligation, specifying each such default known to such officer and the nature and status thereof.

(b) El Paso and the Company each will deliver to the Trustee, promptly after having obtained knowledge thereof, but in no event later than five days thereafter, written notice of any event which with the giving of notice or lapse of time, or both, would become an Event of Default under Section 8.01.

ARTICLE SIX

REDEMPTION OF SECURITIES

The provisions of this Article Six shall be applicable to the Securities of any series which are redeemable before their Stated Maturity of principal except as otherwise provided in such Securities or the Series Supplemental Indenture with respect thereto as contemplated by Section 2.03.

SECTION 6.01. Notice to Trustee of Redemption.

In case of any redemption of any Securities of any series otherwise than through the operation of an applicable Sinking Fund, the Company shall, at least 45 days prior to the scheduled Redemption Date (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee in writing of such Redemption Date and of the principal amount of Securities of such series to be redeemed.

SECTION 6.02. Selection by Trustee of Securities to be Redeemed.

If fewer than all the Securities of any series are to be redeemed, other than through the operation of an applicable Sinking Fund, the particular Securities of such series to be redeemed shall be selected following receipt by the Trustee of the notice required

by Section 6.01, but not more than 60 days prior to the Redemption Date, by the Trustee, from the Outstanding Securities of such series not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions of the principal of Securities of any denomination larger than $1,000; provided, however, that for purposes of selecting Securities of any series for redemption pursuant to this Section, Securities of such series shall be redeemed from each Stated Maturity of principal of Securities of such series as nearly as practicable in the proportion that the aggregate principal amount of Securities of such series of such Stated Maturity of principal Outstanding immediately prior to the Redemption Date shall bear to the aggregate principal amount of Securities of such series of all Stated Maturities of principal then Outstanding, in each case taking into account in the determination of Securities Outstanding the Securities of such series subject to such redemption; provided further, however, that when Securities are being redeemed pursuant to any applicable optional (rather than mandatory) redemption provisions, the Securities to be redeemed shall be selected solely from the Securities of the series and of the Stated Maturity of principal in respect of which a Company Order has been received. If Securities are to be selected for any redemption pursuant to this Section, the Trustee may make such adjustments as it shall deem necessary so that the principal amount of Securities redeemed shall be $1,000 or an integral multiple thereof, such adjustments to be made by the Trustee in such manner as the Trustee in its sole discretion deems appropriate.

The Trustee shall promptly notify the Company, El Paso, the Security Registrar and the Paying Agent in writing of the Securities selected for redemption and, in the case of any Security selected for partial redemption, the principal amount thereof to be redeemed.

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

SECTION 6.03. Notice of Redemption.

Notice of redemption (including redemption through the operation of any applicable Sinking Fund) shall be given by first-class mail, postage prepaid, mailed not less than 20 nor more than 60 days prior to the Redemption Date, to each Holder of Securities to be redeemed, at his address appearing in the Security Register.

All notices of redemption shall state:

(1) the Redemption Date,

(2) the Redemption Price,

(3) if fewer than all Outstanding Securities of any series are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the particular Securities, including the series and the Stated Maturity of principal of such Securities, to be redeemed,

(4) that on the Redemption Date the Redemption Price will become due and payable upon each such Security, and that interest thereon shall cease to accrue from and after said date,

(5) the place where such Securities are to be surrendered for payment of the Redemption Price, and

(6) that the redemption is through the operation of a Sinking Fund, if such is the case.

Notice of redemption of Securities to be redeemed shall be given by the Trustee in the name of the Company.

SECTION 6.04. Deposit of Redemption Price.

Prior to any Redemption Date, the Company shall deposit or cause to be deposited, with the Trustee or the Paying Agent an amount of money sufficient to pay the Redemption Price of all the Securities which are to be redeemed on that date.

SECTION 6.05. Securities Payable on Redemption Date.

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Paying Agent's Office (or, if such office is not in the Borough of Manhattan, the City of New York, at either such office or an office to be maintained in such Borough) at the Redemption Price therein specified and from and after such date (unless there shall be a default in the payment of the Redemption Price) such Securities shall cease to bear interest. Upon surrender of such Securities for redemption in accordance with said notice, such Securities shall be paid at the Redemption Price, exclusive, however, of installments of interest maturing on or prior to the Redemption Date, payment of which shall have been made or duly provided for to the Holders of such Securities registered as such on the relevant Record Dates, or otherwise, according to their terms and the provisions of Section 2.10.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, continue to bear interest from the Redemption Date at the rate borne by the Security in respect of overdue payments.

SECTION 6.06. Securities Redeemed in Part.

Any Security which is to be redeemed only in part shall be surrendered at the Paying Agent's Office (or, if such office is not in the Borough of Manhattan, the City of New York, at either such office or an office to be maintained in such Borough) (with due endorsement by, or a written instrument of transfer in form satisfactory to the Security Registrar duly executed by, the Holder thereof or his attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Paying Agent for delivery to the Holder of such Security a new Security or Securities of the same series and the same Stated Maturity of principal, of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

ARTICLE SEVEN

SINKING FUNDS

SECTION 7.01. Sinking Funds for Securities.

The amount of any sinking fund payment provided for by the terms of Securities of any series (and any Stated Maturity of principal within a series) is herein referred to as a "**Sinking Fund**", and the date on which a Sinking Fund payment is to be made is herein referred to as a "**Sinking Fund Date.**" Each such Sinking Fund payment shall be applied to the redemption of Securities of the appropriate series and the appropriate Stated Maturity of principal on the appropriate Sinking Fund Date.

In the event that there shall have been any partial redemption of a series of Securities (other than pursuant to an applicable Sinking Fund), the amount of each applicable Sinking Fund payment of a particular Stated Maturity of principal within such series subsequent to such redemption shall be reduced by an amount equal to the amount obtained by (i) multiplying the amount of such Sinking Fund payment with respect to such Stated Maturity of principal as in effect prior to such redemption by a fraction of which the numerator shall be the aggregate principal amount of Securities of such Stated Maturity of such series redeemed pursuant to such partial redemption, and the denominator shall be the aggregate principal amount of Securities of such Stated Maturity of such series Outstanding

immediately prior to such redemption, and (ii) rounding the amount indicated in (i) to the nearest $1,000, subject to necessary adjustment so that the total amount of such reduction is equal to the [redacted] principal amount of Securities redeemed pursuant to such partial redemption, such adjustment to be made by the Trustee in such manner as the Trustee in its sole discretion deems appropriate.

SECTION 7.02. Selection by Trustee of Securities to be Redeemed Through Operation of Sinking Fund.

In the case of Securities to be redeemed through operation of the Sinking Fund, the particular Securities to be redeemed shall be selected no more than 60 days nor less than 30 days prior to the Redemption Date by the Trustee from the outstanding Securities of the same series and of the same Stated Maturity of principal not previously called for redemption by prorating, as nearly as may be, the principal amount of Securities to be redeemed among the Holders of Securities of the same series and of the same Stated Maturity of principal registered in their respective names. In any proration pursuant to this Section, the Trustee shall make such adjustments, reallocations and eliminations as it shall deem proper so that the principal amount of Securities so prorated shall be $1,000 or an integral multiple thereof, by increasing or decreasing or eliminating the amount which would be allocable to any Holder on the basis of exact proportion by an amount not exceeding $1,000. The Trustee in its discretion may determine the particular Securities of a Stated Maturity of principal registered in the name of any Holder which are to be redeemed, in whole or in part.

Notwithstanding the provisions of the preceding paragraph, if, at the time of any such selection, there shall be any Holders of less than $1,000,000 aggregate principal amount of Outstanding Securities of the series and of the Stated Maturity of principal to be so redeemed, the selection of the particular Securities to be so redeemed shall be made in the following manner:

(a) the Trustee shall first prorate the principal amount of Securities of such series and of such Stated Maturity to be so redeemed between (i) Holders of Securities in aggregate principal amounts of $1,000,000 or more and (ii) Holders of Securities in aggregate principal amounts of less than $1,000,000; such proration to be effected in accordance with the respective aggregate principal amounts of such Securities held by the Holders referred to in the foregoing items (i) and (ii), respectively;

(b) the Trustee shall then select for redemption in the manner hereinabove in the first paragraph of this Section 7.02 provided, from the Securities of such series

and Stated Maturity held by the Holders referred to in item (i) of clause (a) above, particular Securities (or portions thereof) in the principal amount prorated to such Holders pursuant to said clause (a); and

(c) the Trustee shall then select for redemption in the manner provided in Section 6.02 hereof, from the Securities of such series and Stated Maturity held by the Holders referred to in item (ii) of said clause (a), particular Securities (or portions thereof) in the principal amount prorated to such Holders pursuant to said clause (a);

provided, however, in any such prorating pursuant to this paragraph the Trustee may, according to such method as it shall deem proper in its discretion, make such adjustments by increasing or decreasing by not more than $1,000 the amount which would be allocable on the basis of an exact proportion, as may be necessary to the end that the principal amount so prorated shall be in each instance an integral multiple of $1,000.

ARTICLE EIGHT

EVENTS OF DEFAULT; REMEDIES

SECTION 8.01. Events of Default.

"Events of Default", 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 a judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(1) default in the payment of any interest upon any Security when it becomes due and payable, and continuance of such default for a period of ten (10) days; or

(2) default in the payment of the principal of (or premium, if any, on) any Security at its Stated Maturity, or upon call for redemption or otherwise, and continuance of such default for a period of ten (10) days; or

(3) default in the making of any Sinking Fund payment, and continuance of such default for a period of ten (10) days; or

(4) default in the performance, or breach, of any covenant of El Paso or the Company contained herein and

continuance of such default or breach for a period of 30 days after there has been given, by registered or certified mail, to El Paso and the Company by the Trustee, or to El Paso, the Company and the Trustee by the Holders of at least 25% in principal amount of Outstanding Securities, a written notice specifying such failure and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(5) the occurrence of an "Indenture Event of Default" under any Lease Indenture and the declaration as a result thereof that any Pledged Lessor Note is due and payable; or

(6) the entry of a decree or order by a court having jurisdiction in the premises adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under the Federal Bankruptcy Act or any other applicable federal or state law or law of the District of Columbia, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; or

(7) the institution by the Company of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the Federal Bankruptcy Act or any other applicable federal or state law or law of the District of Columbia, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company in furtherance of any such action.

SECTION 8.02. Acceleration of Maturity; Rescission and Annulment.

Upon the occurrence of an Event of Default, (i) if such Event of Default is one referred to in clause (1), (2), (3), (4), (6) or (7) of Section 8.01, the Trustee may, and upon the direction of the Holders of not less than 25% in principal amount of the Securities Outstanding shall, and (ii) if such Event of Default is the one referred to in clause (5) of Section 8.01 (including without limitation an event of default under any Lease which has resulted in an Event of Default referred to in clause (1), (2), or (3) of Section 8.01), the Trustee shall, declare the principal of all the Securities to be due and payable immediately, by a notice in writing to El Paso and the Company, and upon any such declaration such principal shall become immediately due and payable; provided that no such declaration shall be made (and no action under Section 8.03 or 8.05 shall be taken) in cases in which the Event of Default is one referred to in clause (1), (2), or (3) of Section 8.01 which resulted directly from a failure of El Paso to make any payment of rent under any Lease until such time as the Lessor under such Lease has been given the opportunity to exercise its rights, if any, under provisions of the related Lease Indenture analogous to Section 6.8 of the Lease Indentures dated as of August 1, 1986.

At any time after such a declaration of acceleration has been made and before any sale of the Pledged Property, or any part thereof, shall have been made pursuant to any power of sale as hereinafter in this Article provided, the Holders of a majority in principal amount of the Securities Outstanding, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if

(1) there shall have been paid to or deposited with the Trustee a sum sufficient to pay

(A) all overdue installments of interest on all Securities,

(B) the principal of (and premium, if any, on) any Securities which have become due otherwise than by such declaration of acceleration and interest thereon at the respective rates provided in the Securities for late payments of principal or premium,

(C) to the extent that payment of such interest is lawful, interest upon overdue installments of interest at the respective rates provided in the Securities for late payments of interest, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and

(2) all Events of Default, other than the non-payment of the principal of Securities which have become due solely by such acceleration, have been cured or waived as provided in Section 8.08.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

SECTION 8.03. Trustee's Power of Sale of Pledged Property; Notice Required; Power to Bring Suit.

If an Event of Default shall have occurred and be continuing, subject to the provisions of Sections 8.06 and 8.07 and the proviso to the first paragraph of Section 8.02, the Trustee, by such officer or agent as it may appoint, may:

(1) sell, to the extent permitted by law, without recourse, for cash, or credit or for other property, for immediate or future delivery, and for such price or prices and on such terms as the Trustee in its discretion may determine, the Pledged Property as an entirety, or in any such portions as the Holders of a majority in aggregate principal amount of the Securities then Outstanding shall request by an Act of Securityholders, or, in the absence of such request, as the Trustee in its discretion shall deem expedient in the interest of the Securityholders, at public or private sale; and/or

(2) proceed by one or more suits, actions or proceedings at law or in equity or otherwise or by any other appropriate remedy, to enforce payment of the Securities or Pledged Lessor Notes, or to foreclose this Indenture or to sell the Pledged Property under a judgment or decree of a court or courts of competent jurisdiction, or by the enforcement of any such other appropriate legal or equitable remedy, as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce any of its rights or powers or any of the rights or powers of the Securityholders.

In the event that the Trustee shall deem it advisable to sell any of or all the Pledged Property in accordance with the provisions of this Section, El Paso and the Company agree that if registration of any such Pledged Property shall be required, in the opinion of counsel for the Trustee, under the Securities Act of 1933

or other applicable law, and regulations promulgated thereunder, and if El Paso shall not effect, or cause to be effected, such registration promptly, the Trustee may sell any such Pledged Property at a private sale, and no Person shall attempt to maintain that the prices at which such Pledged Property is sold are inadequate by reason of the failure to sell at public sale, or hold the Trustee liable therefor.

SECTION 8.04. Incidents of Sale of Pledged Property.

Upon any sale of all or any part of the Pledged Property made either under the power of sale given under this Indenture or under judgment or decree in any judicial proceedings for foreclosure or otherwise for the enforcement of this Indenture, the following shall be applicable:

(1) **Securities Due and Payable.** The principal of, and premium, if any, and accrued interest on, the Securities, if not previously due, shall immediately become and be due and payable.

(2) **Trustee Appointed Attorney of Company to Make Conveyances.** The Trustee is hereby irrevocably appointed the true and lawful attorney of the Company, in its name and stead, to make all necessary deeds, bills of sale and instruments of assignment, transfer or conveyance of the property thus sold; and for that purpose the Trustee may execute all such documents and instruments and may substitute one or more persons with like power; and the Company hereby ratifies and confirms all that its said attorneys, or such substitute or substitutes, shall lawfully do by virtue hereof.

(3) **Company to Confirm Sales and Conveyances.** If so requested by the Trustee or by any purchaser, the Company shall ratify and confirm any such sale or transfer by executing and delivering to the Trustee or to such purchaser or purchasers all proper deeds, bills of sale, instruments of assignment, conveyance or transfer and releases as may be designated in any such request.

(4) **Securityholders and Trustee May Purchase Pledged Property.** Any Securityholder or the Trustee may bid for and purchase any of the Pledged Property, and upon compliance with the terms of sale, may hold, retain, possess and dispose of such Pledged Property in his or its own absolute right without further accountability.

(5) **Purchaser at Sale May Apply Securities to Purchase Price.** Any purchaser at any such sale may, in

paying the purchase price, deliver any of the Securities then Outstanding in lieu of cash and apply to the purchase price the amount which shall, upon distribution of the net proceeds of such sale, after application to the costs of the action and any other sums which the Trustee is authorized to deduct under this Indenture, be payable on such Securities so delivered in respect of principal, premium, if any, and interest. In case the amount so payable on such Securities shall be less than the amount due thereon, duly executed and authenticated Securities shall be delivered in exchange therefor to the Holder thereof for the balance of the amount due on such Securities so delivered by such Holder.

(6) **Receipt of Trustee Shall Discharge Purchaser.** The receipt of the Trustee or of the officer making such sale under judicial proceedings shall be a sufficient discharge to any purchaser for his purchase money, and, after paying such purchase money and receiving such receipt, such purchaser or his personal representative or assigns shall not be obliged to see to the application of such purchase money, or be in any way answerable for any loss, misapplication or non-application thereof.

(7) **Sale To Divest Rights of Company in Property Sold.** Any such sale shall operate to divest the Company of all right, title, interest, claim and demand whatsoever, either at law or in equity or otherwise, in and to the Pledged Property so sold, and shall be a perpetual bar both at law and in equity or otherwise against the Company, and its successors and assigns, and any and all persons claiming or who may claim the Pledged Property sold or any part thereof from, through or under the Company, or its successors and assigns.

(8) **Application of Moneys Received upon Sale.** Any moneys collected by the Trustee upon any sale made either under the power of sale given by this Indenture or under judgment or decree in any judicial proceedings for foreclosure or otherwise for the enforcement of this Indenture, shall be applied as provided in Section 8.12.

SECTION 8.05. Judicial Proceedings Instituted by Trustee

(a) **Trustee May Bring Suit.** If there shall be a failure to make payment of the principal of any Security at its Stated Maturity or upon declaration of acceleration, call for redemption or otherwise, or of any Sinking Fund payment when due and payable by the terms hereof or of such Security, or if there shall be a failure to pay the premium, if any, or interest on any Security when the same

becomes due and payable, then the Trustee, if any such failure shall continue for 15 days, in its own name, and as trustee of an express trust, shall be entitled, and empowered subject to the proviso to the first paragraph of Section 8.02 to institute any suits, actions or proceedings at law, in equity or otherwise, for the collection of the sums so due and unpaid on the Securities, and may prosecute any such claim or proceeding to judgment or final decree, and may enforce any such judgment or final decree and collect the moneys adjudged or decreed to be payable in any manner provided by law, whether before or after or during the pendency of any proceedings for the enforcement of the Lien of this Indenture, or of any of the Trustee's rights or the rights of the Securityholders under this Indenture, and such power of the Trustee shall not be affected by any sale hereunder or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Indenture or for the foreclosure of the lien hereof.

(b) **Trustee May Recover Unpaid Indebtedness after Sale of Pledged Property.** In the case of a sale of the Pledged Property and of the application of the proceeds of such sale to the payment of the indebtedness secured by this Indenture, the Trustee in its own name, and as trustee of an express trust, shall be entitled and empowered, by any appropriate means, legal, equitable or otherwise, to enforce payment of, and to receive all amounts then remaining due and unpaid upon, all or any of the Securities, for the benefit of the Holders thereof, and upon any other portion of the indebtedness remaining unpaid, with interest at the rates specified in the respective Securities on the overdue principal of and premium, if any, and (to the extent that payment of such interest is legally enforceable) on the overdue installments of interest.

(c) **Recovery of Judgment Does Not Affect Lien of this Indenture or Other Rights.** No recovery of any such judgment or final decree by the Trustee and no levy of any execution under any such judgment upon any of the Pledged Property, or upon any other property, shall in any manner or to any extent affect the Lien of this Indenture upon any of the Pledged Property, or any rights, powers or remedies of the Trustee, or any liens, rights, powers or remedies of the Securityholders, but all such liens, rights, powers and remedies shall continue unimpaired as before.

(d) **Trustee May File Proofs of Claim; Appointment of Trustee as Attorney-in-Fact in Judicial Proceedings.** The Trustee in its own name, or as trustee of an express trust, or as attorney-in-fact for the Securityholders, or in any one or more of such capacities (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand for the payment of overdue principal, premium (if any) or interest), shall be entitled and empowered to

file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and of the Securityholders (whether such claims be based upon the provisions of the Securities or of this Indenture) allowed in any equity receivership, insolvency, bankruptcy, liquidation, readjustment, reorganization or any other judicial proceedings relative to the Company or any obligor on the Securities (within the meaning of the TIA), the creditors of the Company or any such obligor, the Pledged Property or any other property of the Company or any such obligor and any receiver, assignee, trustee, liquidator, sequestrator (or other similar official) in any such judicial proceeding is hereby authorized by each Securityholder to make such payments to the Trustee and in the event that the Trustee shall consent to the making of such payments directly to the Securityholders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel. The Trustee is hereby irrevocably appointed (and the successive respective Holders of the Securities, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee) the true and lawful attorney-in-fact of the respective Securityholders, with authority to (i) make and file in the respective names of the Securityholders (subject to deduction from any such claims of the amounts of any claims filed by any of the Securityholders themselves), any claim, proof of claim or amendment thereof, debt, proof of debt or amendment thereof, petition or other document in any such proceedings and to receive payment of any amounts distributable on account thereof, (ii) execute any such other papers and documents and to do and perform any and all such acts and things for and on behalf of such Securityholders, as may be necessary or advisable in order to have the respective claims of the Trustee and of the Securityholders against the Company or any such obligor, the Pledged Property or any other property of the Company or any such obligor allowed in any such proceeding and (iii) receive payment of or on account of such claims and debt; **provided, however**, that nothing contained in this Indenture shall be deemed to give to the Trustee any right to accept or consent to any plan of reorganization or otherwise by action of any character in any such proceeding to waive or change in any way any right of any Securityholder. Any moneys collected by the Trustee under this Section shall be applied as provided in Section 8.12.

(e) **Trustee Need Not Have Possession of Securities.** All rights of action and of asserting claims under this Indenture or under any of the Securities enforceable by the Trustee may be enforced by the Trustee without possession of any of such Securities or the production thereof at the trial or other proceedings relative thereto.

(f) **Suit To Be Brought for Ratable Benefit of Securityholders.** Any suit, action or other proceeding at law, in

equity or otherwise which shall be instituted by the Trustee under any of the provisions of this Indenture shall be for the equal, ratable and common benefit of all the Securityholders, subject to the provisions of this Indenture.

(g) Trustee May Be Restored to Former Position and Rights in Certain Circumstances. In case the Trustee shall have proceeded to enforce any right under this Indenture by suit, foreclosure or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then in every such case, El Paso, the Company and the Trustee shall be restored without further act to their respective former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as though no such proceedings had been taken.

SECTION 8.06. Securityholders May Demand Enforcement of Rights by Trustee.

If an Event of Default shall have occurred and shall be continuing, the Trustee shall, upon the written request of the Holders of a majority in aggregate principal amount of the Securities then Outstanding and upon the offering of indemnity as provided in Section 9.03(e), but subject in all cases to the provisions of Section 3.03 and the proviso to the first paragraph of Section 8.02, proceed to institute one or more suits, actions or proceedings at law, in equity or otherwise, or take any other appropriate remedy, to enforce payment of the principal of, or premium, if any, or interest on, the Securities or Pledged Lessor Notes or to foreclose this Indenture or to sell the Pledged Property under a judgment or decree of a court or courts of competent jurisdiction or under the power of sale herein granted, or take such other appropriate legal, equitable or other remedy, as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce any of the rights or powers of the Trustee or the Securityholders, or, in case such Securityholders shall have requested a specific method of enforcement permitted hereunder, in the manner requested, provided that such action shall not be otherwise than in accordance with law and the provisions of this Indenture, and the Trustee, subject to such indemnity provisions, shall have the right to decline to follow any such request if the Trustee in good faith shall determine that the suit, proceeding or exercise of the remedy so requested would involve the Trustee in personal liability or expense.

SECTION 8.07. Control by Securityholders.

The Holders of a majority in principal amount of the Outstanding Securities shall have the right to direct the time, method and place of conducting any proceeding for any remedy

available to the Trustee or exercising any trust or power conferred on the Trustee, provided that

(1) such direction shall not be in conflict with any rule of law or with this Indenture, and

(2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

SECTION 8.08. Waiver of Past Defaults.

The Holders of not less than a majority in principal amount of the Outstanding Securities may on behalf of the Holders of all the Securities waive any past default hereunder and its consequences, except that only the Holders of all Securities affected thereby may waive a default

(1) in the payment of the principal of (or premium, if any) or interest on such Securities, or

(2) in respect of a covenant or provision hereof which under Article Eleven cannot be modified or amended without the consent of the Holder of each Outstanding Security affected.

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

SECTION 8.09. Securityholder May Not Bring Suit Except under Certain Conditions.

A Securityholder shall not have the right to institute any suit, action or proceeding at law or in equity or otherwise for the foreclosure of this Indenture, for the appointment of a receiver or for the enforcement of any other remedy under or upon this Indenture, unless:

(1) such Securityholder previously shall have given written notice to the Trustee of a continuing Event of Default;

(2) the Holders of at least 25% in aggregate principal amount of the Securities then Outstanding shall have requested the Trustee in writing to institute such action, suit or proceeding and shall have offered to the Trustee indemnity as provided in Section 9.03(e);

(3) the Trustee shall have refused or neglected to institute any such action, suit or proceeding for 60 days after receipt of such notice, request and offer of indemnity; and

(4) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of outstanding Securities.

It is understood and intended that no one or more of the Securityholders shall have any right in any manner whatever hereunder or under the Securities to (i) surrender, impair, waive, affect, disturb or prejudice the Lien of this Indenture on any property subject thereto or the rights of the Holders of any other Securities, (ii) obtain or seek to obtain priority or preference over any other such Holder or (iii) enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all the Securityholders subject to the provisions of this Indenture.

SECTION 8.10. Undertaking To Pay Court Costs.

All parties to this Indenture, and each Securityholder by his acceptance of a Security, shall be deemed to have agreed that any court may in its discretion require, in any suit, action or proceeding for the enforcement of any right or remedy under this Indenture, or in any suit, action or proceeding against the Trustee for any action taken or omitted by it as Trustee hereunder, the filing by any party litigant in such suit, action or proceeding of an undertaking to pay the costs of such suit, action or proceeding, and that such court may, in its discretion, assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, action or proceeding, having due regard to the merits and good faith of the claims or defenses made by such party litigant; **provided, however**, that the provisions of this Section shall not apply to (a) any suit, action or proceeding instituted by the Trustee, (b) any suit, action or proceeding instituted by any Securityholder or group of Securityholders holding in the aggregate more than 10% in aggregate principal amount of the Securities then Outstanding or (c) any suit, action or proceeding instituted by any Securityholder for the enforcement of the payment of the principal of, or premium, if any, or interest on, any of the Securities, on or after the respective due dates expressed therein.

SECTION 8.11. Right of Securityholders To Receive Payment Not To Be Impaired.

Anything in this Indenture to the contrary notwithstanding, the right of any Holder of any Security to receive payment of the principal of, and premium, if any, and interest on, such Security, on or after the respective due dates expressed in such Security (or, in case of redemption, on the Redemption Date fixed for such Security), or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

SECTION 8.12. Application of Moneys Collected by Trustee.

Any moneys collected or to be applied by the Trustee pursuant to this Article, together with any other moneys which may then be held by the Trustee under any of the provisions of this Indenture as security for the Securities (other than moneys at the time required to be held for the payment of specific Securities at their Stated Maturities or at a time fixed for the redemption thereof) shall be applied in the following order from time to time, on the date or dates fixed by the Trustee and, in the case of a distribution of such moneys on account of principal, premium, if any, or interest, upon presentation of the several Outstanding Securities, and stamping thereon of payment, if only partially paid, and upon surrender thereof, if fully paid:

FIRST: to the payment of all taxes, assessments or liens prior to the Lien of this Indenture, except those subject to which any sale shall have been made, all reasonable costs and expenses of collection, including the reasonable costs and expenses of handling the Pledged Property and of any sale thereof pursuant to the provisions of this Article and of the enforcement of any remedies hereunder or under any Lease Indenture, and to the payment of all amounts due the Trustee or any predecessor Trustee under Section 9.07, or through the Trustee by any Securityholder or Securityholders;

SECOND: in case the principal of the Securities or any of them shall not have become due, to the payment of any interest in default, in the order of the maturity of the installments of such interest, with interest at the rates specified in the respective Securities in respect of overdue payments (to the extent that payment of such interest shall be legally enforceable) on the overdue installments thereof;

THIRD: in case the principal of any of but not all the Securities shall have become due at their Stated

Maturities, upon redemption or otherwise, first to the payment of accrued interest in the order of the maturity of the installments thereof with interest at the respective rates specified in the Securities in respect of payments on overdue principal, premium, if any, and (to the extent that payment of such interest shall be legally enforceable) on overdue installments of interest, and next to the payment of the principal of all Securities then due;

FOURTH: in case the principal of all the Securities shall have become due at their Stated Maturities, by declaration, upon redemption or otherwise, to the payment of the whole amount then due and unpaid upon the Securities then Outstanding for principal, premium, if any, and interest, together with interest at the respective rates specified in the Securities in respect of overdue payments on principal, premium, if any, and (to the extent that payment of such interest shall be legally enforceable) on overdue installments of interest, and, in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid, then to the payment of such principal, premium, if any, and interest ratably, without discrimination or preference; and

FIFTH: in case the principal of all the Securities shall have become due at their Stated Maturities, by declaration, upon redemption or otherwise, and all of such Securities shall have been fully paid, together with all interest (including any interest on overdue payments) and premium, if any, thereon, any surplus then remaining shall be paid to the Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct;

provided, however, that all payments to be made pursuant to this Section shall be made ratably to the persons entitled thereto, without discrimination or preference.

SECTION 8.13. Securities Held by Certain Persons Not To Share in Distribution.

Any Securities known to the Trustee to be owned or held by, or for the account or benefit of, El Paso, the Company or any Affiliate of any thereof shall not be entitled to share in any payment or distribution provided for in this Article until all Securities held by other Persons have been paid in full.

SECTION 8.14. Waiver of Appraisement, Valuation, Stay, Right to Marshalling.

To the extent it may lawfully do so, each of El Paso and the Company, for itself and for any Person who may claim through or under it, hereby:

(1) agrees that neither it nor any such Person will set up, plead, claim or in any manner whatsoever take advantage of, any appraisement, valuation, stay, extension or redemption laws, now or hereafter in force in any jurisdiction, which may delay, prevent or otherwise hinder (i) the performance or enforcement or foreclosure of this Indenture, (ii) the sale of any of the Pledged Property, or (iii) the putting of the purchaser or purchasers thereof into possession of such property immediately after the sale thereof;

(2) waives all benefit or advantage of any such laws;

(3) waives and releases all rights to have the Pledged Property marshalled upon any foreclosure, sale or other enforcement of this Indenture; and

(4) consents and agrees that all the Pledged Property may at any such sale be sold by the Trustee as an entirety.

SECTION 8.15. Remedies Cumulative; Delay or Omission Not a Waiver.

Every remedy given hereunder to the Trustee or to any of the Securityholders shall not be exclusive of any other remedy or remedies, and every such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter given by statute, law, equity or otherwise. The Trustee may exercise all or any of the powers, rights or remedies given to it hereunder or which may now or hereafter be given by statute, law or equity or otherwise, in its absolute discretion. No course of dealing between El Paso or the Company and the Trustee or the Securityholders or any delay or omission of the Trustee or of any Securityholder to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver of any such Event of Default or of any right of the Trustee or of the Securityholders or acquiescence therein, and, subject to the provisions of Section 8.07, every right, remedy and power given by this Article to the Trustee or to the Securityholders may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the Securityholders.

ARTICLE NINE

THE TRUSTEE

SECTION 9.01. Certain Duties and Responsibilities.

(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 provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

(b) 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 man would exercise or use under the circumstances in the conduct of his 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 shall not be construed to limit the effect of Subsection (a) of this Section;

(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 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; 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 herein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

SECTION 9.02. Notice of Defaults.

In addition to its obligation to give notice to Securityholders as provided in **Section** 3.03, as promptly as practicable after, and in any event within 90 days after, the occurrence of any default hereunder, the Trustee shall transmit by mail to all Securityholders, as their names and addresses appear in the 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 Security or in the payment of any Sinking Fund installment, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Securityholders; and **provided, further,** that in the case of any default of the character specified in **Section 8.01(4)** no such notice to Securityholders shall be given until at least 30 days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.

SECTION 9.03. Certain Rights of Trustee.

Except as otherwise provided in **Section** 9.01:

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

(b) any request or direction of El Paso or the Company mentioned herein shall be sufficiently evidenced by a El Paso or Company Request or Order, in the case of a request or direction of El Paso, the Company, as the case may be and any resolution of the Board of Directors of El Paso or the Company may be sufficiently evidenced by a Board Resolution of El Paso or the Company, as the case may be;

(c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate of El Paso or the Company;

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

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

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of El Paso or the Company, personally or by agent or attorney; and

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

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

The recitals contained herein and in the Securities, except the certificates of authentication, shall not be taken as the statements of the Trustee, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to

the validity or sufficiency of this Indenture, the Pledged Property or the Securities, except that the Trustee hereby represents and warrants that this Indenture has been executed and delivered by one of its officers who is duly authorized to execute and deliver such document on its behalf. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

SECTION 9.05. May Hold Securities.

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

SECTION 9.06. Funds May Be Held by Trustee or Paying Agent; Investments.

(a) Subject to subsection (b) of this Section 9.06, any monies held by the Trustee or the Paying Agent hereunder as part of the Pledged Property may, until paid out by the Trustee or the Paying Agent as herein provided, be carried by the Trustee or the Paying Agent on deposit with itself, and neither the Trustee nor the Paying Agent shall have any liability for interest upon any such monies.

(b) At any time and from time to time prior to payment in full of any amounts to be paid by the Trustee pursuant to Section 2.15(b) in respect of any series of Securities, if at the time no Event of Default has occurred and is continuing, the Trustee shall, on Company Request, invest and reinvest in Permitted Investments as specified in such Company Request any monies from the sale of the Securities of such series at the time on deposit with the Trustee as part of the Pledged Property, together with any income and gains from the investment and reinvestment thereof, and sell any Permitted Investments, in either case, at such prices, including accrued interest, as are set forth in such Company Request, and such Permitted Investments shall be held by the Trustee until so sold in trust as part of the Pledged Property. The Trustee shall, on Company Request, sell such Permitted Investments as may be specified therein, and the Trustee shall, without Company Request, in the event monies are required for payment of any amounts to be paid by the Trustee pursuant to Section 2.15(b) in respect of any series of Securities and for any payment of principal, premium, if any, or interest on any series of Securities sell such Permitted Investments as are required to restore to cash as part of the Pledged Property such amounts as are needed for any such payment. The Trustee shall not be responsible for any losses on any investments or sales of Permitted Investments made pursuant to the procedure specified in this subsection (b).

SECTION 9.07. Compensation and Reimbursement

The Company agrees

(1) to pay, or cause to be paid, to each of the Trustee and any Authorized Agent from time to time reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(2) to reimburse, or cause to be reimbursed, each of the Trustee and any Authorized Agent upon its request for all expenses, disbursements and advances incurred or made by it in accordance with any provision of this Indenture (including the compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its own negligence, willful misconduct or bad faith; and

(3) to indemnify, or cause to be indemnified, each of the Trustee, any predecessor Trustee and any Authorized Agent for, and to hold it harmless against, any loss, liability or expense incurred without negligence, willful misconduct or bad faith on its part, arising out of or in connection with the acceptance or administration of this trust or the performance of its duties hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

As security for the performance of the obligations of the Company under this Section the Trustee shall have a lien prior to the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of (and premium, if any) or interest on particular Securities.

SECTION 9.08. Disqualification; Conflicting Interests.

(a) If the Trustee has or shall acquire any conflicting interest, as defined in this Section, it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign in the manner and with the effect hereinafter specified in this Article.

(b) In the event that the Trustee shall fail to comply with the provisions of Subsection (a) of this Section the Trustee shall, within 10 days after the expiration of such 90-day period, transmit by mail to all Securityholders, as their names and addresses appear in the Security Register, notice of such failure.

(c) For the purposes of this Section, the Trustee shall be deemed to have a conflicting interest if

(1) the Trustee is trustee under another Indenture under which any other securities, or certificates of interest or participation in any other securities, of any obligor on the Securities are outstanding, unless (A) the Securities are collateral trust bonds under which the only collateral consists of securities issued under such other indenture, or (B) such other indenture is a collateral trust indenture under which the only collateral consists of Securities issued under this Indenture, provided that there shall be excluded from the operation of this paragraph any indenture or indentures under which other securities, or certificates of interest or participation in other securities, of such obligor are outstanding, if such obligor shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under this Indenture and such other indenture or indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under one of such indentures;

(2) the Trustee or any of its directors or executive officers is an obligor upon the Securities or an underwriter for such obligor;

(3) the Trustee directly or indirectly controls or is directly or indirectly controlled by or is under direct or indirect common control with any obligor on the Securities or an underwriter for such obligor;

(4) the Trustee or any of its directors or executive officers is a director, officer, partner, employee, appointee or representative of any obligor on the Securities, or of an underwriter (other than the Trustee itself) for such obligor who is currently engaged in the business of underwriting, except that (i) one individual may be a director or an executive officer, or both, of the Trustee and a director or an executive officer, or both, of an obligor on the Securities but may not be at the same time an executive officer of both the Trustee and such obligor; (ii) if and so long as the number of directors of the Trustee in office is more than nine, one additional individual may be director or an executive officer, or both, of the Trustee and a director of an obligor on the Securities; and (iii) the Trustee may be designated by an obligor on the Securities or by any underwriter for such obligor to act in the

capacity of transfer agent, registrar, custodian, paying agent, fiscal agent, escrow agent, or depositary, or in any other similar capacity, or, subject to the provisions of paragraph (1) of this Subsection, to act as trustee, whether under an indenture or otherwise;

(5) 10% or more of the voting securities of the Trustee is beneficially owned either by any director, partner, or executive officer thereof, or 20% or more of such voting securities is beneficially owned, collectively, by any two or more of such persons; or 10% or more of the voting securities of the Trustee is beneficially owned either by an underwriter for any obligor on the Securities or by any director, partner or executive officer thereof, or is beneficially owned collectively by any two or more such persons;

(6) the Trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default (as hereinafter in this Subsection defined), (i) 5% or more of the voting securities, or 10% or more of any other class of security, of any obligor on the Securities not including the Securities issued under this Indenture and securities issued under any other indenture under which the Trustee is also trustee, or (ii) 10% or more of any class of security of an underwriter for any obligor on the Securities;

(7) the Trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default (as hereinafter in this Subsection defined), 5% or more of the voting securities of any person who, to the knowledge of the Trustee, owns 10% or more of the voting securities of, or controls directly or indirectly or is under direct or indirect common control with, any obligor on the Securities;

(8) the Trustee is the beneficial owner of, or holds collateral security for an obligation which is in default (as hereinafter in this Subsection defined), 10% or more of any class of security of any person who, to the knowledge of the Trustee, owns 50% or more of the voting securities of any obligor on the Securities; or

(9) the Trustee owns, on May 15 in any calendar year, in the capacity of executor, administrator, testamentary or inter vivos trustee, guardian, committee or conservator, or in any other similar capacity, an aggregate of 25% or more of the voting securities, or of any class of security, of any person, the beneficial ownership of a

specified percentage of which would have constituted a conflicting interest under paragraphs (6), (7) or (8) of this Subsection. As to any such securities of which the Trustee acquired ownership through becoming executor, administrator, or testamentary trustee of an estate which included them, the provisions of the preceding sentence shall not apply, for a period of two years from the date of such acquisition to the extent that such securities included in such estate do not exceed 25% of such voting securities or 25% of any such class of security. Promptly after May 15 in each calendar year, the Trustee shall make a check of its holdings of such securities in any of the above mentioned capacities as of such May 15. If any obligor upon the Securities fails to make payment in full of the principal of, or the premium, if any, or interest on, any of the Securities when and as the same becomes due and payable, and such failure continues for 30 days thereafter, the Trustee shall make a prompt check of its holdings of such securities in any of the above mentioned capacities as of the date of the expiration of such 30 day period, and after such date, notwithstanding the foregoing provisions of this paragraph, all such securities so held by the Trustee, with sole or joint control over such securities vested in it, shall, but only so long as such failure shall continue, be considered as though beneficially owned by the Trustee for the purposes of paragraphs (6), (7) and (8) of this Subsection.

The specification of percentages in paragraphs (5) to inclusive, of this Subsection, shall not be construed as indicating that the ownership of such percentages of the securities of a person is or is not necessary or sufficient to constitute direct or indirect control for the purposes of paragraph (3) or (7) of this Subsection.

For the purposes of paragraphs (6), (7), (8) and (9) of this Subsection only, (i) the terms "security" and "securities" shall include only such securities as are generally known as corporate securities, but shall not include any note or other evidence of indebtedness issued to evidence an obligation to repay moneys loaned to a person by one or more banks, trust companies or banking firms, or any certificate of interest or participation in any such note or evidence or indebtedness; (ii) an obligation shall be deemed to be "in default" when a default in payment of principal shall have continued for 30 days or more and shall not have been cured; and (iii) the Trustee shall not be deemed to be the owner or holder of (A) any security which it holds as collateral security, as trustee or otherwise, for an obligation which is not in default as defined in clause (ii) above, or (B) any security which it holds as collateral security under this Indenture, irrespective of any default hereunder, or (C) any security which it holds as agent for collection, or as custodian,

escrow agent, or depositary, or in any similar representative capacity.

Except as provided in the next preceding paragraph, the word "security" or "securities" as used in this Indenture shall mean any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit sharing agreement, collateral trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to purchase, any of the foregoing.

(d) For the purposes of this Section:

(1) The term "underwriter" when used with reference to any obligor on the Securities means every person who, within three years prior to the time as of which the determination is made, has purchased from such obligor with a view to, or has offered or sold for such obligor in connection with, the distribution of any security of such obligor outstanding at such time, or has participated or has had a direct or indirect participation in any such undertaking, or has participated or has had a participation in the direct or indirect underwriting of any such undertaking, but such term shall not include a person whose interest was limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission.

(2) The term "director" means any director of a corporation, or any individual performing similar functions with respect to any organization whether incorporated or unincorporated.

(3) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, or a government or political subdivision thereof. As used in this paragraph, the term "trust" shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.

(4) The term "voting security" means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a person, or any security issued under or pursuant to any trust,

agreement or arrangement whereby a trustee or trustees or agent or agents for the owner or holder of such security are presently entitled to vote in the direction or management of the affairs of a person.

(5) The term "obligor" means any obligor upon the Securities within the meaning of TIA.

(6) The term "executive officer" means the president, every vice president, every trust officer, the cashier, the secretary, and the treasurer of a corporation, and any individual customarily performing similar functions with respect to any organization whether incorporated or unincorporated, but shall not include the chairman of the board of directors.

(e) The percentages of the voting securities and other securities specified in this Section shall be calculated in accordance with the following provisions:

(1) A specified percentage of the voting securities of the Trustee, any obligor or any other person referred to in this Section (each of whom is referred to as a "person" in this paragraph) means such amount of the outstanding voting securities of such person as entitles the holder or holders thereof to cast such specified percentage of the aggregate votes which the holders of all the outstanding voting securities of such person are entitled to cast in the direction or management of the affairs of such person.

(2) A specified percentage of a class of securities of a person means such percentage of the aggregate amount of securities of the class outstanding.

(3) The term "amount", when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to capital shares and the number of units if relating to any other kind of security.

(4) The term "outstanding" means issued and not held by or for the account of the issuer. The following securities shall not be deemed outstanding within the meaning of this definition:

(i) securities of an issuer held in a sinking fund relating to securities of the issuer of the same class;

(ii) securities of an issuer held in a sinking fund relating to another class of securities of the issuer, if the obligation evidenced by such other class of securities is not in default as to principal or interest or otherwise;

(iii) securities pledged by the issuer thereof as security for an obligation of the issuer not in default as to principal or interest or otherwise; and

(iv) securities held in escrow if placed in escrow by the issuer thereof;

provided, however, that any voting securities of an issuer shall be deemed outstanding if any person other than the issuer is entitled to exercise the voting rights thereof.

(5) A security shall be deemed to be of the same class as another security if both securities confer upon the holder or holders substantially the same rights and privileges; **provided, however,** that in the case of secured evidences of indebtedness, all of which are issued under a single indenture, differences in the interest rates or maturity dates of various series thereof shall not be deemed sufficient to constitute such series different classes; and **provided, further,** that, in the case of unsecured evidences of indebtedness, differences in the interest rates or maturity dates thereof shall not be deemed sufficient to constitute them securities of different classes, whether or not they are issued under a single indenture.

SECTION 9.09. Corporate Trustee Required; Eligibility.

There shall at all times be a Trustee hereunder which shall be a corporation organized and doing business under the laws of the United States of America or of any State, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least $50,000,000, and subject to supervision or examination by Federal or State authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this **Section**, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

SECTION 9.10. Resignation and Removal; Appointment of Successor.

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

(b) The Trustee may resign at any time by giving written notice thereof to El Paso and the Company. If an instrument of acceptance by a successor Trustee shall not have been delivered to El Paso, the Company and the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time by Act of the Holders of a majority in principal amount of the Outstanding Securities, delivered to the Trustee, El Paso and to the Company.

(d) If at any time:

(i) the Trustee shall fail to comply with Section 9.08(a) after written request therefor by any Lessor or by any Securityholder who has been a bona fide Holder of a Security for at least 6 months, or

(ii) the Trustee shall cease to be eligible under Section 9.09 and shall fail to resign after written request therefor by any Lessor or by any such Securityholder, or

(iii) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (i) El Paso, acting after consultation with the Company, may remove the Trustee by Board Resolution or (ii) subject to Section 8.10, any Securityholder who has been a bona fide Holder of a Security for at least 6 months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, El Paso, acting after consultation with the Company, shall promptly appoint by Board Resolution a successor

Trustee. If, within 1 year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities delivered to El Paso, the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee and supersede the successor Trustee appointed by El Paso. If no successor Trustee shall have been so appointed by El Paso, acting after consultation with the Company, or by the Securityholders, and accepted appointment in the manner hereinafter provided, any Securityholder who has been a bona fide Holder of a Security for at least 6 months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Company shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing written notice of such event by first-class mail, postage prepaid, to the Holders of Securities as their names and addresses appear in the Security Register. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

SECTION 9.11. Acceptance of Appointment by Successor.

Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to El Paso, the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on request of any Lessor, the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder, subject nevertheless to its lien, if any, provided for in Section 9.07. Upon request of any such successor Trustee, El Paso and the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article.

SECTION 9.12. Merger, Conversion, Consolidation or Succession to Business.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

SECTION 9.13. Preferential Collection of Claims against any Obligor.

(a) Subject to Subsection (b) of this Section, if the Trustee shall be or shall become a creditor, directly or indirectly, secured or unsecured, of any obligor on the Securities (as defined in Subsection (c) of this Section) within 4 months prior to a default, as defined in Subsection (c) of this Section, or subsequent to such a default, then, unless and until such default shall be cured, the Trustee shall set apart and hold in a special account for the benefit of the Trustee individually, the Holders of the Securities and the holders of other indenture securities (as defined in Subsection (c) of this Section):

(i) an amount equal to any and all reductions in the amount due and owing upon any claim as such creditor in respect of principal or interest, effected after the beginning of such 4 month period and valid as against any obligor on the Securities and its other creditors, except any such reduction resulting from the receipt or disposition of any property described in paragraph (ii) of this Subsection, or from the exercise of any right of set-off which the Trustee could have exercised if a petition in bankruptcy had been filed by or against any such obligor upon the date of such default; and

(ii) all property received by the Trustee in respect of any claim as such creditor, either as security therefor, or in satisfaction or composition thereof, or otherwise, after the beginning of such 4 month period, or an amount equal to the proceeds of any such property, if disposed of, subject, however, to the rights, if any, of any obligor on

the Securities and its other creditors in such property or such proceeds.

Nothing herein contained, however, shall affect the right of the Trustee

(A) to retain for its own account (i) payments made on account of any such claim by any Person (other than an obligor on the Securities) who is liable thereon, and (ii) the proceeds of the bona fide sale of any such claim by the Trustee to a third person, and (iii) distributions made in cash, securities or other property in respect of claims filed against such obligor in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law;

(B) to realize, for its own account, upon any property held by it as security for any such claim, if such property was so held prior to the beginning of such 4 month period;

(C) to realize, for its own account, but only to the extent of the claim hereinafter mentioned, upon any property held by it as security for any such claim, if such claim was created after the beginning of such 4 month period and such property was received as security therefor simultaneously with the creation thereof, and if the Trustee shall sustain the burden of proving that at the time such property was so received the Trustee had no reasonable cause to believe that a default as defined in Subsection (c) of this Section would occur within 4 months; or

(D) to receive payment on any claim referred to in paragraph (B) or (C), against the release of any property held as security for such claim as provided in paragraph (B) or (C), as the case may be, to the extent of the fair value of such property.

For the purposes of paragraphs (B), (C) and (D), property substituted after the beginning of such 4 month period for property held as security at the time of such substitution shall, to the extent of the fair value of the property released, have the same status as the property released, and, to the extent that any claim referred to in any of such paragraphs is created in renewal of or in substitution for or for the purpose of repaying or refunding any pre-existing claim of the Trustee as such creditor, such claim shall have the same status as such pre-existing claim.

If the Trustee shall be required to account, the funds and property held in such special account and the proceeds thereof shall be apportioned between the Trustee, the Securityholders and the holders of other indenture securities in such manner that the Trustee, the Securityholders and the holders of other indenture securities realize, as a result of payments from such special account and payments of dividends on claims filed against the obligor on the Securities in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law, the same percentage of their respective claims, figured before crediting to the claim of the Trustee anything on account of the receipt by it from such obligor of the funds and property in such special account and before crediting to the respective claims of the Trustee and the Securityholders and the holders of other indenture securities dividends on claims filed against such obligor in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law, but after crediting thereon receipts on account of the indebtedness represented by their respective claims from all sources other than from such dividends and from the funds and property so held in such special account. As used in this paragraph, with respect to any claim, the term "dividends" shall include any distribution with respect to such claim, in bankruptcy or receivership or proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law, whether such distribution is made in cash, securities, or other property, but shall not include any such distribution with respect to the secured portion, if any, of such claim. The court in which such bankruptcy, receivership or proceedings for reorganization is pending shall have jurisdiction (i) to apportion between the Trustee and the Securityholders and the holders of other indenture securities, in accordance with the provisions of this paragraph, the funds and property held in such special account and proceeds thereof, or (ii) in lieu of such apportionment, in whole or in part, to give to the provisions of this paragraph due consideration in determining the fairness of the distributions to be made to the Trustee and the Securityholders and the holders of other indenture securities with respect to their respective claims, in which event it shall not be necessary to liquidate or to appraise the value of any securities or other property held in such special account or as security for any such claim, or to make a specific allocation of such distributions as between the secured and unsecured portions of such claims, or otherwise to apply the provisions of this paragraph as a mathematical formula.

Any Trustee which has resigned or been removed after the beginning of such 4 month period shall be subject to the provisions of this Subsection as though such resignation or removal had not occurred. If any Trustee has resigned or been removed prior to the beginning of such 4 month period, it shall be subject to the

provisions of this Subsection if and only if the following conditions exist:

(i) the receipt of property or reduction of claim, which would have given rise to the obligation to account if such Trustee had continued as Trustee, occurred after the beginning of such 4 month period; and

(ii) such receipt of property or reduction of claim occurred within 4 months after such resignation or removal.

(b) There shall be excluded from the operation of Subsection (a) of this Section a creditor relationship arising from

(1) the ownership or acquisition of securities issued under any indenture, or any security or securities having a maturity of one year or more at the time of acquisition by the Trustee;

(2) advances authorized by a receivership or bankruptcy court of competent jurisdiction, or by this Indenture, for the purpose of preserving any property which shall at any time be subject to the lien of this Indenture or of discharging tax liens or other prior liens or encumbrances thereon, if notice of such advances and of the circumstances surrounding the making thereof is given to the Securityholders at the time and in the manner provided in this Indenture;

(3) disbursements made in the ordinary course of business in the capacity of trustee under an indenture, transfer agent, registrar, custodian, paying agent, fiscal agent or depositary, or other similar capacity;

(4) an indebtedness created as a result of services rendered or premises rented; or an indebtedness created as a result of goods or securities sold in a cash transaction as defined in Subsection (c) of this Section;

(5) the ownership of stock or of other securities of a corporation organized under the provisions of Section 25(a) of the Federal Reserve Act, as amended, which is directly or indirectly a creditor of El Paso; or

(6) the acquisition, ownership, acceptance or negotiation of any drafts, bills of exchange, acceptances or obligations which fall within the classification of self-liquidating paper as defined in Subsection (c) of this Section.

(c) For the purposes of this Section only:

(1) The term "default" means any failure to make payment in full of the principal of or interest on any of the Securities or upon the other indenture securities when and as such principal or interest becomes due and payable.

(2) The term "other indenture securities" means securities upon which the Person obligated thereunder is an obligor (as defined in the Trust Indenture Act) outstanding under any other indenture (i) under which the Trustee is also trustee, (ii) which contains provisions substantially similar to the provisions of this Section, and (iii) under which a default exists at the time of the apportionment of the funds and property held in a special account as provided in Subsection (a) of this Section.

(3) The term "cash transaction" means any transaction in which full payment for goods or securities sold is made within 7 days after delivery of the goods or securities in currency or in checks or other orders drawn upon banks or bankers and payable upon demand.

(4) The term "self-liquidating paper" means any draft, bill of exchange, acceptance or obligation which is made, drawn, negotiated or incurred by any obligor on the Securities for the purpose of financing the purchase, processing, manufacturing, shipment, storage or sale of goods, wares or merchandise and which is secured by documents evidencing title to, possession of or a lien upon, the goods, wares or merchandise or the receivables or proceeds arising from the sale of the goods, wares or merchandise previously constituting the security, provided the security is received by the Trustee simultaneously with the creation of the creditor relationship with such obligor arising from the making, drawing, negotiating or incurring of the draft, bill of exchange, acceptance or obligation.

(5) The term "obligor" means any obligor upon the Securities within the meaning of the TIA.

SECTION 9.14. Maintenance of Agencies.

(a) There shall at all times be maintained in the Borough of Manhattan, the City of New York, an office or agency where Securities may be presented or surrendered for transfer or exchange or for the registration thereof, and for payment of principal, premium (if any) and interest and where notices and demands to or upon the Trustee in respect of the Securities or of this Indenture may be served. Such office or agency shall be initially at the Paying

Agent's Office . Written notice of the location of each of such other office or agency and of any change of location thereof shall be given to the Company and to the Trustee. In the event that no such office or agency shall be maintained or no such notice of location or of change of location shall be given, presentations and demands may be made and notices may be served at the Corporate Trust Office.

(b) There shall at all times be a Security Registrar and a Paying Agent hereunder. Each such Authorized Agent shall be a bank or trust company, shall be a corporation organized and doing business under the laws of the United States or any State thereof, with a combined capital and surplus of at least $50,000,000, and shall be authorized under such laws to exercise corporate trust powers, subject to supervision by Federal or State authorities. Mellon Trust Company is hereby appointed as Paying Agent hereunder. The Trustee shall be the Security Registrar hereunder.

(c) Any Paying Agent (other than the Trustee) from time to time appointed hereunder shall execute and deliver to the Trustee an instrument in which said Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will

(1) hold all sums held by it for the payment of principal of, and premium (if any) and interest on Securities in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give the Trustee within five days thereafter notice of any default by any obligor upon the Securities in the making of any such payment of principal, premium (if any) or interest; and

(3) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

Notwithstanding any other provision of this Indenture, any payment required to be made to or received or held by the Trustee may, to the extent authorized by written instructions of the Trustee, be made to or received or held by a Paying Agent in the Borough of Manhattan, the City of New York, for the account of the Trustee.

(d) Any corporation into which any Authorized Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, consolidation or conversion to which any Authorized Agent shall be a party, or any corporation succeeding to the corporate trust business of any Authorized Agent,

shall be the successor of such Authorized Agent hereunder, if such successor corporation is otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the parties hereto or such Authorized Agent or such successor corporation.

(e) Any Authorized Agent may at any time resign by giving written notice of resignation to the Trustee, El Paso and the Company. The Company may, and at the request of the Trustee or any Lessor shall, at any time, terminate the agency of any Authorized Agent by giving written notice of termination to such Authorized Agent and to the Trustee. Upon the resignation or termination of an Authorized Agent or in case at any time any such Authorized Agent shall cease to be eligible under this Section (when, in either case, no other Authorized Agent performing the functions of such Authorized Agent shall have been appointed), the Company shall promptly appoint one or more qualified successor Authorized Agents approved by the Trustee and each Lessor to perform the functions of the Authorized Agent which has resigned or whose agency has been terminated or who shall have ceased to be eligible under this Section. The Company shall give written notice of any such appointment to all Holders as their names and addresses appear on the Security Register.

ARTICLE TEN

SECURITYHOLDERS' LISTS AND REPORTS BY TRUSTEE AND EL PASO

SECTION 10.01. El Paso to Furnish Trustee Names and Addresses of Securityholders.

El Paso will furnish or cause to be furnished to the Trustee semiannually, between January 15 and January 30, inclusive, and between July 15 and July 30, inclusive, in each year, and at such other times as the Trustee may request in writing, within 30 days after receipt by El Paso of any such request, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Securities, in each case as of a date not more than 15 days prior to the time such list is furnished; provided, however, that so long as the Trustee is the sole Security Registrar, no such list need be furnished for so long as a copy of the Security Register is being furnished to the Trustee pursuant to Section 9.14(b).

SECTION 10.02. Preservation of Information; Communications to Securityholders.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders of Securities contained in the most recent list furnished to the Trustee

as provided in Section 9.14(b) or Section 10.01, as the case may be, and the names and addresses of Holders of Securities received by the Trustee in its capacity as Security Registrar, if so acting. The Trustee may destroy any list furnished to it as provided in Section 9.14(b) or Section 10.01, as the case may be, upon receipt of a new list so furnished.

(b) If three or more Holders of Securities (hereinafter referred to as "applicants") apply in writing to the Trustee, and furnish to the Trustee reasonable proof that each such applicant has owned a Security for a period of at least six months preceding the date of such application, and such application states that the applicants desire to communicate with other Holders of Securities with respect to their rights under this Indenture or under the Securities and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Trustee shall, within 5 Business Days after the receipt of such application, at its election, either:

(i) afford such applicants access to the information preserved at the time by the Trustee in accordance with Section 10.02(a), or

(ii) inform such applicants as to the approximate number of Holders of Securities whose names and addresses appear in the information preserved at the time by the Trustee in accordance with Section 10.02(a), and as to the approximate cost of mailing to such Securityholders the form of proxy or other communication, if any, specified in such application.

If the Trustee shall elect to afford such applicants access to such information, the Trustee shall, upon the written request of such applicants, mail to each Securityholder whose name and address appear in the information preserved at the time by the Trustee in accordance with Section 10.02(a), a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless within five days after such tender, the Trustee shall mail to such applicants and file with the Commission, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee, such mailing would be contrary to the best interests of the Holders of Securities or would be in violation of applicable law. Such written statement shall specify the basis of such opinions. If the Commission, after opportunity for a hearing upon the objections specified in the written statement so filed, shall enter an order refusing to sustain any of such objections or if, after the entry of an order sustaining one or more of such objections, the Commission

shall find, after notice and opportunity for hearing, that all the objections so sustained have been met and shall enter an order so declaring, the Trustee shall mail copies of such material to all such Securityholders with reasonable promptness after the entry of such order and the renewal of such tender; otherwise the Trustee shall not be relieved of any obligation or duty to such applicants respecting their application.

(c) Every Holder of Securities, by receiving and holding the same, agrees with El Paso and the Trustee that neither El Paso nor the Trustee shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of Securities in accordance with Section 10.02(b), regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 10.02(b).

SECTION 10.03. Reports by Trustee.

(a) Within 60 days after May 15 in each year, commencing with 1987, the Trustee shall transmit by mail to all Securityholders, as their names and addresses appear in the Security Register, a brief report dated as of such May 15 with respect to:

(1) it eligibility under Section 9.09 and its qualifications under Section 9.08, or in lieu thereof, if to the best of its knowledge it has continued to be eligible and qualified under said Sections, a written statement to such effect;

(2) the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) which remain unpaid on the date of such report, and for the reimbursement of which it claims or may claim a lien or charge, prior to that of the Securities, on any property or funds held or collected by it as Trustee, except that the Trustee shall not be required (but may elect) to report such advances if such advances so remaining unpaid aggregate not more than 1/2 of 1% of the principal amount of the Securities Outstanding on the date of such report;

(3) the amount, interest rate and maturity date of all other indebtedness owing by an obligor on the Securities within the meaning of the TIA to the Trustee in its individual capacity, on the date of such report, with a brief description of any property held as collateral security therefor, except an indebtedness based upon a creditor relationship arising in any manner described in Section 9.13(b)(2), (3), (4) or (6);

(4) the property and funds, if any, physically in the possession of the Trustee as such on the date of such report;

(5) any release, or release and substitution, of property subject to the lien of this Indenture (and the consideration therefor, if any) which the Trustee has not previously reported;

(6) any additional issue of Securities which the Trustee has not previously reported; and

(7) any action taken by the Trustee in the performance of its duties hereunder which it has not previously reported and which in its opinion materially affects the Securities, except action in respect of a default, notice of which has been or is to be withheld by the Trustee in accordance with Section 9.02.

(b) The Trustee shall transmit by mail to all Securityholders, as their names and addresses appear in the Security Register, a brief report with respect to:

(1) the release, or release and substitution, of property subject to the Lien of this Indenture (and the consideration therefor, if any), such report to be transmitted within 90 days of such time; and

(2) the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) since the date of the last report transmitted pursuant to Subsection (a) of this Section (or if no such report has yet been so transmitted, since the date of execution of this instrument) for the reimbursement of which it claims or may claim a lien or charge, prior to that of the Securities, on property or funds held or collected by it as Trustee, and which it has not previously reported pursuant to this Subsection, except that the Trustee shall not be required (but may elect) to report such advances if such advances remaining unpaid at any time aggregate 10% or less of the principal amount of the Securities Outstanding at such time, such report to be transmitted within 90 days after such time.

(c) A copy of each such report shall, at the time of such transmission to Securityholders, be filed by the Trustee with each stock exchange upon which the Securities are listed, and also with the Commission. El Paso will notify the Trustee when the Securities are listed on any stock exchange.

SECTION 10.04. Reports by El Paso.

El Paso will

(1) file with the Trustee, within 15 days after El Paso is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which El Paso may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934: or, if El Paso is not required to file information, documents or reports pursuant to either of said Sections, then it will file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Securities Exchange Act of 1934 in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(2) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by El Paso with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(3) transmit by mail to all Securityholders, as their names and addresses appear in the Security Register, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by El Paso pursuant to paragraphs (1) and (2) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

ARTICLE ELEVEN

SUPPLEMENTAL INDENTURES

SECTION 11.01. Supplemental Indentures Without Consent of Securityholders.

Without the consent of the Holders of any Securities, El Paso, when authorized by a Board Resolution, the Company and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto (a "Series Supplemental Indenture" in the case of item 1 below), in form satisfactory to the Trustee, for any of the following purposes:

(1) to establish the form and terms of Securities of any series of Securities permitted by Sections 2.01 and 2.03; or

(2) to evidence the succession of another corporation to El Paso, and the assumption by any such successor of the covenants of El Paso herein contained, or to evidence the succession of another corporation to the Company, and the assumption by any such successor of the covenants of the Company herein and in the Securities contained; or

(3) to add to the covenants of El Paso or the Company, for the benefit of the Holders of the Securities, or to surrender any right or power herein conferred upon El Paso or the Company; or

(4) to convey, transfer and assign to the Trustee, and to subject to the Lien of this Indenture, with the same force and effect as though included in the Granting Clauses hereof, additional Pledged Lessor Notes or additional properties or assets, and to correct or amplify the description of any property at any time subject to the Lien of this Indenture or to assure, convey and confirm unto the Trustee any property subject or required to be subject to the Lien of this Indenture; or

(5) to modify, eliminate or add to the provisions of this Indenture to such extent as shall be necessary to continue the qualification of this Indenture (including any supplemental indenture) under the TIA, or under any similar federal statute hereafter enacted, and to add to this Indenture such other provisions as may be expressly permitted by the TIA, excluding, however, the provisions referred to in Section 316(a)(2) of the TIA as in effect at the date as of which this instrument was executed or any

corresponding provision in any similar federal statute hereafter enacted; or

(6) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture, provided such action shall not adversely affect the interest of the Holders of the Securities.

SECTION 11.02. Supplemental Indenture With Consent of Securityholders.

With the consent of (i) the Holders of not less than a majority in principal amount of the Outstanding Securities, by Act of said Holders delivered to the Company and the Trustee, and (ii) El Paso, when authorized by a Board Resolution, and the Company may and the Trustee, subject to Section 11.03 shall, enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner the rights and obligations of the Holders of the Securities and of El Paso and the Company under this Indenture; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby,

(1) change the Stated Maturity of the principal of, or any installment of interest on, or the dates or circumstances of payment of premium (if any) on, any Security, or reduce the principal amount thereof or the interest thereon or any premium payable upon the redemption thereof, or change the place of payment where, or the coin or currency in which, any Security or the premium (if any) or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment of principal or interest on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date) or such payment of premium (if any) on or after the date such premium becomes due and payable or change the dates or the amounts of payments to be made through the operation of the Sinking Fund in respect of such Securities, or

(2) except with respect to additional series of Securities issued in accordance with the terms of this Indenture, permit the creation of any lien prior to or pari passu with the Lien of this Indenture with respect to any of the Pledged Property, or terminate the Lien of this Indenture on any Pledged Property (except in each case as permitted by, and pursuant to, Article Four) or deprive any

Securityholder of the security afforded by the Lien of this Indenture, or

(3) reduce the percentage in principal amount of the Outstanding Securities, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture, or

(4) modify any of the provisions of this Section or Section 8.08, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Security affected thereby.

Upon receipt by the Trustee of Board Resolutions of El Paso and the Company and such other documentation as the Trustee may reasonably require and upon the filing with the Trustee of evidence of the Act of said Holders, the Trustee shall join in the execution of such supplemental indenture or other instrument, as the case may be, subject to the provisions of Sections 11.03 and 11.04.

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

SECTION 11.03. Documents Affecting Immunity or Indemnity.

If in the opinion of the Company or the Trustee any document required to be executed by it pursuant to the terms of Section 11.02 affects any interest, right, duty, immunity or indemnity in favor of the Company or the Trustee under this Indenture or any of the Participation Agreements, the Company or the Trustee, as the case may be, may in its discretion decline to execute such document.

SECTION 11.04. Execution of Supplemental Indentures.

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 9.01) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture.

SECTION 11.05. Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

SECTION 11.06. Conformity with Trust Indenture Act.

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

SECTION 11.07. Reference in Securities to Supplemental Indentures.

Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by any Lessor or the Company, bear a notation in form approved by such Lessor, the Company and the Trustee as to any matter provided for in such supplemental indenture; and, in such case, suitable notation may be made upon Outstanding Securities after proper presentation and demand. If any Lessor or the Company shall so determine, new Securities so modified as to conform, in the opinion of such Lessor, the Company and the Trustee, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities.

ARTICLE TWELVE

DEFEASANCE

SECTION 12.01. Payment of Indebtedness; Satisfaction and Discharge of this Indenture.

This Indenture shall cease to be of further effect (except as to any rights of registration of transfer or exchange of Securities herein expressly provided for and the rights of the Trustee, any predecessor Trustee and any Authorized Agent under Section 9.07), and the Trustee, on demand and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(1) either

(A) all Securities theretofore authenticated and delivered (other than (i) Securities which have been destroyed, lost or stolen and which have been replaced or redeemed as provided in Section 2.09 and (ii) Securities for the payment of which money held in trust hereunder has been paid to the Company and discharged from such trust, as provided in Section 5.03) have been delivered to the Trustee for cancellation; or

(B) all such Securities not theretofore delivered to the Trustee for cancellation

(i) have become due and payable, or

(ii) will become due and payable at their Stated Maturity of principal within one year, or

(iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name and at the expense of the Company,

and the Company, in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee in trust (subject to Section 9.06 hereof) for the purpose of paying and discharging the entire indebtedness on such Securities not theretofore cancelled by the Trustee or delivered to the Trustee for cancellation, an amount sufficient to discharge such indebtedness, including principal, premium (if any) and interest to the date of such deposit (in the case of Securities which have become due and payable), or to the Stated Maturity of principal or Redemption Date, as the case may be;

(2) All other sums then due and payable hereunder have been paid; and

(3) El Paso or the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

SECTION 12.02. Application of Deposited Money.

All money deposited with the Trustee pursuant to Section 12.01 shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment to the Persons entitled thereto of the principal, premium (if any), and interest for the payment of which such money has been deposited with the Trustee.

ARTICLE THIRTEEN

RELEASE OF FUNDS BY THE TRUSTEE FOR PAYMENT OF THE PLEDGED LESSOR NOTES AND RELEASE AND SUBSTITUTION OF PLEDGED PROPERTY

SECTION 13.01. Conditions Precedent to Release of Funds by the Trustee for Payment of the Pledged Lessor Notes.

The obligation of the Trustee to make payments to the Lessors pursuant to Section 2.15(b) hereof is subject to the receipt by the Trustee of the following:

(a) an executed counterpart of a supplemental indenture appropriate to subject to the Lien of this Indenture the related Pledged Lessor Notes;

(b) the documents, opinions and certificates specified in the proviso to Section 2.04;

(c) a written notice of the Company, dated as of the closing date under the applicable Participation Agreements (the Closing Date), of the Closing Date;

(d) a certificate of each Lessor dated as of the Closing Date under the related Participation Agreement (i) specifying the principal amount of the Pledged Lessor Note to be issued thereby and (ii) stating that (A) such Lessor has received the amount of the Equity Investor's investment pursuant to applicable provisions of such Participation Agreement and that such amount is available for use by such Lessor pursuant to applicable provisions of such Participation Agreement upon receipt of the amount to be paid by the Trustee with respect to such Pledged Lessor Note pursuant to Section 2.15(b) hereof; (B) to the best knowledge of such Lessor no event has occurred and is continuing which constitutes an Indenture Event of Default, or would constitute an Indenture Event of Default after notice or lapse of time or both under the related Lease Indenture and (C) the Pledged Lessor Note of such Lessor has been duly authorized, executed and delivered by such Lessor and is a valid and binding obligation of such Lessor; and

(e) such other documents and evidence with respect to the Lessors and the Company as the Trustee may reasonably request.

ARTICLE FOURTEEN

SUNDRY PROVISIONS

SECTION 14.01. Execution in Counterparts.

This instrument may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

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

EL PASO FUNDING CORPORATION

By _____
Vice President

Attest:

_____
Assistant Secretary

EL PASO ELECTRIC COMPANY

By _____
Executive Vice President

Attest:

_____
Assistant Secretary

FIRST CITY NATIONAL BANK OF HOUSTON

By _____
Assistant Vice President

Attest:

_____
Assistant Cashier

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

On this 18th day of August, 1986, before me personally came K. E. Kojalowicz, to me known, who, being by me duly sworn, did depose and say that she resides at New York, New York; that she is the Vice President of **EL PASO FUNDING CORPORATION**, one of the corporations described in and which executed the foregoing instrument; that she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation, and that she signed her name thereto by like authority.

[NOTARIAL SEAL]

Delia T. Santiago

DELIA T. SANTIAGO
Notary Public, State of New York
No. 01-[illegible]
Qualified in Orange County
Commission Expires March 30, 1987

1021.CHRYSLER.1106.53:1

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

On this 18th day of August, 1986, before me personally came Billye E. Bostic, to me known, who, being by me duly sworn, did depose and say that he resides at Houston, Texas ; that he is the Executive Vice President of EL PASO ELECTRIC COMPANY, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

[NOTARIAL SEAL]

Delia T. Santiago

DELIA T. SANTIAGO
Notary Public, State of New York
No. 41-4851160
Qualified in Queens County
Commission Expires March 30, 1987

1021.CHRYSLER.1106.53:1

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

On the 18th day of August, 1986, before me personally came John Chase III, to me known who, being by me duly sworn, did depose and say that he resides at Houston, Texas; that he is an Assistant Vice-President of FIRST CITY NATIONAL BANK OF HOUSTON, a national banking association and one of the associations described in and which executed the foregoing instrument; that he knows the seal of said associations; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said associations, and that he signed his name thereto on behalf of said associations by like order.

[NOTARIAL SEAL]

Delia T. Santiago

DELIA T. SANTIAGO
Notary Public, State of New York
No. 41-[illegible]
Qualified in Queens County
Commission Expires March 30, 1989

EXHIBIT A
TO
COLLATERAL TRUST
INDENTURE

REQUIREMENTS FOR PLEDGED LESSOR
NOTES AND LEASE INDENTURES

The Pledged Lessor Notes and the Lease Indentures relating to any series of Securities shall contain the provisions summarized below or other provisions substantially as protective or more protective of the interests of Holders of Outstanding Securities. Notwithstanding the foregoing, (i) the Principal Instruments in connection with the initial series of Securities issued under this Indenture shall be deemed to satisfy all criteria set forth in this Exhibit A and (ii) the Principal Instruments in connection with any subsequent series of Securities, if substantially similar in form and substance to the Principal Instruments in connection with such initial series of Securities, shall also be deemed to satisfy all criteria set forth in this Exhibit A.

I. Each Pledged Lessor Note will:

(i) be duly issued pursuant to, and be secured by, the related Lease Indenture;

(ii) provide for the payment to the registered holder thereof, not later than when due, of amounts at least equal to that portion of all principal of and premium, if any, and interest on the series of Securities issued in connection with and relating to the pledge thereof under the Indenture, such payment to be without defenses or set-offs and otherwise unconditional;

(iii) (A) if such Pledged Lessor Note is the initial series issued under the related Lease Indenture, the principal amount thereof shall not exceed an amount equal to 80% of the sum of the aggregate purchase price of the property being purchased with the proceeds of the issuance and sale of such Lessor Note; and (B) if such Pledged Lessor Note is of an additional series issued under the related Lease Indenture, the sum of the principal amount thereof and the principal amount of Pledged Lessor Notes theretofore issued under such Lease Indenture shall not exceed an amount equal to 80% of the sum of (1) the aggregate purchase price of property being purchased with the

proceeds of the issuance and sale of such Lessor Note and (2) the aggregate purchase price of the property purchased with the proceeds of the issuance and sale of each Pledged Lessor Note theretofore issued; and

(iv) provide that no Change to the Pledged Lessor Note may be made without the consent of the holder thereof.

II. Each Lease Indenture will:

(i) assign to the Lease Indenture Trustee obligations under the related Lease to which the Owner Trustee then or thereafter is entitled at least sufficient to pay the principal of, premium, if any, and interest on the related Pledged Lessor Note; and

(ii) contain provisions no less protective of the interests of Holders of Securities than the following provisions of the Lease Indentures in connection with the initial series of Securities: Article II, Sections 3.4, 3.5, 3.6, 3.8, 3.11, Article V, Article VI and Article VII.

EL PASO FUNDING CORPORATION,

EL PASO ELECTRIC COMPANY

AND

FIRST CITY NATIONAL BANK OF HOUSTON,
as Trustee

Series 1986A Bond Supplemental Indenture

Dated as of December 1, 1986

to

Collateral Trust Indenture

dated as of August 1, 1986

Providing for the Issuance of
$146,305,000 Aggregate Principal Amount
of Lease Obligation Bonds, Series 1986A
with the Interest Rates and Stated Maturities
Set Forth Herein

PALO VERDE NUCLEAR GENERATING STATION

SERIES 1986A BOND SUPPLEMENTAL INDENTURE, dated as of December 1, 1986 among EL PASO FUNDING CORPORATION, a Delaware corporation (the *Company*), EL PASO ELECTRIC COMPANY, a Texas corporation *(El Paso)*, and FIRST CITY NATIONAL BANK OF HOUSTON, a national banking association, as trustee (the *Trustee*).

WHEREAS, the Company and El Paso have heretofore executed and delivered to the Trustee an indenture dated as of August 1, 1986 (the *Original Indenture)* to provide for the issue from time to time of the Company's debentures, notes or other evidences of indebtedness to be issued in one or more series (the *Securities);*

WHEREAS, Section 2.03 of the Original Indenture provides, among other things, that El Paso, the Company and the Trustee may enter into indentures supplemental to the Original Indenture for, among other things, the purpose of establishing the form and terms of Securities of any series as permitted by Section 2.03 of the Original Indenture;

WHEREAS, Securities in the aggregate principal amount of $396,328,000 are currently issued and outstanding under the Original Indenture;

WHEREAS, El Paso and the Company (i) desire by the issuance by the Company of a new series of Securities as hereinafter designated to provide funds to be loaned by the Company to purchasers of portions of El Paso's undivided interest in Unit 2 of the Palo Verde Nuclear Generating Station, and (ii) have requested the Trustee to enter into this Series 1986A Bond Supplemental Indenture for the purpose of establishing the form and terms of the Securities of such series;

WHEREAS, all action on the part of the Company necessary to authorize the issuance of $146,305,000 principal amount of its Lease Obligation Bonds, Series 1986A (the *Bonds*) under the Original Indenture and this Series 1986A Bond Supplemental Indenture (said Original Indenture, as heretofore supplemented and amended and as supplemented by this Series 1986A Bond Supplemental Indenture, being hereinafter called the *Indenture)* has been duly taken;

WHEREAS, the Bonds to be issued hereunder are to be substantially in the form annexed as Schedule 1 hereto; and

WHEREAS, all acts and things necessary to make the Bonds, when executed by the Company and authenticated and delivered by the Trustee

as provided in the Original Indenture, the valid, binding and legal obligations of the Company, and to constitute these presents a valid and binding supplemental indenture and agreement according to its terms, have been done and performed, and the execution of this Series 1986A Bond Supplemental Indenture and the creation and issuance under the Indenture of $146,305,000 aggregate principal amount of the Bonds have in all respects been duly authorized, and the Company, in the exercise of legal right and power in it vested, executes this Series 1986A Bond Supplemental Indenture and proposes to create, execute, issue and deliver the Bonds:

NOW, THEREFORE, THIS SERIES 1986A BOND SUPPLEMENTAL INDENTURE WITNESSETH:

That in order to establish the form and terms of and to authorize the authentication and delivery of the Bonds, and in consideration of the acceptance of the Bonds by the holders thereof and of the sum of one dollar duly paid to the Company by the Trustee at the execution of these presents, the receipt whereof is hereby acknowledged, the Company and El Paso each covenant and agree with the Trustee, for the equal and proportionate benefit of the respective holders from time to time of the Bonds, as follows:

ARTICLE ONE

THE BONDS

SECTION 1.01. *Terms of the Bonds.*

There is hereby created a series of Securities designated "Lease Obligation Bonds, Series 1986A." Bonds in the aggregate principal amount of $146,305,000 may forthwith be executed by the Company and delivered to the Trustee for authentication and delivery by the Trustee in accordance with the provisions of Section 2.04 of the Original Indenture in the following principal amounts for the Stated Maturities of principal and at the interest rates indicated:

Stated Maturity of Principal	Interest Rate	Principal Amount
July 2, 1992	8.100%	$ 14,506,000
July 2, 1997	9.200%	24,129,000
January 2, 2011	10.375%	107,670,000

The Bonds shall be payable, bear interest and have and be subject to such other terms as provided in the form of Bond attached as Schedule 1 hereto.

SECTION 1.02. *Mandatory Redemption of the Bonds.*

(a) *Termination of Lease.* In the event that there shall occur under Section 14 of any Lease identified in Schedule 2 hereto a termination of such Lease, Bonds with a Stated Maturity of principal of January 2, 2011 shall be redeemed, in part, in an aggregate principal amount equal to the principal amount of the Pledged Lessor Notes related to such Lease (the *Prepaid Lessor Notes*), prepaid in accordance with their terms and Section 5.2 of the Lease Indenture under which such Pledged Lessor Notes are issued. Any such redemption shall be on the same date on which, and shall be made to the extent that, the Prepaid Lessor Notes are so prepaid.

(b) *Selection.* Any Bonds redeemed pursuant to Section 1.02(a) of this Series 1986A Bond Supplemental Indenture shall be selected in accordance with Section 6.02 of the Indenture, but without giving effect to the first proviso contained in such Section.

(c) *Redemption Price.* The Redemption Price for any Bond to be redeemed pursuant to this Section 1.02 shall be 100% of the principal amount thereof, together with accrued interest to the Redemption Date.

SECTION 1.03. *Optional Redemption of Bonds.*

(a) *Bonds with a Stated Maturity of Principal of July 2, 1997.* The Bonds with a Stated Maturity of principal of July 2, 1997 shall be redeemable prior to maturity at the option of the Company at the following times and redemption prices (expressed as a percentage of principal amounts), together with interest accrued to the redemption date:

Twelve Month Period Beginning January 2	Redemption Price
1992	102.63%
1993	101.31

and thereafter at the principal amount thereof, together with interest accrued to the redemption date.

(b) *Bonds with a Stated Maturity of Principal of January 2, 2011.* The Bonds with a Stated Maturity of principal of January 2, 2011 shall be redeemable prior to maturity at the option of the Company at the following times and redemption prices (expressed as a percentage of principal amounts), together with interest accrued to the redemption date:

Twelve Month Period Beginning January 2	Redemption Price	Twelve Month Period Beginning January 2	Redemption Price
1992	107.78%	2000	103.63%
1993	107.26	2001	103.11
1994	106.74	2002	102.59
1995	106.23	2003	102.08
1996	105.71	2004	101.56
1997	105.19	2005	101.04
1998	104.67	2006	100.52
1999	104.15		

and thereafter at the principal amount thereof, together with interest accrued to the redemption date.

SECTION 1.04. *Sinking Fund.*

(a) *Amounts and Dates.* The Bonds shall be redeemed through operation of a sinking fund. The amount of each Sinking Fund payment (subject to adjustment as provided in paragraphs (c) and (d) below) and each Sinking Fund Date applicable to a Stated Maturity of principal of the Bonds are as set forth below:

Sinking Fund Date	Stated Maturity		
	July 2, 1992	July 2, 1997	January 2, 2011
January 2, 1988	$ 670,000	—	—
July 2, 1988	704,000	—	—
January 2, 1989	1,423,000	—	—
July 2, 1989	1,480,000	—	—
January 2, 1990	1,540,000	—	—
July 2, 1990	1,603,000	—	—
January 2, 1991	1,668,000	—	—
July 2, 1991	1,735,000	—	—

Sinking Fund Date	Stated Maturity July 2, 1992	July 2, 1997	January 2, 2011
January 2, 1992	$1,805,000	—	—
July 2, 1992	1,878,000	—	—
January 2, 1993		$ 1,955,000	—
July 2, 1993		2,045,000	—
January 2, 1994		2,139,000	—
July 2, 1994		2,237,000	—
January 2, 1995		2,339,000	—
July 2, 1995		2,447,000	—
January 2, 1996		2,559,000	—
July 2, 1996		2,677,000	—
January 2, 1997		2,801,000	—
July 2, 1997		2,930,000	—
January 2, 1998			$ 2,525,000
July 2, 1998			2,730,000
January 2, 1999			2,391,000
July 2, 1999			2,291,000
January 2, 2000			2,377,000
July 2, 2000			2,447,000
January 2, 2001			2,541,000
July 2, 2001			2,616,000
January 2, 2002			2,717,000
July 2, 2002			2,797,000
January 2, 2003			2,904,000
July 2, 2003			2,989,000
January 2, 2004			3,104,000
July 2, 2004			3,196,000
January 2, 2005			3,318,000
July 2, 2005			3,732,000
January 2, 2006			4,408,000
July 2, 2006			4,802,000
January 2, 2007			4,938,000
July 2, 2007			6,116,000
January 2, 2008			6,433,000
July 2, 2008			6,767,000
January 2, 2009			7,118,000
July 2, 2009			7,487,000

Sinking Fund Date	Stated Maturity July 2, 1992	Stated Maturity July 2, 1997	Stated Maturity January 2, 2011
January 2, 2010			$ 7,875,000
July 2, 2010			4,893,000
January 2, 2011			2,158,000

(b) *Selection of Bonds.* The provisions of Section 7.02 of the Original Indenture to the contrary notwithstanding, the Trustee shall first select for redemption on any Sinking Fund Date on which Bonds with a Stated Maturity of principal of January 2, 2011 are to be redeemed in accordance with the Sinking Fund relating thereto, such Bonds, if any, of such Stated Maturity of principal of January 2, 2011 as the Company shall specify (by Bond number) are held by El Paso or an Affiliate of El Paso in a Company Request delivered to the Trustee at least 40 (but not more than 90) days prior to such Sinking Fund Date and upon which the Trustee may rely. El Paso agrees that (i) neither it nor any of its Affiliates shall purchase any Bond more than 180 days in advance of the date of the mandatory sinking fund redemption applicable thereto, (ii) the aggregate principal amount of Bonds purchased by El Paso or any Affiliate shall not exceed the amount of the next succeeding sinking fund payment applicable thereto and (iii) any Bonds so purchased shall be the subject of a Company Request delivered in accordance with the preceding sentence.

(c) *Adjustments to Sinking Funds in Respect of Reoptimization Pursuant to Section 2(e) of a Participation Agreement.* The principal amount of Bonds of a particular Stated Maturity of principal to be redeemed through operation of the Sinking Fund for the Bonds of such Stated Maturity of principal may be adjusted (upward or downward) at the discretion of the Company at one time (contemporaneously with similar adjustments for all Stated Maturities of principal) prior to June 30, 1990; *provided, however,* that no such adjustment shall be made by the Company which will increase or reduce the average life of the Bonds of such Stated Maturity of principal (calculated in accordance with generally accepted financial practice from the date of initial issuance) by more than 6 months; *provided further, however,* such adjustment may only be made in connection with an adjustment to basic rent pursuant to Section 3(d) of one or more of the Leases identified in Schedule 2 hereto. If the Company shall elect to make the

foregoing adjustment, the Company shall deliver to the Trustee and El Paso at least 60 days prior to the first Sinking Fund Date proposed to be affected by such adjustment, a Company Request (w) stating that the Company has elected to make such adjustment in connection with adjustments to basic rent under one or more of such Leases, (x) setting forth a revised schedule of principal amounts of the Sinking Fund applicable to Bonds of the affected Stated Maturity of principal, (y) attaching a copy of the revised schedules of principal amortization for the related Pledged Lessor Notes (as hereinafter defined) and (z) attaching calculations showing that (i) the average life of the Bonds of the affected Stated Maturity of principal will not be reduced or increased except as permitted by this paragraph (c), (ii) the aggregate principal amount of the Pledged Lessor Notes identified on Schedule 2 hereto equals the aggregate principal amount of the Bonds and (iii) the aggregate amortization of the principal amount of such Pledged Lessor Notes is sufficient to repay in full, as and when due, the principal amount of the Bonds as and when due, whether upon redemption through operation of the applicable Sinking Funds or at maturity. The Trustee may rely on such Company Request and shall have no duty with respect to the calculations referred to in the foregoing clause (z), other than to make them available for inspection by any Holder of Bonds at the Corporate Trust Office upon reasonable notice. The Trustee shall, at the expense of El Paso, send to each Holder of Bonds of the affected Stated Maturity of principal at least 20 days before the first Sinking Fund Date to be affected thereby, by first class mail, a copy of such revised schedule of principal amounts of Sinking Fund payments applicable to such Bonds.

(d) *Adjustments to Sinking Fund in Respect of Partial Redemption.* Notwithstanding the second paragraph of Section 7.01 of the Original Indenture, in the event that there shall have been any partial redemption of Bonds of a particular Stated Maturity of principal (other than pursuant to the Sinking Fund), Sinking Fund payments thereafter to be made with respect to such Bonds shall be adjusted as follows. The Trustee shall first identify all related Pledged Lessor Notes identified in Schedule 2 hereto having the same maturity as the Bonds of such particular Stated Maturity of principal redeemed, if any, which are outstanding following such redemption and, having so identified all such Pledged Lessor Notes, shall determine the dates on which the principal of such Pledged Lessor Notes is to be amortized (the *Scheduled Amortization Dates*). The amount of the Sinking

Fund payment scheduled to be made on each Sinking Fund Date subsequent to the date of such redemption in respect of Bonds having the same Stated Maturity of principal as the Bonds redeemed shall then be adjusted to equal the aggregate principal amount of all related Pledged Lessor Notes identified in Schedule 2 hereto having the same maturity as the Stated Maturity of principal of the Bonds redeemed which is scheduled to be amortized on the Scheduled Amortization Date corresponding to such Sinking Fund Date, after taking into account any prepayment of Pledged Lessor Notes. All such adjustments in respect of a Sinking Fund Date shall be rounded to the nearest $1,000, and shall be subject to necessary further adjustment so that the total amount of such reduction is equal to the total principal amount of Bonds redeemed pursuant to such partial redemption. In connection with the adjustments required by the preceding two sentences, the Company shall deliver to the Trustee a Company Request not later than 30 days following any partial redemption of Bonds (other than pursuant to the Sinking Fund), setting forth (x) the schedules of principal amortization of all related Pledged Lessor Notes identified on Schedule 2 hereto having the same maturity as the Stated Maturity of principal of the Bonds redeemed and (y) a revised schedule of Sinking Fund payments applicable to Bonds having the same Stated Maturity of principal as the Bonds redeemed. The Trustee may rely on such Company Request and shall have no duty with respect to the adjustments set forth therein other than to make them available for inspection by a Holder of Bonds at the Corporate Trust Office upon reasonable notice.

(e) *Redemption Price.* The Redemption Price for any Bond to be redeemed pursuant to paragraph (a) of this Section 1.04 shall be 100% of the principal amount thereof, together with accrued interest to the Redemption Date.

SECTION 1.05. *Place of Payment for Bonds.*

The Bonds shall also be payable, at the option of any Holder, at the Corporate Trust Office.

ARTICLE TWO

Pledge of Lessor Notes

To secure the payment of the principal of and premium (if any) and interest on all the Securities from time to time Outstanding under the Indenture, and the performance of the covenants therein and herein contained, the Company by these presents does grant, bargain, sell, release, convey, assign, transfer, mortgage, hypothecate, pledge, confirm and create a security interest in, unto the Trustee, the Lessor Notes identified on Schedule 2 hereto (herein referred to as the *Pledged Lessor Notes*).

To Have and To Hold the aforesaid Pledged Lessor Notes unto the Trustee and its successors and assigns forever, in trust and for the uses and purposes and subject to the covenants and conditions set forth in the Indenture.

ARTICLE THREE

Miscellaneous

Section 3.01. *Execution as Supplemental Indenture; Definitions.*

This Series 1986A Bond Supplemental Indenture is executed and shall be construed as an indenture supplemental to the Original Indenture and, as provided in the Original Indenture, this Series 1986A Bond Supplemental Indenture forms a part thereof. Except as herein expressly otherwise defined, the use of the terms herein is in accordance with the definitions contained in the Original Indenture.

Section 3.02. *Responsibility for Recitals, Etc.*

The recitals contained herein and in the Bonds, except the Trustee's certificate of authentication, shall be taken as the statements of the Company and El Paso, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representation as to the validity or sufficiency of this Series 1986A Bond Supplemental Indenture or the Bonds.

SECTION 3.03. *Provisions Binding on Successors.*

All the covenants, stipulations, promises and agreements in this Series 1986A Bond Supplemental Indenture contained by or on behalf of the Company shall bind its successors and assigns, whether so expressed or not.

SECTION 3.04. *New York Contract.*

This Series 1986A Bond Supplemental Indenture and each Bond shall be deemed to be a contract under the laws of the State of New York, and for all purposes shall be governed by and construed in accordance with the laws of said state.

SECTION 3.05. *Counterparts.*

This Series 1986A Bond Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Company, El Paso and the Trustee have caused this Series 1986A Bond Supplemental Indenture to be duly executed by their respective officers thereunto duly authorized, as of the date and year first above written.

EL PASO FUNDING CORPORATION

[CORPORATE SEAL]

By _____
Vice President

Attest:

_____
Secretary

EL PASO ELECTRIC COMPANY

[CORPORATE SEAL]

By _____
Vice President

Attest:

_____
Assistant Secretary

FIRST CITY NATIONAL BANK OF HOUSTON,
as Trustee

[CORPORATE SEAL]

By _____
Assistant Vice President

Attest:

_____
Assistant Cashier

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

On this 18th day of December, 1986, before me personally came C. D. Dunlop, to me known, who, being by me duly sworn, did depose and say that he resides at Wilmington, Delaware; that he is the Vice President of EL PASO FUNDING CORPORATION, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

[NOTARIAL SEAL]

Delia T. Santiago

DELIA T. SANTIAGO
Notary Public, State of New York
No. 41-3451160
Qualified in Queens County
Commission Expires March 30, 1987

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

On this 18th day of December, 1986, before me personally came W. J. Johnson, to me known, who, being by me duly sworn, did depose and say that he resides at El Paso, Texas; that he is the Vice President of EL PASO ELECTRIC COMPANY, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

[NOTARIAL SEAL]

Delia T. Santiago

DELIA T. SANTIAGO
Notary Public, State of New York
No. 41-3451160
Qualified in Queens County
Commission Expires March 30, 1987

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 18th day of December, 1986, before me personally came JOHN CHASE, to me known, who, being by me duly sworn, did depose and say that he resides at Houston, Texas; that he is an Assistant Vice President of FIRST CITY NATIONAL BANK OF HOUSTON, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

[NOTARIAL SEAL]

Delia T. Santiago

DELIA T. SANTIAGO
Notary Public, State of New York
No. 41-4851160
Qualified in Queens County
Commission Expires March 30, 1987

SCHEDULE 1
to
SERIES 1986A BOND
SUPPLEMENTAL INDENTURE

[FORM OF FACE OF BOND]

No. R- $_____

EL PASO FUNDING CORPORATION

LEASE OBLIGATION BOND, SERIES 1986A

INTEREST RATE STATED MATURITY

REGISTERED HOLDER: ISSUE DATE: DECEMBER , 1986

PRINCIPAL AMOUNT: DOLLARS

EL PASO FUNDING CORPORATION, a Delaware corporation (hereinafter called the "*Company,*" which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received, hereby promises to pay to the Registered Holder (named above) hereof, or registered assigns, the Principal Amount (stated above) on the Stated Maturity (stated above) and to pay interest thereon from the Issue Date hereof (stated above), or from the most recent interest payment date to which interest has been paid or duly provided for, semiannually on January 2 and July 2 in each year, commencing July 2, 1987, at the Interest Rate (stated above) per annum, until the principal hereof is paid in full or made available for payment. The interest so payable, and punctually paid or duly provided for, on any interest payment date will, as provided in such Indenture, be paid to the person in whose name this Bond (or one or more Predecessor Securities, as defined in such Indenture) is registered at the close of business on the Regular Record Date for such interest, which shall be the June 17 or December 18, as the case may be (whether or not a Business Day, as defined in such Indenture), next preceding such interest payment date. Any such interest not so punctually paid or duly provided for

shall forthwith cease to be payable to the Registered Holder on such Regular Record Date, and may be paid to the person in whose name this Bond (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such defaulted interest to be fixed by the Trustee, notice of which shall be given to the Bondholders not less than 10 days prior to such Special Record Date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Bonds may be listed, and upon such notice as may be required by such exchange, all as more fully provided in such Indenture. Payment of the principal of (and premium, if any) and interest on this Bond will be made at the corporate trust office of the Paying Agent (or if such office is not in the Borough of Manhattan, The City of New York, at either such office or an office to be maintained in such Borough), or, at the option of the Registered Holder, at the Corporate Trust Office of the Trustee, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public or private debts. Payment of interest may, however, be made at the option of the Company by check mailed to the address of the Holder entitled thereto as such address shall appear on the Security Register.

Interest on any overdue principal and premium, if any, and (to the extent permitted by applicable law) any overdue interest shall be paid, on demand, from the due date thereof at the rate of interest per annum (computed on the basis of a 360-day year of twelve 30-day months) equal to 1% above the Interest Rate (stated above) on this Bond for the period during which any such principal, premium or interest shall be overdue.

Reference is hereby made to the further provisions of this Bond set forth on the reverse hereof which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee by manual signature, this Bond shall not be entitled to any benefit under such Indenture, or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

EL PASO FUNDING CORPORATION

By _____
President

Attest:

_____
Secretary

[FORM OF CERTIFICATE OF AUTHENTICATION]

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

FIRST CITY NATIONAL BANK OF HOUSTON
as Trustee

By _____
Authorized Officer

[FORM OF REVERSE OF BOND]

EL PASO FUNDING CORPORATION

LEASE OBLIGATION BOND, SERIES 1986A

This Bond is one of an authorized issue of Securities of the Company known as its *"Lease Obligation Bonds, Series 1986A"* (the *"Bonds")* issued under, and all equally and ratably secured by, a Collateral Trust Indenture dated as of August 1, 1986 among the Company, El Paso Electric Company, a Texas corporation (herein called *"El Paso"*), and First City National Bank of Houston, as Trustee (herein called the *"Trustee,"* which term includes any successor Trustee under the Indenture), as heretofore supplemented and amended and as further supplemented by the Series 1986A Bond Supplemental Indenture dated as of December 1, 1986 among such parties (collectively, the *"Indenture"*) to which Indenture reference is hereby made for a description of the nature and extent of the securities and other property assigned, pledged and transferred thereunder, the respective rights of the holders of the Bonds and of the Trustee and the Company in respect of such security, and the terms upon which the Bonds are and are to be authenticated and delivered.

The principal of, and premium, if any, and interest on, this Bond are payable from, and secured by, the assets subject to the lien of the Indenture or the income and proceeds received by the Trustee therefrom, and all payments of principal, premium (if any) and interest shall be made in accordance with the terms of the Indenture.

The Indenture and each of the Participation Agreements among an Equity Investor (as hereinafter defined), a Lessor (as hereinafter defined), the Company, a Lease Indenture Trustee (as hereinafter defined) and El Paso (each a *"Participation Agreement"*) provide that, as and when issued, certain Nonrecourse Promissory Notes (the *"Pledged Lessor Notes"*), in aggregate principal amount of $146,305,000, to be issued by The First National Bank of Boston, as owner trustee under separate Trust Agreements with the respective institutional investors named in such Trust Agreements (The First National Bank of Boston in each of such capacities as owner trustee being herein called a *"Lessor"* and each such institutional investor being herein called an *"Equity Investor"*), will be included within the assets subject to the lien of the Indenture pursuant to indenture supplements. Such Pledged Lessor Notes are to be issued under separate

documents entitled Trust Indenture, Mortgage, Security Agreement and Assignment of Rents, each between a Lessor and First City National Bank of Houston, as trustee ("*Lease Indenture Trustee*") (each of such Trust Indentures, as it was executed and delivered and as amended in accordance with its terms, being herein called a *"Lease Indenture"*). Reference is made to each Lease Indenture for a description of the nature and extent of property to be assigned, pledged, transferred and mortgaged thereunder and the rights of the holders of notes issued thereunder, including the Pledged Lessor Notes. Except as expressly provided in a Lease Indenture, all payments of principal, premium, if any, and interest to be made on a Pledged Lessor Note and under such Lease Indenture will be made only from the assets subject to the lien of such Lease Indenture or the income and proceeds received by the Lease Indenture Trustee therefrom, including, in the case of each Lease Indenture, the rights of the Lessor which is a party thereto to receive basic rentals and certain other payments under a Lease with El Paso relating to an undivided interest in certain assets constituting part of the Palo Verde Nuclear Generating Station (also known as the Arizona Nuclear Power Project) (each of such Leases, as it was executed and delivered and as amended in accordance with its terms, being herein called a *"Lease"*), which basic rentals and other payments will be at least sufficient to provide for the payment of the principal of and premium, if any, and interest when due on each Pledged Lessor Note issued under such Lease Indenture. Each Holder hereof, by its acceptance of this Bond, agrees (x) that except as expressly provided above, it will look solely to the assets subject to the lien of the Indenture or the income and proceeds received by the Trustee therefrom, to the extent available for distribution to the Holder hereof as provided in the Indenture and (y) that none of an Equity Investor, a Lessor, a Lease Indenture Trustee or the Trustee is liable to the Holder hereof or, in the case of an Equity Investor, a Lessor and a Lease Indenture Trustee, to the Trustee for any amounts payable under this Bond or, except as provided in the Indenture with respect to the Trustee, for any liability under the Indenture. An Equity Investor shall not have any duty or responsibility under the Indenture or the Bonds to any Holder or to the Trustee.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of El

Paso and the Company and the rights of the Holders of the Securities under the Indenture at any time by El Paso and the Company with the consent of the Holders of not less than a majority in aggregate principal amount of the Securities at the time Outstanding, as defined in the Indenture. The Indenture also contains provisions permitting the Holders of specified percentages in aggregate principal amount of the Securities at the time Outstanding, on behalf of the Holders of all the Securities, to waive compliance by El Paso and the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Bond shall be conclusive and binding upon such Holder and upon all future Holders of this Bond and of any Security issued upon the transfer hereof or in exchange herefor or in lieu hereof whether or not notation of such consent or waiver is made upon this Bond.

As provided in the Indenture, the aggregate principal amount of Securities which may be issued thereunder is unlimited. The Bonds are limited in aggregate principal amount to $146,305,000, consisting of:

Stated Maturity of Principal	Interest Rate	Principal Amount
July 2, 1992	8.100%	$ 14,506,000
July 2, 1997	9.200%	24,129,000
January 2, 2011	10.375%	107,670,000
		$146,305,000

In the event that one or more Leases are terminated under Section 14 thereof, the Bonds with a Stated Maturity of principal of January 2, 2011 are subject to mandatory redemption in whole or in part from time to time on not less than 20 nor more than 60 days' prior notice given as provided in the Indenture at a redemption price equal to the principal amount of the Bonds to be redeemed plus accrued interest to the date fixed for redemption, on the same date on which, and to the same extent that, the Pledged Lessor Notes relating to the Bonds are prepaid as provided in Section 5.2 of the Lease Indenture under which they were issued.

The Bonds of each Stated Maturity of principal are also subject to mandatory redemption pursuant to sinking fund installments, as more fully provided in the Indenture, at the principal amount thereof, together with

interest accrued to the date fixed for redemption, on the dates and in the respective principal amounts set forth in the Indenture.

The sinking fund installments for the Bonds of a particular Stated Maturity of principal set forth in the Indenture may be adjusted once at the discretion of the Company prior to June 30, 1990, in connection with certain adjustments in basic rent pursuant to one or more of the Leases: *provided, however,* that no such sinking fund adjustments shall be made by the Company which will increase or reduce the average life of such Bonds (calculated in accordance with generally accepted financial practice from the date of initial issuance thereof) by more than 6 months.

As provided in the Indenture, in connection with any mandatory sinking fund redemption of Bonds with a Stated Maturity of principal of January 2, 2011, the Company may cause the Trustee first to select for such redemption Bonds of such Stated Maturity of principal held by El Paso or an affiliate of El Paso.

In the event of any partial redemption of Bonds of a particular Stated Maturity of principal (other than pursuant to the aforementioned sinking fund), the principal amount of Bonds of such Stated Maturity of principal to be redeemed thereafter pursuant to the sinking fund schedule indicated in the Indenture shall be adjusted in accordance with the Indenture.

In addition, the Bonds (other than Bonds with a Stated Maturity of principal of July 2, 1992) are subject to redemption, in whole or in part, at the option of the Company, with monies deposited with the Trustee, on not less than 20 nor more than 60 days' notice given as provided in the Indenture, at the following redemption prices (expressed as a percentage of principal amount), together with interest accrued to the date fixed for redemption as follows:

Bonds with a Stated Maturity of principal of July 2, 1997 may be redeemed at any time on and after January 2, 1992 at a price of 102.63% of the principal amount thereof, such price to decline to 101.31% of such principal amount on January 2, 1993 and to 100% of such principal amount on January 2, 1994, as set forth in the Indenture, together with accrued interest; and

Bonds with a Stated Maturity of principal of January 2, 2011 may be redeemed at any time on and after January 2, 1992 at a

price of 107.78% of the principal amount thereof, such price to decline on January 2, 1993 and each anniversary thereof, as set forth in the Indenture, until such date as such price shall be the principal amount of such Bonds, together with accrued interest;

In the case of any redemption of Bonds, unpaid interest installments whose Stated Maturity, as defined in the Indenture, is on or prior to the date fixed for redemption will be payable to the Holders of such Bonds or one or more Predecessor Securities of record at the close of business on the relevant Regular or Special Record Date referred to on the face hereof.

The Indenture provides that Bonds of a denomination larger than $1,000 may be redeemed in part ($1,000 or an integral multiple thereof) and that upon any partial redemption of any such Bond the same may be surrendered at the corporate trust office of the Paying Agent in exchange for one or more new Bonds for the unredeemed portion thereof.

Bonds (or portions thereof as aforesaid) for whose redemption and payment provision is made in accordance with the Indenture shall thereupon cease to be entitled to the lien of the Indenture and shall cease to bear interest from and after the date fixed for redemption.

If an Event of Default, as defined in the Indenture, shall occur, the principal of this Bond may become or be declared due and payable, in the manner and with the effect provided in the Indenture.

This Bond is transferable by the registered owner hereof in person or by attorney authorized in writing, at the corporate trust office of the Bond Registrar, First City National Bank of Houston (or if such office is not in the Borough of Manhattan, The City of New York, at either such office or an office to be maintained in such Borough), upon surrender of this Bond, and upon any such transfer a new Bond of the same Stated Maturity of principal, for the same aggregate principal amount, will be issued to the transferee in exchange herefor.

The Bonds are issuable only as registered Bonds without coupons in denominations of $1,000 or any integral multiple thereof. As provided in, and subject to the provisions of, the Indenture, Bonds of a particular Stated Maturity of principal are exchangeable for other Bonds of such Stated Maturity, but of a different authorized denomination or denominations, as requested by the Holder surrendering the same.

CURRENT ENDING PAGE CONDITIONS ARE INCONSISTENT WITH THE NEXT PAGE : 028.00.00.00

No service charge will be made to any Holder of Bonds for any such transfer or exchange, but the Bond Registrar may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment for registration of transfer, the person in whose name this Bond is registered shall be deemed to be the owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Bond be overdue, regardless of any notice to anyone to the contrary.

As provided in the Indenture, the Indenture and the Bonds shall be construed in accordance with and governed by the laws of the State of New York.

SCHEDULE 2
to
SERIES 1986A BOND
SUPPLEMENTAL INDENTURE

A. As used in this Series 1986A Bond Supplemental Indenture, the following terms have the following meanings:

(1) *Lease Indenture* means each of:

(i) the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents, dated as of December 1, 1986, between the Indenture Trustee and the Owner Trustee, as owner trustee for Chrysler Financial Corporation; and

(ii) the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents, dated as of December 1, 1986, between the Indenture Trustee and the Owner Trustee, as owner trustee for Commercial Federal Investment Corporation.

(2) *Lessor Note* means each of:

(i) the Non-Recourse Promissory Note, Initial Series (Due July 2, 1992) in the amount of $8,059,000 dated December 18, 1986, payable by the Owner Trustee, as owner trustee for Chrysler Financial Corporation, to the Company;

(ii) the Non-Recourse Promissory Note, Initial Series (Due July 2, 1997) in the amount of $12,295,000 dated December 18, 1986, payable by the Owner Trustee, as owner trustee for Chrysler Financial Corporation, to the Company;

(iii) the Non-Recourse Promissory Note, Initial Series (Due January 2, 2011) in the amount of $56,046,000 dated December 18, 1986, payable by the Owner Trustee, as owner trustee for Chrysler Financial Corporation, to the Company;

(iv) the Non-Recourse Promissory Note, Initial Series (Due July 2, 1992) in the amount of $6,447,000 dated December 18, 1986, payable by the Owner Trustee, as owner trustee for Commercial Federal Investment Corporation, to the Company;

(v) the Non-Recourse Promissory Note, Initial Series (Due July 2, 1997) in the amount of $11,834,000 dated December 18, 1986, payable by the Owner Trustee, as owner trustee for Commercial Federal Investment Corporation, to the Company; and

(vi) the Non-Recourse Promissory Note, Initial Series (Due January 2, 2011) in the amount of $51,624,000 dated December 18, 1986, payable by the Owner Trustee, as owner trustee for Commercial Federal Investment Corporation, to the Company.

(3) *Lessor* or *Owner Trustee* means The First National Bank of Boston, a national banking association (FNB), in its capacity as owner trustee under two separate Trust Agreements, each dated as of December 1, 1986, with the Equity Investor named therein.

(4) *Indenture Trustee* means First City National Bank of Houston, a national banking association, as Trustee.

(5) *Lease* means each of:

(i) the Facility Lease, dated as of December 1, 1986, between El Paso, as lessee, and the Owner Trustee, as owner trustee for Chrysler Financial Corporation, as lessor; and

(ii) the Facility Lease, dated as of December 1, 1986, between El Paso, as lessee, and the Owner Trustee, as owner trustee for Commercial Federal Investment Corporation, as lessor.

(6) *Participation Agreement* means each of:

(i) the Participation Agreement, dated as of December 1, 1986, among the Owner Participant designated therein, the Company, FNB, in its individual capacity

and as Owner Trustee for Chrysler Financial Corporation, First City National Bank of Houston, in its individual capacity and as Indenture Trustee, and El Paso; and

(ii) the Participation Agreement, dated as of December 1, 1986, among the Owner Participant designated therein, the Company, FNB, in its individual capacity and as Owner Trustee for Commercial Federal Investment Corporation, First City National Bank of Houston, in its individual capacity and as Indenture Trustee, and El Paso.

Letter of Credit and Security Agreement

LETTER OF CREDIT AND SECURITY AGREEMENT, dated as of December 1, 1986, among (i) EL PASO ELECTRIC COMPANY (the "Company"), (ii) THE BANK OF NEW YORK (the "Bank") and (iii) for the purposes of Sections 10(h) and 10(i) only, CHRYSLER FINANCIAL CORPORATION.

WHEREAS, the Company has entered into a Participation Agreement, dated as of December 1, 1986 (the "Participation Agreement"), among Chrysler Financial Corporation, as Owner Participant (the "Equity Participant"), El Paso Funding Corporation, as Loan Participant, The First National Bank of Boston, in its individual capacity and as Owner Trustee (the "Owner Trustee"), First City National Bank of Houston, in its individual capacity and as Indenture Trustee, and the Company, providing for the acquisition of an undivided interest in Unit 2 of the Palo Verde Nuclear Generating Station ("PVNGS") and a real property interest related thereto (collectively, the "Equity Interest") through a trust for the benefit of the Equity Participant; and

WHEREAS, the Company has entered into a Facility Lease, dated as of December 1, 1986 (the "Facility Lease"), between the Owner Trustee, as Lessor, and the Company, as Lessee, providing for the leasing of the Equity Interest to the Company; and

WHEREAS, it is a condition precedent to the Owner Trustee's causing the Equity Interest to be purchased through a trust for the benefit of the Equity Participant that the Bank issue to the Equity Participant an irrevocable letter of credit in the form of Annex A hereto (the "Letter of Credit"); and

WHEREAS, the Bank is willing to issue the Letter of Credit on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and in order to induce the Bank to issue the Letter of Credit, the parties hereto hereby agree as follows:

SECTION 1. (a) Definitions. In addition to the terms defined in the recitals, the following terms, as used herein, have the following respective meanings:

"Affiliate" shall mean any Person directly or indirectly controlling or controlled by the Company.

"Borrowed Money" means any obligation to repay money, any indebtedness evidenced by notes, bonds, debentures or similar obligations, any obligation under a conditional sale or other title retention agreement, and the net aggregate rentals under any lease which under generally accepted accounting principles would be capitalized on the books of the Company or which is the substantial equivalent of the financing of the property so leased.

"Business Day" means any day that is not a Saturday, Sunday or legal holiday in the State of New York or Texas or a day on which banking institutions chartered by the State of New York or Texas or the United States are legally authorized to close.

"CD" shall have the meaning ascribed to such term in Section 9 hereof.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Collateral" shall have the meaning ascribed to such term in Section 10 hereof.

"Date of Issuance" means the date on which the Letter of Credit is issued upon request of the Company pursuant to Section 2(a) hereof, which date shall in no event be later than December 22, 1986.

"Default" means any event or condition which with the giving of notice or the lapse of time or both would, unless cured or waived, become an Event of Default.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Event of Default" means any of the events specified in Section 9 hereof.

"Expiration Date" means January 3, 1992, unless the Bank shall have agreed to extend the Letter of Credit in accordance with the terms thereof, in which event such term shall mean January 3, in the year in which the Letter of Credit, as so extended, expires.

"Financing Documents" shall have the meaning ascribed to such term in the Facility Lease.

"Junior Obligations" shall have the meaning ascribed to such term in Section 10 hereof.

"Letter of Credit Amount" shall have the meaning ascribed to such term in the Letter of Credit.

"Maintenance Level" shall have the meaning ascribed to such term in Section 10(b) hereof.

"Maximum Drawing Amount" shall have the meaning ascribed to such term in the Letter of Credit.

"PBGC" means the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its functions under ERISA.

"Permitted Investments" shall have the meaning ascribed to such term in Section 10 hereof.

"Person" means and includes an individual, a corporation (including a business trust), a partnership, an unincorporated association, a joint stock company, a trust, a joint venture or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Plan" means at any time an employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code and is maintained by the Company for employees of the Company.

"Proceeds" shall have the meaning ascribed to such term in Section 10 hereof.

"Reports" means the Company's Annual Report on Form 10-K for the year ended December 31, 1985, as amended by Amendment No. 1 on Form 8 dated April 2, 1986, and the Company's Quarterly Reports on Form 10-Q for the quarters ended March 31, 1986, June 30, 1986 and September 30, 1986, respectively, and the Company's Current Reports on Form 8-K dated June 16, 1986, July 22, 1986, August 29, 1986, September 11, 1986 and October 1, 1986, which have heretofore been delivered to the Bank.

"Senior Obligation" shall have the meaning ascribed to such term in Section 10 hereof.

"Significant Subsidiary" of any company means a Subsidiary, including its Subsidiaries, which meets any of the following conditions: (i) such company's investments in and advances to the Subsidiary exceed 10 percent of the total assets of such company and its Subsidiaries consolidated as of the end of the most recently completed fiscal

year; or (ii) such company's and its other Subsidiaries' proportionate share of the total assets (after intercomp eliminations) of the Subsidiary exceeds 10 percent of the total assets of such company and its Subsidiaries consolidated as of the end of the most recently completed fiscal year; or (iii) such company's and its other Subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle of the Subsidiary exceeds 10 percent of such income of such company and its Subsidiaries consolidated for the most recently completed fiscal year.

"Subsidiary", where used with respect to any company, means any corporation the majority of the voting shares of which at the time are owned directly or indirectly by such company and/or by one or more subsidiaries of such company.

"Transaction Documents" shall have the meaning ascribed to such term in the Facility Lease.

(b) Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements requir to be delivered hereunder shall be prepared, in accordanc with generally accepted accounting principles as in effect from time to time, applied on a basis consistent (except for changes concurred in by the Company's independent public accountants) with the most recent audited consolidated financial statements of the Company delivered to the Bank.

(c) Incorporated Terms. Capitalized terms not otherwise defined herein shall have the respective meanings ascribed to them in the Facility Lease.

SECTION 2. Issuance of the Letter of Credit; Conditions Precedent to Issuance. (a) On or before December 22, 1986, subject to satisfaction of the conditions precedent set forth in subsections (b), (c), (d), (e) and (f) of this Section 2, the Bank shall issue the Letter of Credit.

(b) As a condition precedent to the issuance of the Letter of Credit, the Bank shall have received on or before the Date of Issuance the following, each dated such date, in form and substance reasonably satisfactory to the Bank:

(i) opinions of Kemp, Smith, Duncan & Hammond, Snell & Wilmer and Mudge Rose Guthrie Alexander & Ferdon, counsel to the Company, as to the matters set forth in Section 6(b), (c), (d), (e), (f), (g) and (j) hereof and as to such other matters, including without limitation matters relating to the other Transaction Documents and Financing Documents, as the Bank may reasonably request;

(ii) an opinion of Sullivan & Cromwell, counsel for the Bank, as to the form of documents delivered to the Bank pursuant to this Section 2 and as to such other matters as the Bank may reasonably require;

(iii) copies of the resolutions of the Board of Directors of the Company with respect to this Agreement, the other Transaction Documents, the Financing Documents and the transactions contemplated hereby and thereby, certified by the Secretary or an Assistant Secretary of the Company (which certificate shall state that such resolutions are in full force and effect on the Date of Issuance and are the only resolutions of the Company's Board of Directors or any committee thereof with respect to this Agreement, the other Transaction Documents, the Financing Documents or the transactions contemplated hereby and thereby);

(iv) certified copies of (x) all approvals, authorizations or consents of, or notices to or registrations with, any governmental body or agency required for the Company to enter into this Agreement, the other Transaction Documents and the Financing Documents and to grant the pledge provided for in Section 10 hereof and (y) all such approvals, authorizations, notices or registrations required to be obtained or made by the Company prior to the Date of Issuance in connection with the transactions contemplated by this Agreement, the other Transaction Documents and the Financing Documents;

(v) a certificate of the Secretary or an Assistant Secretary of the Company certifying the names and true signatures of the

officers of the Company authorized to sign this Agreement and the other documents to be delivered by the Company hereunder;

(vi) executed copies (or duplicates thereof) of the other Transaction Documents and the Financing Documents, each of which shall be in form and substance reasonably satisfactory to the Bank; and

(vii) such other documents, instruments, approvals (and, if requested by the Bank, certified duplicates of executed copies thereof) or opinions as the Bank may reasonably request.

(c) The following statements shall be true and correct on the Date of Issuance and the Bank shall have received a certificate signed by a duly authorized officer of the Company, dated the Date of Issuance, stating that:

(i) the representations and warranties of the Company contained in Section 6 hereof are correct on and as of the Date of Issuance as though made on and as of such date;

(ii) no Default or Event of Default shall have occurred and be continuing or would result from the issuance of the Letter of Credit or the consummation of the transactions contemplated by this Agreement, the other Transaction Documents and Financing Documents; and

(iii) no event of default, event of loss or deemed loss event, each as defined in the Facility Lease, shall have occurred or be continuing.

(d) On or before the Date of Issuance:

(i) each of the Transaction Documents and Financing Documents shall have been duly authorized and executed by the respective parties thereto and shall be in full force and effect;

(ii) all conditions precedent to the Closing set forth in Section 11 of the Participation Agreement shall have been fulfilled; and

(iii) the Purchase Documents shall have been delivered to the Owner Trustee.

(e) The Bank shall have received at least two days prior to the Date of Issuance a written notice of the proposed Date of Issuance signed by the Company and the Equity Participant.

(f) On or before the Date of Issuance, the Company shall have pledged and delivered to the Bank Collateral with a value equal to or greater than the greatest Maximum Drawing Amount in effect during the period from the Date of Issuance until the date 35 days thereafter.

SECTION 3. Reimbursement and Other Payments. (a) The Company agrees to pay to the Bank (i) immediately after any amount is paid pursuant to a drawing under the Letter of Credit a sum equal to the amount so drawn; (ii) all reasonable charges and expenses incurred by the Bank relative to the Letter of Credit; (iii) interest on any amounts paid pursuant to a drawing under the Letter of Credit from the date of such drawing until payment in full and interest on any and all other amounts unpaid by the Company when due hereunder from the date such amounts become due until payment in full, in each case payable on demand, at a fluctuating interest rate per annum (computed on the basis of a year of 360 days for the actual number of days elapsed) equal to 1% per annum above the Bank's prime commercial loan rate as announced to be in effect from time to time, which rate shall change as and when said prime commercial loan rate shall change, but such fluctuating interest rate shall in no event be higher (with respect to each amount due and payable hereunder) than the maximum rate permitted by applicable law; and (iv) any and all reasonable expenses incurred by the Bank in enforcing any rights under this Agreement.

(b) The Company agrees that it will pay to the Bank a commission with respect to the Letter of Credit (i) at the rate of 1/4 of 1.0% per annum of the Maximum Drawing Amount (computed on the basis of a year of 360 days for the actual number of days elapsed) and (ii) at the rate of 1/10 of 1.0% per annum of the excess, if any, of the Letter of Credit Amount over the Maximum Drawing Amount, in each case payable quarterly in arrears, commencing March 31, 1987, until the earliest of the Expiration Date or the date on which the Letter of Credit has been surrendered to the Bank (calculated on each day on which such fee is payable based upon the Maximum Drawing Amount and the Letter of Credit Amount then in effect, without reduction or adjustment for any subsequent termination of the Letter of Credit or

reduction of the Maximum Drawing Amount and the Letter of Credit Amount).

(c) If, after the date hereof, any change in any applicable law or regulation or in the interpretation thereof by any court or administrative or governmental authority charged with the administration thereof or the enactment of any applicable law or regulation shall (i) impose upon, modify, require, make or deem applicable to the Bank or any of its Affiliates any reserve requirement based upon the issuance of the Letter of Credit, special deposit requirement, insurance assessment or similar costs or requirement against or affecting the Letter of Credit or (ii) subject the Bank or any of its Affiliates to any tax, charge, fee, deduction, withholding or similar costs of any kind whatsoever or (iii) impose any condition upon or cause in any manner the addition of any supplement to or increase of any kind in the Bank's or an Affiliate's capital or cost base for issuing letters of credit which results in an increase in the capital requirement supporting such letters of credit, (iv) impose upon, modify, require, make or deem applicable to the Bank or any of its Affiliates any capital requirement, increased capital requirement or similar requirement such as by the deeming of such letters of credit to be assets held by the Bank or any of its Affiliates for capital calculation or other purposes or (v) impose on the Bank any other condition regarding this Agreement or the Letter of Credit, and the result of any events referred to in (i), (ii), (iii), (iv) or (v) above shall be to increase the costs or decrease the benefit in any way to the Bank or any Affiliate of issuing, maintaining or participating in the Letter of Credit, then and in such event the Company shall immediately after the mailing of a written statement (which shall describe the nature of the change giving rise to the increased costs or decreased benefits and a summary of the Bank's calculations of the amounts due to the Bank in connection therewith) to the Company, which shall be conclusive absent manifest error, pay to the Bank all such additional amounts which in the Bank's sole good faith calculation as allocated to the Letter of Credit, shall be sufficient to compensate it for all such increased costs and/or decreased benefits, all as stated by the Bank in said written notice to the Company. Such amount shall bear interest thereon from the fifth Business Day after the effective receipt of the aforementioned notice until payment in full thereof at the rate provided in clause (iii) of subsection (a) of this Section.

(d) All payments by the Company to the Bank hereunder shall be made in lawful currency of the United States and in immediately available funds to The Bank of

York, International Division, Letter of Credit Department, 110 Washington Street, New York, New York 10006, Attention: Elizabeth Mallon. Whenever any payment hereunder shall be due on a day which is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day, and any interest payable thereon shall be payable for such extended time at the specified rate.

SECTION 4. Adjustment of Maximum Drawing Amount. The Maximum Drawing Amounts shall be modified from time to time as follows:

(a) Upon payment by the Bank of each drawing under the Letter of Credit, the Maximum Drawing Amounts applicable to the period of and each period subsequent to such payment shall be automatically reduced by an amount equal to the amount of the drawing so paid and shall not be reinstated except in accordance with clause (b) below.

(b) After any payment by the Bank of a drawing under the Letter of Credit, then upon the Bank's receipt of a certificate in the form of Exhibit 1 to the Letter of Credit purportedly signed by authorized officers of the Company and the Equity Participant, the Maximum Drawing Amounts applicable to the period of and each period subsequent to such payment shall be reinstated to the Maximum Drawing Amounts which would have been in effect immediately after such payment had no reduction in the Maximum Drawing Amounts been effected pursuant to clause (a) above. The Company agrees that (i) it shall reimburse the Bank for the amount of any payment by the Bank of a drawing under the Letter of Credit prior to any such reinstatement of such amount, and (ii) it shall be in compliance with all of its covenants and agreements in this Agreement, including Section 10 hereof, upon and after giving effect to such reinstatement.

(c) If adjustments are made to Casualty Values under the Facility Lease, then upon the Bank's receipt of a certificate in the form of Exhibit 1 to the Letter of Credit purportedly signed by authorized officers of the Company and the Equity Participant, corresponding adjustments shall be made to

the Maximum Drawing Amounts shown in Schedule I (as then in effect), provided that if any such adjustment would cause the Maximum Drawing Amount for any period to exceed the Letter of Credit Amount, the Letter of Credit Amount shall apply for such period. The Company agrees that (i) it shall be in compliance with all of its covenants and agreements in this Agreement, including Section 10 hereof, upon and after giving effect to such adjustment, and (ii) it shall have delivered Collateral to the Bank, if required, so that the market value of the Collateral at the date of such adjustment in Maximum Drawing Amounts is equal to the greatest Maximum Drawing Amount in effect during the period from the date of such adjustment to the 35th day thereafter.

SECTION 5. Obligations Absolute. The obligations of the Company under this Agreement shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, irrespective of any of the following circumstances:

(i) any lack of validity or enforceability of the Letter of Credit, this Agreement or any other Transaction Document or Financing Document or any transaction relating hereto or thereto;

(ii) any amendment or waiver of, or consent to departure from, any other Transaction Document or Financing Document;

(iii) the existence of any claim, set-off, defense or other rights which the Company may have at any time against any beneficiary or any transferee of the Letter of Credit (or any persons or entities for whom any such beneficiary or any such transferee may be acting), the Bank or any other Person or entity, whether in connection with this Agreement, any other Transaction Document or Financing Document or any unrelated transactions;

(iv) any statement or any other document presented under the Letter of Credit (including Exhibits 1, 2, 3, 4, 5 or 6 thereof) proving to be forged, fraudulent, invalid or

insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever;

(v) payment by the Bank under the Letter of Credit against presentation of a draft or certificate which does not comply with the terms of the Letter of Credit, provided such payment shall not have constituted gross negligence or willful misconduct of the Bank; or

(vi) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, provided that the same shall not have constituted negligence or willful misconduct of the Bank.

SECTION 6. Representations and Warranties. The Company represents and warrants to the Bank as of the date hereof and at the Date of Issuance as follows:

(a) Subsidiaries. The Company has no Significant Subsidiaries.

(b) Good Standing and Power. Each of the Company and Franklin Land & Resources, Inc. is a corporation, duly organized and existing and in good standing under the laws of the jurisdiction of its incorporation, and has the corporate power to own its property and to carry on its business as now being conducted and is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned or leased by it therein or in which the transaction of its business makes such qualification necessary.

(c) Corporate Authority. The Company has full power and authority to enter into and perform this Agreement and each other Transaction Document and Financing Document to which it is a party and the transactions relating hereto and thereto, all of which have been, or on or before the Date of Issuance, will have been, duly authorized by all proper and necessary corporate action. No consent or approval of shareholders of the Company or any Subsidiary of the Company, or any trustee or holder of any indebtedness of the Company or any Subsidiary is required as a condition to the validity of this Agreement or any other Transaction Document or Financing Document to which it is a party other than such consents and approvals as have been, or on or before the Date of Issuance will have been, duly obtained.

(d) Consents. All authorizations, consents, approvals, registrations, exemptions and licenses with or from governmental authorities which are necessary for the execution and delivery by the Company of this Agreement and each other Transaction Document and Financing Document to which it is a party and the performance by the Company of its obligations hereunder and thereunder have been effected or obtained and are in full force and effect except for such authorizations, consents, approvals, registrations, exemptions, and licenses (i) as have been, or on or before the Date of Issuance will have been, duly obtained, given or accomplished, with true copies thereof delivered to the Bank, (ii) as may be required under existing Federal, Texas, New Mexico, Arizona or New York law to be obtained, given or accomplished from time to time after the Date of Issuance in connection with the maintenance, use, possession or operation of Unit 2 or otherwise with respect to Unit 2 and the Company's or the Operating Agent's involvement therewith and which are, for PVNGS, routine in nature and which the Company has no reason to believe will not be timely obtained and (iii) as may be required under applicable law not now in effect. No authorizations, consents, approvals, registrations, exemptions, or licenses with or from any governmental authority relating to the Securities Act, the Securities Exchange Act, the Trust Indenture Act, the Federal Power Act, the Atomic Energy Act, the Nuclear Waste Act, the Public Utility Holding Company Act, the Texas Public Utility Regulatory Act, the New Mexico Public Utility Act, the Arizona Public Utility Act, energy or nuclear matters, public utilities, the environment, health and safety or Unit 2 is or will be required (a) in connection with the participation by the Bank in the consummation of the transactions contemplated by this Agreement, or in connection with the participation by any party thereto in the consummation of the transactions contemplated by the other Transaction Documents or Financing Documents or (b) to be obtained in connection with Unit 2 by any of such Persons during the Lease Term, except such authorizations, consents, approvals, registrations, exemptions and licenses (i) as have been, or on or before the Date of Issuance, will have been, duly obtained, given or accomplished, (ii) as may be required by applicable law not now in effect, (iii) as may be required in consequence of any transfer of ownership of any Note or Bond by the holder thereof or of the beneficial interest in the Trust by the Equity Participant, (iv) as may be required in consequence of the issuance, sale or exchange and delivery of or any obligations issued under and pursuant to the Collateral Trust Indenture (other than the Initial Series Bonds), (v) as would be required by applicable law existing on the Lease Termination Date in connection with taking possession of an interest in Unit 2, (vi) as may b

required by existing applicable law if, after the Lease Termination Date, the Lessee should provide transmission services for the Owner Trustee or cease to be agent for the Owner Trustee as provided under the Assignment and Assumption, or (vii) as may be required in consequence of any exercise of remedies or other rights by any such Person in connection with taking possession of an interest in Unit 2. No authorizations, consents, approvals, registrations, exemptions or licenses with or from any governmental authority which are required after the date hereof but which have not yet been obtained (except as may be required under applicable law which is not now in effect, promulgated or proposed) shall in any way affect the Company's obligations hereunder.

(e) Binding Effect. This Agreement constitutes, and each other Transaction Document and Financing Document to which it is a party when executed and delivered will constitute, the valid and legally binding obligations of the Company enforceable in accordance with their respective terms subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(f) No Conflicts. There is no statute, regulation, rule, order or judgment, no charter or by-law or preference stock provision of the Company, or any Affiliate of the Company and no provision of any mortgage, indenture, contract or agreement binding on the Company or affecting its properties, which would prohibit, conflict with or in any way prevent the execution, delivery or performance by the Company of the terms of this Agreement or any other Transaction Document or Financing Document to which it is a party or the transactions contemplated hereby or thereby (other than the Mortgage Releases which shall be obtained on or before the Date of Issuance).

(g) Litigation. Except as disclosed in the Reports, there are no proceedings or investigations pending or, so far as the officers of the Company know, threatened against the Company or any Subsidiary thereof before any court or arbitrator or before or by any governmental authority which, in any one case or in the aggregate, if determined adversely to the interests of the Company or such a Subsidiary, would have a material adverse effect on the business, properties, condition (financial or otherwise) or operations, present or prospective, of the Company and its consolidated Subsidiaries taken as a whole or on the operation of Unit 2 of PVNGS.

(h) Financial Condition. The consolidated balance sheet of the Company and Subsidiary as of December 31, 1985, together with consolidated statements of income, retained earnings and sources of funds invested in utility plant and other plant, for the fiscal year then ended, together with the notes accompanying such financial statements, all certified by Peat, Marwick, Mitchell & Co., and the consolidated balance sheet of the Company and Subsidiary as of September 30, 1986, together with consolidated statements of income, retained earnings and sources of funds invested in utility plant and other plant for the nine months then ended, together with the notes accompanying such financial statements, all certified by the chief financial officer of the Company, heretofore delivered to the Bank, fairly present the financial condition of the Company and Subsidiary and the results of their operations as of the dates and for the periods referred to and have been prepared in accordance with generally accepted accounting principles consistently maintained by the Company and its Subsidiaries throughout the periods involved subject in the case of the consolidated balance sheets and the related consolidated statements at or for a nine-month period ending on September 30, 1986, to the condensation of certain financial information and the omission of certain footnote disclosures as permitted by the rules and regulations of the Securities and Exchange Commission and to normal year-end audit adjustments. The Company knows of no such adjustments which would, if made on the date hereof, be material. There are no liabilities, direct or indirect, fixed or contingent, of the Company as of the dates of such balance sheets which are not reflected therein or in the notes thereto. Except as disclosed in the Reports, at the date hereof there has been no material adverse change in the business, properties, condition (financial or other) or operations, present or prospective, of the Company since December 31, 1985.

(i) Compliance with ERISA. The Company has fulfilled its obligations under the minimum funding standards of ERISA and the Code with respect to each Plan, is in compliance in all material respects with the presently applicable provisions of ERISA and the Code, and has not incurred any liability to the PBGC under Title IV of ERISA.

(j) Collateral. Section 10 of this Agreement creates a valid grant, assignment, pledge and security interest in favor of the Bank in the Collateral delivered to the Bank from time to time pursuant thereto and, upon delivery of such Collateral to the Bank, shall constitute a fully perfected first and prior security interest in and lien upon all right, title and interest of the Company in such Collateral, superior in right to any liens, existin

or future, which the Company or any third person may have against such Collateral or interests therein.

SECTION 7. Affirmative Covenants. The Company covenants and agrees that, until the Expiration Date, and for so long as the Letter of Credit shall remain in effect or any monetary obligations of the Company arising hereunder shall remain unpaid, the Company will:

(a) Corporate Existence. Maintain its corporate existence in good standing, qualify and remain qualified to do business as a foreign corporation in each jurisdiction in which the character of the properties owned or leased by it therein or in which the transaction of its business makes such qualification necessary, and preserve, renew and keep in full force and effect all rights, privileges, franchises, licenses, trademarks, copyrights and patents necessary or normal in the conduct of its business, and cause each of its Significant Subsidiaries so to do except (i) for mergers and consolidations as permitted by Section 8(b) below, and (ii) that the Company may discontinue any right or franchise if its board of directors shall determine that such discontinuance is necessary or desirable in the conduct of its business and does not materially and adversely affect or diminish the ability for the Company to perform its obligations under this Agreement or any other Transaction Document or Financing Document.

(b) Financial Statements. Furnish to the Bank (i) as soon as available but in no event more than 60 days after the end of each of the Company's fiscal quarters, a consolidated balance sheet of the Company and its Subsidiaries as of the close of such period and consolidated statements of income, retained earnings and sources of funds invested in utility plant and other plant from the beginning of the then current fiscal year and from the beginning of such fiscal quarter to the close of such period, together with the notes accompanying such financial statements, all certified by the chief financial officer of the Company and accompanied by a certificate of said officer stating whether any event has occurred which constitutes Default or an Event of Default and, if so, stating the facts with respect thereto, and providing calculations which establish the Company's compliance with the requirements or restrictions imposed by Section 10; (ii) as soon as available but in no event more than 120 days after the close of each of the Company's fiscal years, a copy of the annual audit report relating to the Company and its Subsidiaries in reasonable detail satisfactory to the Bank and prepared in accordance with generally accepted accounting principles by Peat, Marwick, Mitchell & Co. or other independent public

accountants satisfactory to the Bank, together with financial statements consisting of a consolidated balance sheet of the Company and its Subsidiaries as of the end of such fiscal year and consolidated statements of income, retained earnings, and sources of funds invested in utility plant and other plants of the Company and its Subsidiaries for such fiscal year together with the notes accompanying such financial statements; (iii) as soon as available but in no event more than 120 days after the close of each of the Company's fiscal years, a letter or opinion of the accountants who prepared the annual audit report relating to the Company and its Subsidiaries stating whether anything in such accountants' examination has revealed the occurrence of any event which constitutes a Default or an Event of Default and, if so, stating the facts with respect thereto; and (iv) such additional information, reports or statements as the Bank may from time to time reasonably request.

(c) Taxes. Pay and discharge, and cause each of its Subsidiaries to pay and discharge, all taxes, assessments and governmental charges upon it, its income and its properties prior to the date on which penalties are attached thereto, unless and to the extent only that (i) such taxes, assessments and governmental charges shall be contested in good faith and by appropriate proceedings by the Company or such Subsidiary, as the case may be, and (ii) the Company or such Subsidiary shall have set aside on its books adequate reserves therefor.

(d) Insurance. Maintain, and cause each of its Subsidiaries to maintain, insurance with responsible insurance companies against such risks, on such properties and in such amounts as is customarily maintained by similar businesses, and file, and cause each of its Subsidiaries to file, with the Bank upon its request a detailed list of the insurance then in effect and stating the names of the insurance companies, the amounts and rates of the insurance, the dates of the expiration thereof and the properties and risks covered thereby.

(e) Maintenance of Records. For the Company and each of its Significant Subsidiaries (i) keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to its business and affairs; (ii) set up on its books reserves with respect to all taxes, assessments, charges, levies and claims; and (iii) on a current basis, set up on its books, from its earnings, appropriate reserves against doubtful accounts receivable, advances and investments and all other proper reserves (including, without limitation by reason of enumeration, reserves for premiu

if any, due on required prepayments and reserves for depreciation, obsolescence, or amortization of properties), which should be set aside from such earnings in connection with its business. All determinations pursuant to this subsection shall be made in accordance with, or as required by, generally accepted accounting principles consistently applied in the opinion of such independent public accountants as shall then be regularly engaged by the Company.

(f) Inspection. Permit and cause each of its Subsidiaries to permit, the Bank to have one or more of its officers and employees, or any other person designated by the Bank, at the Bank's expense, visit and inspect any of the properties of the Company and to examine the minute books, books of account and other records of the Company and its Subsidiaries (other than tax returns) and make copies thereof or extracts therefrom, and discuss its affairs, finances and accounts with its officers and, at the request of the Bank and with opportunity for officers of the Company to be present, with the Company's independent accountants, during normal business hours and at such other reasonable times and as often as the Bank may reasonably desire.

(g) Maintenance of Property, Etc. Maintain, keep and preserve and cause each of its Significant Subsidiaries to maintain, keep and preserve all of its properties which are used or useful in the conduct of the Company's business in good repair, working order and condition and from time to time make all necessary and proper repairs, renewals, replacements, and improvements thereto (provided that this Section 7(g) shall not be construed as a covenant of the Company, or any Significant Subsidiary not to dispose of such properties by sale, lease, transfer, conveyance or otherwise).

(h) Conduct of Business. Engage in as its principal business the providing of electric power to wholesale and retail customers.

(i) Defaults. Promptly notify the Bank of the occurrence of any event which constitutes a Default or an Event of Default hereunder or an event of default by the Company under any other Transaction Document or Financing Document or any instrument described or referred to in paragraph (e) of Section 9 hereof.

SECTION 8. Negative Covenants. The Company covenants and agrees that, until the Expiration Date and for so long as the Letter of Credit shall remain in effect or any monetary obligations of the Company arising hereunder shall remain unpaid, the Company will not, without the prior written consent of the Bank:

(a) Pledges. Except for the pledge and security interest in favor of the Bank and the Owner Participant provided for in Section 10, create, incur, assume or suffer to exist any pledge, lien or other encumbrance of any kind upon, or any security interest in, the Collateral or any part or portion thereof or any interest therein.

(b) Mergers and Sales of Assets. Merge or consolidate with or into any other Person or sell, lease, transfer, convey or otherwise dispose of any asset, or permit any of its Significant Subsidiaries so to do, except, so long as no Default or Event of Default has occurred and is continuing, (i) as permitted under Section 10(b)(3)(ii) of the Participation Agreement, as amended from time to time, provided that in the case of any merger or consolidation to which the Company is a party, the corporation formed by such consolidation or into which the Company shall be merged shall assume the Company's obligations under this Agreement in a writing satisfactory in form and substance to the Bank, (ii) transactions of such nature to which the Owner Participant consents pursuant to Section 10(b)(3)(ii) of the Participation Agreement, as amended from time to time, and which do not materially and adversely affect the Bank's rights and interests hereunder or the ability of the Company to perform its obligations hereunder, provided that in the case of any merger or consolidation to which the Company is a party, the corporation formed by such consolidation or into which the Company shall be merged shall assume the Company's obligations under this Agreement in a writing satisfactory in form and substance to the Bank, (iii) any Subsidiary of the Company may merge or consolidate with or into the Company, (iv) asset transfers between the Company and its consolidated Subsidiaries, (v) pursuant to the Existing Mortgages and (vi) other sale and leaseback transactions pertaining to assets of the Company.

(c) Related Documents. Enter into or consent to any amendment or assignment of any other Transaction Document or Financing Document to which it is a party, unless it shall have given the Bank ten prior Business Days' notice thereof (unless it is impossible for the Company to give ten days' prior notice, in which event the Company shall give notice as soon as possible, but in no event later than the date such amendment or assignment becomes effective) and, if such amendment or assignment could materially and adversely affect the Bank's rights and interests hereunder or the ability of the Company to perform its obligations hereunder, the Bank shall have given its written consent to such amendment or assignment.

SECTION 9. Events of Default. (A) The following events shall be Events of Default hereunder unless waived by the Bank pursuant to Section 11 hereof:

(a) the Company shall fail to pay, and there shall otherwise fail to have been paid on behalf of the Company, when due any amount payable under Section 3(a) or 3(b) hereof on or before the third Business Day after the Bank has given notice of such failure to the Company and the Equity Participant;

(b) the Company shall fail to observe or perform any of its obligations set forth in Section 8 or 10 hereof;

(c) the Company shall fail to observe or perform any other covenant, restriction or agreement contained in this Agreement for 30 days after the Company becomes aware of such failure;

(d) any representation, warranty, certification or statement made by the Company in this Agreement or in any certificate, financial statement or other document delivered pursuant to this Agreement shall prove to have been incorrect in any material respect when made;

(e) any obligation or obligations (other than its obligation hereunder) of the Company or of any Subsidiary thereof for the payment of Borrowed Money, which payment or payments shall exceed $10,000,000 in the aggregate is not paid when due or becomes or is declared to be due and payable prior to the express maturity thereof;

(f) the entry by a court having jurisdiction in the premises of (A) a decree or order for relief in respect of the Company in any involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or (B) a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable Federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of any of its property, or ordering the winding up or liquidation of its affairs, and the continuation of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive days; and

(g) the commencement by the Company of a voluntary case or proceeding under any applicable Federal or

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

(B) If an Event of Default occurs and is continuing hereunder, the Bank may in its sole discretion (A) notify the Equity Participant of such occurrence by delivering to the Equity Participant a certificate in the form of Exhibit 5 to the Letter of Credit, thereby terminating such Letter of Credit effective not earlier than the close of business on the tenth Business Day after the giving of such certificate to the Equity Participant in the case of an Event of Default under Section 9(f) or (g) or the 30th day after the giving of such certificate to the Equity Participant in the case of any other Event of Default hereunder and/or (B) exercise the rights granted to it in paragraph (f) of Section 10.

SECTION 10. Collateral.

(a) For value received and to induce the Bank to issue the Letter of Credit for the account of the Company in accordance with the terms of this Agreement, the Company hereby grants to the Bank, as security for all present and future obligations and liabilities of the Company to the Bank, under or with respect to the Letter of Credit and/or this Agreement, whether for principal, interest, fees, expenses or otherwise (collectively referred to as the "Senior Obligations"), a security interest in the following described property (collectively referred to as the "Collateral"):

(i) Certificate of Deposit No. 429208, dated December 17, 1986, issued by Bankers

Trust Company in the amount of $30,000,000, with interest thereon at the rate of 6.30% per annum and maturing on January 16, 1987 (the "CD"), and

(ii) all other indebtedness owed to the Company and the certificates and instruments evidencing such indebtedness, which are delivered to the Bank from time to time pursuant to this Section 10.

together with

(iii) their products, proceeds and accessions, including without limitation all interest thereon and cash, instruments or other property received, receivable or otherwise distributed in respect of or in exchange for any or all of the property referred to in clauses (i) and (ii) above, or any such products, proceeds or accessions (collectively the "Proceeds").

(b) (i) The Company shall deliver or cause to be delivered to the Bank on or before the Date of Issuance the CD. Thereafter, on each day the Company shall maintain with the Bank Collateral consisting of Permitted Investments having a market value as most recently determined by the Bank pursuant to clause (d) below equal to or greater than the Maximum Drawing Amount in effect during the period from such day until the 35th day thereafter (the "Maintenance Level"), provided that the Company shall not be obligated to deliver additional Collateral unless it has received notice pursuant to clause (b)(iii) below. "Permitted Investments" means any investment permitted to be made under the Investment Agreement, dated as of December 1, 1986, between the Company and the Bank.

(ii) In the event that the market value (as determined pursuant to clause (d) below) of the Collateral exceeds the Maintenance Level, the Company may from time to time by notice in writing to the Bank request the release from this Agreement of the excess amount of the Collateral (but not an amount less than $100,000), and the Bank shall, provided that there is not (and would not by reason of such release be) any Default or Event of Default, release such excess security from the provisions of this Agreement and

return such excess security to the Company. The Bank will release from this Agreement any Collateral held by it after the Letter of Credit has been surrendered or has expired and all amounts due and owing to the Bank hereunder have been paid in full.

(iii) In the event that the market value (as determined pursuant to clause (d) below) of the Collateral is less than the Maintenance Level, upon the Bank's giving of notice to such effect to the Company, the Company shall deliver additional instruments comprising Permitted Investments to the Bank, and such additional instruments shall immediately and without any need for any further action on the part of the Company or the Bank become subject to the security interest, lien and assignment set forth in this Section 10, and be deemed Collateral for all purposes hereunder and be subject to the provisions of this Agreement.

(c) The Bank is hereby authorized and directed to invest and reinvest Proceeds on the written instructions of the Company or, if the Company shall fail to give such instructions upon delivery of any such Proceeds, in the sole discretion of the Bank, provided that in no event may the Company give instructions to the Bank to, or may the Bank in its discretion, invest or reinvest Collateral in other than Permitted Investments. In addition, the Bank shall have the right at any time to exchange certificates or instruments representing or evidencing Collateral for certificates or instruments of smaller or larger denominations.

(d) Not later than the second day of each month (or if such day is not a Business Day, then on the next succeeding Business Day), and on the date of any adjustment in Maximum Drawing Amounts pursuant to Section 4 hereof, and at any time the Bank otherwise determines, the Bank shall determine the market value of the Collateral then held by the Bank as of the last day of the preceding month, or the date of such adjustment or such other time, as the case may be, and shall notify the Company in writing promptly thereafter. The determination by the Bank of the market value of the Collateral shall be binding and conclusive on all parties.

(e) The Bank may from time to time:

(i) Transfer or register any of the Collateral into the name of the Bank or its nominee.

(ii) Notify parties obligated on any of the Collateral to make payment to the Bank of any amounts due or to become due thereunder.

(iii) Enforce collection of any of the Collateral by suit or otherwise; surrender, release or exchange all or any part thereof, or compromise or extend or renew for any period (whether or not longer than the original period) any obligation of any nature of any party with respect thereto; and exercise all other rights of the Company in any of the Collateral, except as hereinafter provided with respect to income from or interest on the Collateral and except that, prior to a Default or an Event of Default, the Company may exercise its voting and consensual rights with respect to any Collateral constituting voting securities.

(iv) Take possession or control of any proceeds of the Collateral.

The Bank will promptly notify the Company of any action taken by it under clause (i) or (ii) above.

Until the occurrence of a Default or an Event of Default, the Company shall have the right to receive all income from or interest on Collateral, and if the Bank receives any such income or interest prior to the occurrence of a Default or an Event of Default, the Bank shall pay the same to the Company, except that in the case of securities or other non-cash property distributed by way of a dividend or otherwise with respect to the Collateral and subject to Section 10(b)(ii) above, such securities or other property shall be promptly delivered to the Bank to be held as Collateral hereunder. Upon the occurrence of a Default or an Event of Default, the Company will not demand or receive any income from or interest on the Collateral, and if the Company receives any such income or interest, the same shall be held by the Company in trust for the Bank in the same medium in which received, shall not be co-mingled with any assets of the Company and shall be delivered to the Bank in the form received, properly endorsed to permit collection, not later than the next business day following the day of its receipt. The Bank may apply the net cash received from such income or interest to payment of any of the Obligations, provided that the Bank shall account for and pay over to the Company any such income or interest remaining after payment in full of the Obligations then outstanding.

(f) If an Event of Default shall have occurre

(i) the Bank's rights and remedies with respect to the Collateral shall be those of a secured party under the Uniform Commercial Code as in effect in the State of New York and under any other applicable law, as the same may from time to time be in effect, in addition to those rights granted herein in any other agreement now or hereafter in effect between the Company and the Bank.

(ii) Without in any way requiring notice to be given in the following time and manner, the Company agrees that any notice by the Bank of sale, disposition or other intended action hereunder in connection therewith, whether required by the Uniform Commercial Code as in effect in the State of New York or otherwise, shall constitute reasonable notice to the Company if such notice is mailed by regular or certified mail, postage prepaid, at least three days prior to such action, to the Company's address specified in Section 12 hereof.

(iii) All dividends, payments of interest and other distributions of every character made upon or in respect of the Collateral or any part thereof shall be deemed to be Collateral and shall be paid directly to and shall be held by the Bank as additional Collateral pledged under and subject to this Agreement.

(g) The Company agrees to take such actions and to execute such stock or bond powers and such other or different writings as the Bank may request (and irrevocably authorizes the Bank to execute such writings as the Company's agent and attorney-in-fact) further to perfect, confirm and assure the Bank's security interest in the Collateral and to assist the Bank's realization thereon.

(h) To secure the obligations and liabilities of the Company to the Equity Participant under the Facility Lease in an amount not to exceed at any time the Maximum Drawing Amount in effect at such time (the "Junior Obligations"), the Company hereby grants the Equity Participant a security interest in all Collateral from time to time held by the Bank pursuant to this Section 10.

(i) To induce the Bank to issue the Letter of Credit and permit the Company to grant the security interest to the Equity Participant pursuant to Section 10(h), the Equity Participant agrees that the Junior Obligations shall be subordinate and junior in right of payment, to the extent and manner provided below, to the Senior Obligations:

(i) the Equity Participant will not take any actions to enforce any remedy against the Company with respect to the Collateral until a court of final jurisdiction shall have first determined that the Equity Participant shall have made a proper demand for payment under the Letter of Credit and the Bank shall have wrongfully refused to honor such demand.

(ii) the Bank shall be entitled to receive payment in full of all amounts due on or in respect of the Senior Obligations before the Equity Participant is entitled to receive any amount of Collateral or proceeds thereof on account of any of the Junior Obligations.

In the event that, notwithstanding the foregoing, any distribution of or from the Collateral or the proceeds thereof by the Company or any payment by or on behalf of the Company of any kind or character of or from the Collateral or the proceeds thereof, whether in cash, securities or other property, to which the Equity Participant would be entitled but for the provisions of this Subordination Agreement, shall be received by the Equity Participant before all Senior Obligations are paid in full, such distribution or payment shall be held in trust for the benefit of, and shall, immediately upon receipt thereof, be paid over or delivered to the Bank for application to the payment of Senior Obligations. The Equity Participant agrees that the Bank shall not hold the Collateral as bailee or trustee or otherwise of the Equity Participant and that the Bank shall not owe any fiduciary or other obligation to the Equity Participant with respect to the Collateral. The Equity Participant hereby consents to, and agrees that the Bank shall have no liability to it in connection with, any action that the Bank in its sole discretion may take with respect to the Collateral, including without limitation, any sale, transfer or other disposition of any of the Collateral or any release of the Collateral from the security interest created by this Section 10 in favor of the Bank and the Equity Participant. The Equity Participant agrees that the Bank shall not be responsible in any manner to the Equity Participant for any representation

or warranty made by the Company herein or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Section 10 or the security interests granted to the Bank or the Equity Participant herein. The Equity Participant exonerates and releases the Bank from any obligation or liability for any loss of, depreciation of, or failure to realize upon the Collateral; or any failure to collect or receive payment on the Senior Obligations; or any claim for any reason with respect to the inadequacy of the proceeds realized upon the sale of any Collateral, or of the value of any Collateral substituted for existing Collateral. The Equity Participant hereby irrevocably consents to the jurisdiction of any state or federal court in New York City for the purpose of any suit, action, proceeding or judgment relating to or arising out of Sections 10(h) and 10(i) hereof.

SECTION 11. Amendments and Waivers. No amendment or waiver of any provision of this Agreement nor consent to any departure by the Company or the Bank therefrom shall in any event be effective unless the same shall be in writing and signed by the Company and the Bank. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 12. Notices. All notices, requests and other communications to any party hereunder shall be in writing (including telexes, telecopies or similar writing) and shall be given to such party, addressed to it, at its address set forth below or such other address as such party may hereafter specify for the purpose by notice to the other parties. Each such notice, request or communication shall be effective (i) if given by mail 10 days after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid, (ii) if given by telex or telecopier, when transmitted to the number set forth below or (iii) if given by any other means, when delivered at the address specified below:

Party	Address
El Paso Electric Company	303 North Oregon Street El Paso, Texas 79901 Attn: Corporate Secretary P.O. Box 79960 El Paso, Texas 79960 Attn: Corporate Secretary Telex: Telecopier:

The Bank of New York

Public Utilities Division
48 Wall Street
New York, New York 10015
Attn: Guy Mule

Telex: 12304
Telecopier: (212) 530-3119
(212) 530-3110

Chrysler Financial Corporation

c/o Chrysler Capital Corp.
Greenwich Office Park I
Greenwich, Connecticut 06836
Attn: Vice President,
Leveraged Leasing

Telex: (510) 600-6491
Telecopier: (203) 629-1466

; or to such other address as either party may specify in a notice to the other parties.

SECTION 13. No Waiver; Remedies. No failure on the part of the Bank to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

SECTION 14. Indemnification. The Company hereby indemnifies and holds harmless the Bank from and against any and all claims, damages, losses, liabilities, costs or expenses whatsoever which the Bank may incur (or which may be claimed against the Bank by any person or entity whatsoever) (i) by reason of the provisions of Section 10; (ii) by reason of or in connection with the execution and delivery or transfer of, or payment or failure to pay under, the Letter of Credit or the effecting or failing to effect any increase or decrease in Maximum Drawing Amounts under Section 4 hereof or Paragraph 3 of the Letter of Credit, except to the extent of (x) the Bank's willful misconduct or gross negligence in determining whether documents presented under the Letter of Credit comply with the terms thereof or (y) the Bank's willful failure to pay under the Letter of Credit after the presentation to it by the Equity Participant of a draft and certificate strictly complying with the terms and condition of the Letter of Credit; (iii) by reason of any inaccuracy in any material respect, or untrue statement or alleged untrue statement of any material fact contained or incorporated by reference in any offering

document or prospectus distributed by or on behalf of the Company in connection with obtaining purchasers of the Company's undivided interest in Unit 2 of the PVNGS or in connection with the financing thereof pursuant to the Financing Documents, or in any supplement or amendment to either thereof, or the omission or alleged omission to state therein a material fact necessary to make such statements, in the light of the circumstances under which they are or were made, not misleading; or (iv) by reason of or in connection with the execution of, delivery and performance of the Transaction Documents and Financing Documents.

SECTION 15. Continuing Obligation. The obligations of the Company under this Agreement shall continue until the date upon which (i) the Letter of Credit has been surrendered or has expired according to its terms and (ii) all amounts due and owing to the Bank hereunder shall have been paid in full. This Agreement shall (a) be binding upon the parties hereto and their respective successors and assigns and (b) inure to the benefit of and be enforceable by the parties hereto and their respective successors, transferees and assigns; provided, however, that (i) the Company may not assign all or any part of this Agreement without the prior written consent of the Bank, (ii) the obligations of the Company pursuant to Section 14 hereof shall survive the payment in full of amounts payable und Section 3 hereof and termination of this Agreement. The security interest granted to the Equity Participant pursuant to Section 10(h) may only be assigned by the Equity Participant to a successor Owner Participant under the Trust Agreement to which the Letter of Credit has been transferred pursuant to Paragraph 11 of the Letter of Credit, and then may only be so assigned if such transferee delivers to the Bank a duly executed letter of accession in form and substance satisfactory to the Bank pursuant to which such transferee agrees to be bound by the terms of Section 10(i) hereof.

SECTION 16. No Liability of the Bank. The Company assumes all risks of the acts or omissions of the Equity Participant and any transferee of any Letter of Credit with respect to its use of the Letters of Credit. Neither the Bank nor any of its officers or directors shall be liable or responsible for: (a) the use which may be made of any Letter of Credit or for any acts or omissions of the Equity Participant or any other beneficiary or transferee in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsements or signatures thereon, even if such documents, endorsements, or signatures should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by the B

against presentation of documents which do not comply with the terms of the Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit; (d) acting upon any telex or telecopied notice given pursuant hereto or to the Letter of Credit; (e) any action or failure to act by the Bank to increase or decrease Maximum Drawing Amounts pursuant to Section 4 hereof and Paragraph 3 of the Letter of Credit; or (f) any other circumstances whatsoever in making or failing to make payment under the Letter of Credit, except only that the Company shall have a claim against the Bank, and the Bank shall be liable to the Company to the extent, but only to the extent, of any direct, as opposed to consequential, damages suffered by the Company as a direct result of (i) the Bank's willful misconduct or gross negligence in determining whether documents presented under the Letter of Credit comply with the terms thereof or (ii) the Bank's willful failure to pay under the Letter of Credit after the presentation to it by the Equity Participant of a draft and certificate strictly complying with the terms and condition of the Letter of Credit. In furtherance and not in limitation of the foregoing, the Bank may accept documents that appear on their face to be in order, without responsibility for further investigation.

SECTION 17. Costs, Expenses and Taxes. The Company agrees to pay on demand all reasonable costs and expenses of the Bank in connection with the preparation, execution, delivery, filing and administration of this Agreement, the other Transaction Documents, the Financing Documents and any other documents which may be delivered in connection with or related to this Agreement or any of the other Transaction Documents or the Financing Documents and realization upon the Collateral, including, without limitation, the fees and out-of-pocket expenses of counsel for the Bank with respect thereto and with respect to advising the Bank as to its rights and responsibilities under this Agreement or any waiver or amendment of, or the enforcement of, this Agreement and such other documents which may be delivered in connection with this Agreement or any of the other Transaction Documents or the Financing Documents. In addition, the Company shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing and recording of this Agreement, the other Transaction Documents, the Financing Documents and such other documents and agrees to save the Bank harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes and fees.

SECTION 18. Severability. Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

SECTION 19. Governing Law; Submission to Jurisdiction. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York. The Company hereby irrevocably submits to the non-exclusive jurisdiction of any state or Federal court in New York City for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement or the Letter of Credit. The Company hereby appoints Mudge Rose Guthrie Alexander & Ferdon, with offices on the date hereof at 180 Maiden Lane, New York, New York, as its authorized agent on whom process may be served in any action which may be instituted against it by the Bank in any state or Federal court in New York City, arising out of or relating to this Agreement or the Letter of Credit. Service of process upon such authorized agent and written notice of such service to the Company shall be deemed in every respect effective service of process upon the Company, and the Company hereby irrevocably consents to the jurisdiction of any such court in any such action and to the laying of venue in New York City. The Company hereby irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in the aforesaid courts and hereby irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding the foregoing, nothing herein shall in any way affect the right of the Bank to bring any action arising out of or relating to this Agreement or the Letter of Credit in any competent court elsewhere having jurisdiction over the Company or its property.

SECTION 20. Right of Setoff. The Bank hereby irrevocably waives its right to exercise as collateral security for the Senior Obligations any bankers lien or right of setoff it may have with respect to any balances, credits, accounts, or moneys of the Company at any time with the Bank when and if there shall be a drawing under the Letter of Credit during the pendency of any proceeding by or against the Company as a debtor under any law relating to bankruptcy, insolvency, or reorganization or release of debtors unless and until it is determined by a court of competent jurisdiction that the failure to grant such waiver would not lead to the Bank being released, prevented, or

restrained from or delayed in fulfilling its obligations under the Letter of Credit and unless the exercise of such banker's lien or right of setoff would not constitute any payment (including pursuant to the Letter of Credit) to the Equity Participant in respect of amounts payable under the Facility Lease a voidable preference payment under federal bankruptcy law then in effect.

SECTION 21. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purposes.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

EL PASO ELECTRIC COMPANY

By _____
Name:
Title:

THE BANK OF NEW YORK

By _____
Name:
Title:

CHRYSLER FINANCIAL CORPORATION
(but solely for purposes of Sections 10(h) and 10(i))

By _____
Name:
Title: ATTORNEY-IN-FACT

Attachment A

Irrevocable Transferable
Letter of Credit No. 14677

CHRYSLER FINANCIAL CORPORATION
Greenwich Office Park I
Greenwich, Connecticut 06836

Attn: Leasing and Investment Services

December 18, 1986

Dear Sirs:

1. We hereby establish, at the request and for the account of El Paso Electric Company, a Texas corporation (the "Company"), this Irrevocable Transferable Letter of Credit, whereby we irrevocably authorize you to draw on THE BANK OF NEW YORK, New York, New York (sometimes herein referred to as the "Bank") in an amount not exceeding $45,000,000 (as such amount may be reduced from time to time by drawings hereunder or pursuant to the terms hereof, the "Letter of Credit Amount"), in connection with the leasing of an undivided interest in Unit 2 of the Palo Verde Nuclear Generating Station to the Company pursuant to a Facility Lease, dated as of December 1, 1986 (the "Facility Lease"), between the Company and The First National Bank of Boston, as Owner Trustee under a Trust Agreement, dated as of December 1, 1986 with you, in accordance with the terms and conditions hereinafter set forth.

2. Any drawing under this Letter of Credit shall not exceed the lesser of (a) the Letter of Credit Amount and (b) the amount shown opposite the period including the date of such drawing (the "Date of Drawing") in the Table of Maximum Drawing Amounts attached hereto as Schedule I which forms an integral part of this Letter of Credit, as such amounts are modified from time to time in accordance with the next paragraph. Such amounts, as modified in accordance with the next paragraph, are hereinafter referred to collectively as the "Maximum Drawing Amounts" and individually as the "Maximum Drawing Amount".

3. The Maximum Drawing Amounts shall be modified from time to time as follows:

(a) upon payment by the Bank of each drawing under this Letter of Credit, the Maximum Drawing Amounts applicable to the period of and each period subsequent to such payment shall be automatically reduced by an amount equal to the amount of the drawing so paid and shall not be reinstated except in accordance with clause (b) below;

(b) after any payment by the Bank of a drawing under this Letter of Credit, then upon the Bank's receipt of a certificate in the form of Exhibit 1 to this Letter of Credit, which exhibit forms an integral part of this Letter of Credit, purportedly signed by authorized officers of the Company and you, the Maximum Drawing Amounts applicable to the period of and each period subsequent to such payment shall be reinstated to the Maximum Drawing Amounts which would have been in effect immediately after such payment had no reduction in the Maximum Drawing Amounts been effected pursuant to clause (a) above;

(c) if adjustments are made to Casualty Values under the Facility Lease, then upon the Bank's receipt of a certificate in the form of Exhibit 1 to this Letter of Credit, which exhibit forms an integral part of this Letter of Credit, purportedly signed by authorized officers of the Company and you, corresponding adjustments shall be made to the Maximum Drawing Amounts shown in Schedule I (as then in effect), provided that if any such adjustment would cause the Maximum Drawing Amount for any period to exceed the Letter of Credit Amount, the Letter of Credit Amount shall apply for such period.

Upon surrender of this Letter of Credit together with such certificate, we will promptly issue an irrevocable transferable letter of credit containing a revised Schedule I reflecting the adjustments contained in such certificate and in all other respects identical to this Letter of Credit.

4. Subject to the foregoing and the further provisions of this Letter of Credit, a demand for payment may be made by you by presentation to us at our address, 110 Washington Street, New York, New York 10006 (Attention:

International Division, Letter of Credit Department, Elizabeth Mallon) or to such other address as we may specify to you in writing at least 15 days prior to the effectiveness of such change in address, of (a) your draft in the form of Exhibit 2 hereto, which exhibit forms an integral part of this Letter of Credit, and (b) your drawing certificate in the form of Exhibit 3 hereto, which exhibit forms an integral part of this Letter of Credit, each appropriately completed and purportedly signed by one of your authorized officers. If your draft and your drawing certificate, so completed and purportedly signed by one of your authorized officers, are presented to us at our aforesaid office at or prior to 10:00 A.M., New York time, on a business day, payment shall be made to you of the amount specified before our close of business on such business day. If this Letter of Credit and your drawing certificate, so completed and purportedly signed by one of your authorized officers, are presented to us at our aforesaid office after 10:00 A.M., New York time, on a business day, payment shall be made to you of the amount specified before our close of business on the next succeeding business day. Payment under this Letter of Credit to you shall be made by wire transfer in same day funds to an account maintained by you with a commercial bank in the City of New York and specified in your drawing certificate presented to us.

5. As used herein "business day" shall mean any day other than a Saturday, Sunday or a day on which banking institutions in the State of New York are authorized or required by law to close.

6. This Letter of Credit shall expire at the earlier of (a) our close of business at the aforesaid address on January 3, 1992, provided, however, that said expiration date shall be extended without increase in the Letter of Credit Amount then in effect or any other amendment, except as described in the following sentence, for one year from said expiration date, or from any future expiration date, if, on or before the date thirty days prior to the date four years prior to such expiration date, we shall notify you by registered mail of our election (which is in our sole discretion) to renew this Letter of Credit for any such additional period and (b) the date on which we pay a drawing under this Letter of Credit in the full amount of the Maximum Drawing Amount then in effect. In the event that we elect to renew this Letter of Credit for any additional period pursuant to clause (a) above, such renewal shall become effective only if you and the Company shall deliver to us, prior to December 31 in the year we so elect to renew this Letter of Credit for the relevant period, notice in the form of Exhibit 4 hereto, which exhibit forms

an integral part of this Letter of Credit, setting forth supplemental Table of Maximum Drawing Amounts for such period (none of which Maximum Drawing Amounts shall exceed the Letter of Credit Amount). Upon surrender of this Letter of Credit together with said notice we will promptly issue an irrevocable transferable letter of credit containing a revised Schedule I reflecting the terms contained in said notice and in all other respects identical to this Letter of Credit.

7. Notwithstanding any other provision of this Letter of Credit, this Letter of Credit shall expire at our close of business at our aforesaid address on the date ten business days or 30 days; as the case may be, after we have given you a certificate in the form of Exhibit 5 hereto, which exhibit forms an integral part of this Letter of Credit, appropriately completed; provided that on or before such expiration date you will have the right to draw once an amount not in excess of the Maximum Drawing Amount then in effect in accordance with the procedures described herein. The certificate referred to in the preceding sentence shall be given by telex or facsimile transmission or by overnight delivery service addressed to you at Chrysler Financial Corporation, c/o Chrysler Capital Corp., Greenwich Office Park I, Greenwich, Connecticut 06836, Attention: Vice President, Leveraged Leasing, with Telex: (510) 600-649 Telecopier: (203) 629-1466, with a copy to: Manager, Contract Administration (Leveraged Leasing) (or to such other address or telex or facsimile transmission number designated by you by written notice delivered to us at least 15 days prior to the notice of early termination) and such certificate shall be effective upon the earlier of (i) receipt of the appropriate answerback or confirmation of the facsimile transaction and (ii) delivery to you of such certificate by overnight delivery service or hand delivery. This Letter of Credit shall be promptly surrendered to us by you upon such expiration.

8. This Letter of Credit sets forth in full the terms of our undertaking, and this undertaking shall not in any way be modified, amended or amplified by reference to any document, instrument or agreement referred to herein (except the Uniform Customs (hereinafter defined) and Schedule I and Exhibits 1, 2, 3, 4, 5 and 6 hereto and the notices referred to herein) or in which this Letter of Credit is referred to or to which this Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.

9. Except so far as otherwise expressly stated, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1983 Revision) International Chamber of Commerce, Publication No. 400, and, as to matters not covered therein, shall be governed by the laws of the State of New York, including without limitation the Uniform Commercial Code as in effect in such State.

10. Communications to us with respect to this Letter of Credit shall be in writing and shall be addressed to us at our address set forth above, Attention: International Division, Letter of Credit Department, Elizabeth Mallon (with a copy to The Bank of New York, Public Utilities Division, 48 Wall Street, New York, New York 10015 (Attention: Guy Mule)) and shall specifically refer to the number of this Letter of Credit.

11. Notwithstanding Article 54 of the Uniform Customs referred to above, this Letter of Credit may be transferred and assigned in its entirety more than once, but in each case only to the successor Owner Participant under the Trust Agreement dated as of December 1, 1986 between yourself and The First National Bank of Boston and in each case effective only upon the transferor's and the transferee's compliance with the immediately following sentence. Upon receipt by us at the address for presentation of documents set forth above of an original of the instrument effecting such transfer and assignment, signed by the transferor and by the transferee and a notice, in the form of Exhibit 6 hereto, which exhibit forms an integral part of this Letter of Credit (which shall be conclusive evidence of such assignee's authority without any inquiry by us into the terms of the Trust Agreement) then, in such case, we will, upon surrender of this Letter of Credit, issue an irrevocable transferable letter of credit in the name of the transferee and providing for notices to be sent to the transferee at the address set forth therein and in all other respects identical to this Letter of Credit and the transferee, instead of the transferor, shall, without necessity of further act, be entitled to all the benefits of, and rights under, this Letter of Credit in the transferor's place.

Very truly yours,

THE BANK OF NEW YORK

By: _____
Name:
Title:

Schedule I

This Schedule Forms an Integral Part of Letter of Credit No. 14677

Table of Maximum Drawing Amounts

Applicable Period	Maximum Drawing Amount
December 18, 1986 through January 1, 1988	$28,820,113
January 2, 1988 through July 1, 1988	23,356,570
July 2, 1988 through January 1, 1989	24,524,190
January 2, 1989 through July 1, 1989	25,592,766
July 2, 1989 through January 1, 1990	26,587,428
January 2, 1990 through July 1, 1990	27,511,137
July 2, 1990 through January 1, 1991	28,373,526
January 2, 1991 through July 1, 1991	29,161,795
July 2, 1991 through January 1, 1992	29,882,187
January 2, 1992 through July 1, 1992	30,521,687
July 2, 1992 through January 1, 1993	31,091,138
January 2, 1993 through July 1, 1993	31,587,077
July 2, 1993 through January 1, 1994	32,016,197
January 2, 1994 through July 1, 1994	32,367,823
July 2, 1994 through January 1, 1995	32,646,710
January 2, 1995 through July 1, 1995	32,842,120
July 2, 1995 through January 1, 1996	32,974,233
January 2, 1996 through July 1, 1996	33,095,060
July 2, 1996 through January 1, 1997	33,220,365
January 2, 1997 through July 1, 1997	33,350,718
July 2, 1997 through January 1, 1998	33,486,561
January 2, 1998 through July 1, 1998	33,628,203
July 2, 1998 through January 1, 1999	33,793,345
January 2, 1999 through July 1, 1999	34,014,390
July 2, 1999 through January 1, 2000	33,918,669
January 2, 2000 through July 1, 2000	33,503,935
July 2, 2000 through January 1, 2001	33,217,403
January 2, 2001 through July 1, 2001	32,775,855
July 2, 2001 through January 1, 2002	32,473,879
January 2, 2002 through July 1, 2002	32,006,086
July 2, 2002 through January 1, 2003	31,687,970
January 2, 2003 through July 1, 2003	31,193,041
July 2, 2003 through January 1, 2004	30,857,659
January 2, 2004 through July 1, 2004	30,333,158
July 2, 2004 through January 1, 2005	29,981,034
January 2, 2005 through July 1, 2005	29,427,307

Table of Maximum Drawing Amounts

Applicable Period	Maximum Drawing Amount
July 2, 2005 through January 1, 2006	$29,057,548
January 2, 2006 through July 1, 2006	28,815,838
July 2, 2006 through January 1, 2007	29,375,281
January 2, 2007 through July 1, 2007	30,051,866
July 2, 2007 through January 1, 2008	30,848,368
January 2, 2008 through July 1, 2008	31,785,427
July 2, 2008 through January 1, 2009	32,865,828
January 2, 2009 through July 1, 2009	34,113,199
July 2, 2009 through January 1, 2010	35,531,428
January 2, 2010 through July 1, 2010	37,147,422
July 2, 2010 through January 1, 2011	38,965,503
January 2, 2011 through July 1, 2011	37,331,236
July 2, 2011 through January 1, 2012	34,450,373
January 2, 2012 through July 1, 2012	31,402,919
July 2, 2012 through January 1, 2013	28,167,979
January 2, 2013 through July 1, 2013	24,745,805
July 2, 2013 through October 1, 2013	21,132,432

Exhibit 1

This Exhibit Forms an integral part of Letter of Credit No. 14677

[Date]

The Bank of New York
110 Washington Street
New York, New York 10005

Attention: International Division,
Letter of Credit Department

Dear Sirs:

Reference is made to that certain Irrevocable Letter of Credit No. 14677 dated December 18, 1986, which has been established by you in favor of Chrysler Financial Corporation (the "Equity Participant").

The undersigned, a duly authorized officer of the Equity Participant and a duly authorized officer of El Paso Electric Company (the "Company"), each hereby certifies that the Maximum Drawing Amounts shown on Schedule I to the Letter of Credit should be [in case of reinstatement pursuant to paragraph 3(b) of Letter of Credit--reinstated] [in the case of modifications pursuant to paragraph 3(c) of the Letter of Credit--modified], in accordance with the terms of Paragraph 3 of the Letter of Credit, to the Maximum Drawing Amounts shown in Appendix A hereto, none of which are greater than the Letter of Credit Amount.

[Include only for modification resulting in change in Maximum Drawing Accounts--The Letter of Credit is returned herewith and we request that you issue an irrevocable transferable letter of credit with the revised Schedule I attached and in all other respects identical to the Letter of Credit.]

CHRYSLER FINANCIAL CORPORATION

By _____
[Name and Title of Authorized Officer of Equity Participant]

EL PASO ELECTRIC COMPANY

By _____
[Name and Title of Authorized Officer of the Company]

Appendix A to Exhibit 1

This Appendix to Exhibit 1
Forms an Integral Part of
Letter of Credit No. 14677

Supplemental Table of Maximum Drawing Amounts

Applicable Period	Maximum Drawing Amount

Exhibit 2

This Exhibit Forms an
Integral Part of Letter
of Credit No. 14677

[Date]

On Sight

Pay to the order of Chrysler Financial Corporation
U.S. $_____ (_____ U.S.
Dollars).

Drawn under The Bank of New York Irrevocable Transferable
Letter of Credit No. 14677, dated December 18, 1986.

The Bank of New York
110 Washington Street
New York, New York 10005

For value received.

CHRYSLER FINANCIAL CORPORATION

By _____
[Authorized Officer]
Name:
Title:

Exhibit 3

This Exhibit Forms an Integral Part of Letter of Credit No. 14677

CERTIFICATE

CHRYSLER FINANCIAL CORPORATION (the "Company"), through one of its duly authorized officers, hereby certifies to The Bank of New York (the "Bank"), with reference to Irrevocable Transferable Letter of Credit No. 14677 (the "Letter of Credit") issued by the Bank in favor of the Company that:

(1) (A) An Event of Default under that certain Facility Lease dated as of December 1, 1986 has occurred and is continuing or (B) any other amount payable under said Facility Lease or any of the Transaction Documents referred to in said Facility Lease is owed by the Lessee thereunder and has not been paid (including without limitation in connection with any Early Payment Obligation referred to in said Facility Lease, or any amount due under said Lessee's purchase option under Section 10(b)(3)(xvii) of the Participation Agreement referred to in said Facility Lease or Section 13(c) of said Facility Lease).

(2) The amount of the drawing under the Letter of Credit being made hereby is $_____ (the "Drawing Amount"), and such amount does not exceed the amount available to be drawn under the Letter of Credit on the date hereof, as determined in accordance with the terms of the Letter of Credit.

Please make payment of the Drawing Amount to [name and address of commercial bank in New York City, [title of account, if any], account no. _____.

IN WITNESS WHEREOF, the Company has executed and delivered this Certificate as of the __ day of _____, 19__.

CHRYSLER FINANCIAL CORPORATION

By_____
[Name and Title of Officer of Company]

Exhibit 4

This Exhibit Forms an Integral Part of Letter of Credit No. 14677

[Date]

The Bank of New York
110 Washington Street
New York, New York 10005

Attention: International Division,
Letter of Credit Department

Dear Sirs:

Reference is made to that certain irrevocable transferable Letter of Credit bearing Letter of Credit No. 14677, dated December 18, 1986 (the "Letter of Credit"), which has been established by you in favor of Chrysler Financial Corporation (the "Equity Participant").

The undersigned, a duly authorized officer of the Equity Participant and a duly authorized officer of El Paso Electric Company (the "Company"), hereby certify that the Equity Participant and the Company have agreed to the extension of the expiration date of the Letter of Credit from January __, 19__ to January __, 19__, and in connection therewith have agreed that the amounts shown on Schedule I to the Letter of Credit should be supplemented, in accordance with the terms of Paragraph 6 of the Letter of Credit, to include the Applicable Periods and Maximum Drawing Amounts shown in Appendix A hereto (none of which Maximum Drawing Amounts are greater than the Letter of Credit Amount).

The Letter of Credit is returned herewith and we request that you issue an irrevocable transferable Letter of Credit with the revised Schedule I attached and in all other respects identical to the Letter of Credit.

CHRYSLER FINANCIAL CORPORATION

By _____
[Name and Title of Authorized Representative of Equity Participant]

EL PASO ELECTRIC COMPANY

By _____
[Name and Title of Authorized Representative of Company]

Exhibit 5

This Exhibit Forms an Integral Part of Letter of Credit No. 14677

DEFAULT CERTIFICATE

The Bank of New York (the "Bank") hereby certifies to Chrysler Financial Corporation, with reference to the Bank's Irrevocable Transferable Letter of Credit No. 14677 (the "Letter of Credit") that an Event of Default under [Section 9(f) or 9(g)] [Section 9 (other than Section 9(f) or 9(g)] of, and as defined in, the Letter of Credit and Security Agreement, dated as of December 18, 1986, between the Bank and El Paso Electric Company, has occurred and is continuing, and hereby gives notice that the Letter of Credit will expire on _____.*

IN WITNESS WHEREOF, the Bank has caused this certificate to be executed on its behalf as of the ____ day of _____, 198 .

THE BANK OF NEW YORK

By_____
(Name and Title)

---

* Date ten business days after giving of certificate in the case of an Event of Default under Section 9(f) or (g) of the Letter of Credit and Security Agreement and 30 days after the giving of certificate in the case of an Event of Default under Section 9 (other than Section 9(f) or (g)).

Exhibit 6

This Exhibit Forms an
Integral Part of Letter
of Credit No. 14677

The Bank of New York
110 Washington Street
New York, New York 10005
Attention: Letter of Credit Department

Dear Sirs:

Reference is made to the certain Irrevocable Letter of Credit No. 14677, dated December 18, 1986, which has been established by you in favor of [name of Equity Participant (the "Transferor")].

The Transferor has transferred and assigned (and hereby confirms to you said transfer and assignment) all of its rights in and under said Letter of Credit to [name of Transferee] (the "Transferee") and confirms that the Transferor no longer has any rights under or interest in said Letter of Credit.

The Letter of Credit is returned herewith and we request that you issue an Irrevocable Transferable Letter of Credit in the name of the Transferee and providing for notices to be sent to the Transferee at the address set forth below and in all other respects identical to the Letter of Credit.

Transferee hereby certifies that it is a duly authorized transferee under the terms of said Letter of Credit and is accordingly entitled, upon presentation of the drafts and certificates called for therein, to receive payment thereunder. Notices under the Letter of Credit should be sent to us as follows: [Name], [Address, [Telex Number], Attention: _____, [Answerback].

_____
[Name of Transferor]

_____
[Name and Title of Authorized Representative of Transferor]

_____
[Name of Transferee]

_____
[Name and Title of Authorized Representative of Transferee]

THE BANK OF NEW YORK
NEW YORK'S FIRST BANK - FOUNDED 1784 BY ALEXANDER HAMILTON

48 WALL STREET, NEW YORK, N.Y. 10015

Irrevocable Transferable
Letter of Credit No. 14677

CHRYSLER FINANCIAL CORPORATION
Greenwich Office Park I
Greenwich, Connecticut 06836

Attn: Leasing and Investment Services

December 18, 1986

Dear Sirs:

1. We hereby establish, at the request and for the account of El Paso Electric Company, a Texas corporation (the "Company"), this Irrevocable Transferable Letter of Credit, whereby we irrevocably authorize you to draw on THE BANK OF NEW YORK, New York, New York (sometimes herein referred to as the "Bank") in an amount not exceeding $45,000,000 (as such amount may be reduced from time to time by drawings hereunder or pursuant to the terms hereof, the "Letter of Credit Amount"), in connection with the leasing of an undivided interest in Unit 2 of the Palo Verde Nuclear Generating Station to the Company pursuant to a Facility Lease, dated as of December 1, 1986 (the "Facility Lease"), between the Company and The First National Bank of Boston, as Owner Trustee under a Trust Agreement, dated as of December 1, 1986 with you, in accordance with the terms and conditions hereinafter set forth.

2. Any drawing under this Letter of Credit shall not exceed the lesser of (a) the Letter of Credit Amount and (b) the amount shown opposite the period including the date of such drawing (the "Date of Drawing") in the Table of Maximum Drawing Amounts attached hereto as Schedule I which forms an integral part of this Letter of Credit, as such amounts are modified from time to time in accordance with the next paragraph. Such amounts, as modified in accordance with the next paragraph, are hereinafter referred to collectively as the "Maximum Drawing Amounts" and individually as the "Maximum Drawing Amount".

3. The Maximum Drawing Amounts shall be modified from time to time as follows:

(a) upon payment by the Bank of each drawing under this Letter of Credit, the Maximum Drawing Amounts applicable to the period of and each period subsequent to such payment shall be automatically reduced by an amount equal to the amount of the drawing so paid and shall not be reinstated except in accordance with clause (b) below;

(b) after any payment by the Bank of a drawing under this Letter of Credit, then upon the Bank's receipt of a certificate in the form of Exhibit 1 to this Letter of Credit, which exhibit forms an integral part of this Letter of Credit, purportedly signed by authorized officers of the Company and you, the Maximum Drawing Amounts applicable to the period of and each period subsequent to such payment shall be reinstated to the Maximum Drawing Amounts which would have been in effect immediately after such payment had no reduction in the Maximum Drawing Amounts been effected pursuant to clause (a) above;

(c) if adjustments are made to Casualty Values under the Facility Lease, then upon the Bank's receipt of a certificate in the form of Exhibit I to this Letter of Credit, which exhibit forms an integral part of this Letter of Credit, purportedly signed by authorized officers of the Company and you, corresponding adjustments shall be made to the Maximum Drawing Amounts shown in Schedule I (as then in effect), provided that if any such adjustment would cause the Maximum Drawing Amount for any period to exceed the Letter of Credit Amount, the Letter of Credit Amount shall apply for such period.

Upon surrender of this Letter of Credit together with such certificate, we will promptly issue an irrevocable transferable letter of credit containing a revised Schedule I reflecting the adjustments contained in such certificate and in all other respects identical to this Letter of Credit.

4. Subject to the foregoing and the further provisions of this Letter of Credit, a demand for payment may be made by you by presentation to us at our address, Washington Street, New York, New York 10006 (Attention:

International Division, Letter of Credit Department, Elizabeth Mallon) or to such other address as we may specify to you in writing at least 15 days prior to the effectiveness of such change in address, of (a) your draft in the form of Exhibit 2 hereto, which exhibit forms an integral part of this Letter of Credit, and (b) your drawing certificate in the form of Exhibit 3 hereto, which exhibit forms an integral part of this Letter of Credit, each appropriately completed and purportedly signed by one of your authorized officers. If your draft and your drawing certificate, so completed and purportedly signed by one of your authorized officers, are presented to us at our aforesaid office at or prior to 10:00 A.M., New York time, on a business day, payment shall be made to you of the amount specified before our close of business on such business day. If this Letter of Credit and your drawing certificate, so completed and purportedly signed by one of your authorized officers, are presented to us at our aforesaid office after 10:00 A.M., New York time, on a business day, payment shall be made to you of the amount specified before our close of business on the next succeeding business day. Payment under this Letter of Credit to you shall be made by wire transfer in same day funds to an account maintained by you with a commercial bank in the City of New York and specified in your drawing certificate presented to us.

5. As used herein "business day" shall mean any day other than a Saturday, Sunday or a day on which banking institutions in the State of New York are authorized or required by law to close.

6. This Letter of Credit shall expire at the earlier of (a) our close of business at the aforesaid address on January 3, 1992, provided, however, that said expiration date shall be extended without increase in the Letter of Credit Amount then in effect or any other amendment, except as described in the following sentence, for one year from said expiration date, or from any future expiration date, if, on or before the date thirty days prior to the date four years prior to such expiration date, we shall notify you by registered mail of our election (which is in our sole discretion) to renew this Letter of Credit for any such additional period and (b) the date on which we pay a drawing under this Letter of Credit in the full amount of the Maximum Drawing Amount then in effect. In the event that we elect to renew this Letter of Credit for any additional period pursuant to clause (a) above, such renewal shall become effective only if you and the Company shall deliver to us, prior to December 31 in the year we so elect to renew this Letter of Credit for the relevant period, notice in the form of Exhibit 4 hereto, which exhibit forms

an integral part of this Letter of Credit, setting forth a supplemental Table of Maximum Drawing Amounts for such period (none of which Maximum Drawing Amounts shall exceed the Letter of Credit Amount). Upon surrender of this Letter of Credit together with said notice we will promptly issue an irrevocable transferable letter of credit containing a revised Schedule I reflecting the terms contained in said notice and in all other respects identical to this Letter of Credit.

7. Notwithstanding any other provision of this Letter of Credit, this Letter of Credit shall expire at our close of business at our aforesaid address on the date ten business days or 30 days, as the case may be, after we have given you a certificate in the form of Exhibit 5 hereto, which exhibit forms an integral part of this Letter of Credit, appropriately completed; provided that on or before such expiration date you will have the right to draw once an amount not in excess of the Maximum Drawing Amount then in effect in accordance with the procedures described herein. The certificate referred to in the preceding sentence shall be given by telex or facsimile transmission or by overnight delivery service addressed to you at Chrysler Financial Corporation, c/o Chrysler Capital Corp., Greenwich Office Park I, Greenwich, Connecticut 06836, Attention: Vice President, Leveraged Leasing, with Telex: (510) 600-6491, Telecopier: (203) 629-1466, with a copy to: Manager, Contract Administration (Leveraged Leasing) (or to such other address or telex or facsimile transmission number designated by you by written notice delivered to us at least 15 days prior to the notice of early termination) and such certificate shall be effective upon the earlier of (i) receipt of the appropriate answerback or confirmation of the facsimile transaction and (ii) delivery to you of such certificate by overnight delivery service or hand delivery. This Letter of Credit shall be promptly surrendered to us by you upon such expiration.

8. This Letter of Credit sets forth in full the terms of our undertaking, and this undertaking shall not in any way be modified, amended or amplified by reference to any document, instrument or agreement referred to herein (except the Uniform Customs (hereinafter defined) and Schedule I and Exhibits 1, 2, 3, 4, 5 and 6 hereto and the notices referred to herein) or in which this Letter of Credit is referred to or to which this Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.

9. Except so far as otherwise expressly stated, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1983 Revision) International Chamber of Commerce, Publication No. 400, and, as to matters not covered therein, shall be governed by the laws of the State of New York, including without limitation the Uniform Commercial Code as in effect in such State.

10. Communications to us with respect to this Letter of Credit shall be in writing and shall be addressed to us at our address set forth above, Attention: International Division, Letter of Credit Department, Elizabeth Mallon (with a copy to The Bank of New York, Public Utilities Division, 48 Wall Street, New York, New York 10015 (Attention: Guy Mule)) and shall specifically refer to the number of this Letter of Credit.

11. Notwithstanding Article 54 of the Uniform Customs referred to above, this Letter of Credit may be transferred and assigned in its entirety more than once, but in each case only to the successor Owner Participant under the Trust Agreement dated as of December 1, 1986 between yourself and The First National Bank of Boston and in each case effective only upon the transferor's and the transferee's compliance with the immediately following sentence. Upon receipt by us at the address for presentation of documents set forth above of an original of the instrument effecting such transfer and assignment, signed by the transferor and by the transferee and a notice, in the form of Exhibit 6 hereto, which exhibit forms an integral part of this Letter of Credit (which shall be conclusive evidence of such assignee's authority without any inquiry by us into the terms of the Trust Agreement) then, in such case, we will, upon surrender of this Letter of Credit, issue an irrevocable transferable letter of credit in the name of the transferee and providing for notices to be sent to the transferee at the address set forth therein and in all other respects identical to this Letter of Credit and the transferee, instead of the transferor, shall, without necessity of further act, be entitled to all the benefits of, and rights under, this Letter of Credit in the transferor's place.

Very truly yours,

THE BANK OF NEW YORK

By: _____
Name:
Title:

Schedule I

This Schedule Forms an Integral Part of Letter of Credit No. 14677

Table of Maximum Drawing Amounts

Applicable Period	Maximum Drawing Amount
December 18, 1986 through January 1, 1988	$28,828,113
January 2, 1988 through July 1, 1988	23,356,570
July 2, 1988 through January 1, 1989	24,524,190
January 2, 1989 through July 1, 1989	25,592,766
July 2, 1989 through January 1, 1990	26,587,428
January 2, 1990 through July 1, 1990	27,511,137
July 2, 1990 through January 1, 1991	28,373,526
January 2, 1991 through July 1, 1991	29,161,795
July 2, 1991 through January 1, 1992	29,882,187
January 2, 1992 through July 1, 1992	30,521,687
July 2, 1992 through January 1, 1993	31,091,138
January 2, 1993 through July 1, 1993	31,587,077
July 2, 1993 through January 1, 1994	32,016,197
January 2, 1994 through July 1, 1994	32,367,823
July 2, 1994 through January 1, 1995	32,646,710
January 2, 1995 through July 1, 1995	32,842,120
July 2, 1995 through January 1, 1996	32,974,233
January 2, 1996 through July 1, 1996	33,095,060
July 2, 1996 through January 1, 1997	33,220,365
January 2, 1997 through July 1, 1997	33,350,718
July 2, 1997 through January 1, 1998	33,486,561
January 2, 1998 through July 1, 1998	33,628,203
July 2, 1998 through January 1, 1999	33,793,345
January 2, 1999 through July 1, 1999	34,014,390
July 2, 1999 through January 1, 2000	33,918,669
January 2, 2000 through July 1, 2000	33,503,935
July 2, 2000 through January 1, 2001	33,217,403
January 2, 2001 through July 1, 2001	32,775,855
July 2, 2001 through January 1, 2002	32,473,879
January 2, 2002 through July 1, 2002	32,006,086
July 2, 2002 through January 1, 2003	31,687,970
January 2, 2003 through July 1, 2003	31,193,041
July 2, 2003 through January 1, 2004	30,857,659
January 2, 2004 through July 1, 2004	30,333,158
July 2, 2004 through January 1, 2005	29,981,034
January 2, 2005 through July 1, 2005	29,427,307

Table of Maximum Drawing Amounts

Applicable Period	Maximum Drawing Amount
July 2, 2005 through January 1, 2006	$29,057,548
January 2, 2006 through July 1, 2006	28,815,838
July 2, 2006 through January 1, 2007	29,375,281
January 2, 2007 through July 1, 2007	30,051,866
July 2, 2007 through January 1, 2008	30,848,368
January 2, 2008 through July 1, 2008	31,785,427
July 2, 2008 through January 1, 2009	32,865,828
January 2, 2009 through July 1, 2009	34,113,199
July 2, 2009 through January 1, 2010	35,531,428
January 2, 2010 through July 1, 2010	37,147,422
July 2, 2010 through January 1, 2011	38,965,503
January 2, 2011 through July 1, 2011	37,331,236
July 2, 2011 through January 1, 2012	34,450,373
January 2, 2012 through July 1, 2012	31,402,919
July 2, 2012 through January 1, 2013	28,167,979
January 2, 2013 through July 1, 2013	24,745,805
July 2, 2013 through October 1, 2013	21,132,432

Exhibit 1

This Exhibit Forms an integral part of Letter of Credit No. 14677

[Date]

The Bank of New York
110 Washington Street
New York, New York 10005

Attention: International Division,
Letter of Credit Department

Dear Sirs:

Reference is made to that certain Irrevocable Letter of Credit No. 14677 dated December 18, 1986, which has been established by you in favor of Chrysler Financial Corporation (the "Equity Participant").

The undersigned, a duly authorized officer of the Equity Participant and a duly authorized officer of El Paso Electric Company (the "Company"), each hereby certifies that the Maximum Drawing Amounts shown on Schedule I to the Letter of Credit should be [in case of reinstatement pursuant to paragraph 3(b) of Letter of Credit--reinstated] [in the case of modifications pursuant to paragraph 3(c) of the Letter of Credit--modified], in accordance with the terms of Paragraph 3 of the Letter of Credit, to the Maximum Drawing Amounts shown in Appendix A hereto, none of which are greater than the Letter of Credit Amount.

[Include only for modification resulting in change in Maximum Drawing Accounts--The Letter of Credit is returned herewith and we request that you issue an irrevocable transferable letter of credit with the revised Schedule I attached and in all other respects identical to the Letter of Credit.]

CHRYSLER FINANCIAL CORPORATION

By _____
[Name and Title of Authorized Officer of Equity Participant]

EL PASO ELECTRIC COMPANY

By _____
[Name and Title of Authorized Officer of the Company]

Appendix A to Exhibit 1

This Appendix to Exhibit 1
Forms an Integral Part of
Letter of Credit No. 14677

Supplemental Table of Maximum Drawing Amounts

Applicable Period	Maximum Drawing Amount

Exhibit 2

This Exhibit Forms an
Integral Part of Letter
of Credit No. 14677

[Date]

On Sight

Pay to the order of Chrysler Financial Corporation
U.S. $_____ (_____ U.S.
Dollars).

Drawn under The Bank of New York Irrevocable Transferable
Letter of Credit No. 14677, dated December 18, 1986.

The Bank of New York
110 Washington Street
New York, New York 10005

For value received.

CHRYSLER FINANCIAL CORPORATION

By _____
[Authorized Officer]
Name:
Title:

Exhibit 3

This Exhibit Forms an Integral Part of Letter of Credit No. 14677

CERTIFICATE

CHRYSLER FINANCIAL CORPORATION (the "Company"), through one of its duly authorized officers, hereby certifies to The Bank of New York (the "Bank"), with reference to Irrevocable Transferable Letter of Credit No. 14677 (the "Letter of Credit") issued by the Bank in favor of the Company that:

(1) (A) An Event of Default under that certain Facility Lease dated as of December 1, 1986 has occurred and is continuing or (B) any other amount payable under said Facility Lease or any of the Transaction Documents referred to in said Facility Lease is owed by the Lessee thereunder and has not been paid (including without limitation in connection with any Early Payment Obligation referred to in said Facility Lease, or any amount due under said Lessee's purchase option under Section 10(b)(3)(xvii) of the Participation Agreement referred to in said Facility Lease or Section 13(c) of said Facility Lease).

(2) The amount of the drawing under the Letter of Credit being made hereby is $_____ (the "Drawing Amount"), and such amount does not exceed the amount available to be drawn under the Letter of Credit on the date hereof, as determined in accordance with the terms of the Letter of Credit.

Please make payment of the Drawing Amount to [Na
and address of commercial bank in New York City, [title of account, if any], account no. _____.

IN WITNESS WHEREOF, the Company has executed and delivered this Certificate as of the __ day of _____, 19__.

CHRYSLER FINANCIAL CORPORATION

By _____
[Name and Title of Officer of Company]

Exhibit 4

This Exhibit Forms an
Integral Part of Letter
of Credit No. 14677

[Date]

The Bank of New York
110 Washington Street
New York, New York 10005

Attention: International Division,
Letter of Credit Department

Dear Sirs:

Reference is made to that certain irrevocable transferable Letter of Credit bearing Letter of Credit No. 14677, dated December 18, 1986 (the "Letter of Credit"), which has been established by you in favor of Chrysler Financial Corporation (the "Equity Participant").

The undersigned, a duly authorized officer of the Equity Participant and a duly authorized officer of El Paso Electric Company (the "Company"), hereby certify that the Equity Participant and the Company have agreed to the extension of the expiration date of the Letter of Credit from January __, 19__ to January __, 19__, and in connection therewith have agreed that the amounts shown on Schedule I to the Letter of Credit should be supplemented, in accordance with the terms of Paragraph 6 of the Letter of Credit, to include the Applicable Periods and Maximum Drawing Amounts shown in Appendix A hereto (none of which Maximum Drawing Amounts are greater than the Letter of Credit Amount).

The Letter of Credit is returned herewith and we request that you issue an irrevocable transferable Letter of Credit with the revised Schedule I attached and in all other respects identical to the Letter of Credit.

CHRYSLER FINANCIAL CORPORATION

By _____
[Name and Title of Authorized
Representative of Equity
Participant]

EL PASO ELECTRIC COMPANY

By _____
[Name and Title of Authorized
Representative of Company]

Exhibit 5

This Exhibit Forms an Integral Part of Letter of Credit No. 14677

DEFAULT CERTIFICATE

The Bank of New York (the "Bank") hereby certifies to Chrysler Financial Corporation, with reference to the Bank's Irrevocable Transferable Letter of Credit No. 14677 (the "Letter of Credit") that an Event of Default under [Section 9(f) or 9(g)] [Section 9 (other than Section 9(f) or 9(g)] of, and as defined in, the Letter of Credit and Security Agreement, dated as of December 18, 1986, between the Bank and El Paso Electric Company, has occurred and is continuing, and hereby gives notice that the Letter of Credit will expire on _____.*

IN WITNESS WHEREOF, the Bank has caused this certificate to be executed on its behalf as of the ____ day of _____, 198 .

THE BANK OF NEW YORK

By_____
(Name and Title)

* Date ten business days after giving of certificate in the case of an Event of Default under Section 9(f) or (g) of the Letter of Credit and Security Agreement and 30 days after the giving of certificate in the case of an Event of Default under Section 9 (other than Section 9(f) or (g)).

Exhibit 6

This Exhibit Forms an
Integral Part of Letter
of Credit No. 14677

The Bank of New York
110 Washington Street
New York, New York 10005
Attention: Letter of Credit Department

Dear Sirs:

Reference is made to the certain Irrevocable Letter of Credit No. 14677, dated December 18, 1986, which has been established by you in favor of [name of Equity Participant (the "Transferor")].

The Transferor has transferred and assigned (and hereby confirms to you said transfer and assignment) all of its rights in and under said Letter of Credit to [name of Transferee] (the "Transferee") and confirms that the Transferor no longer has any rights under or interest in said Letter of Credit.

The Letter of Credit is returned herewith and we request that you issue an Irrevocable Transferable Letter of Credit in the name of the Transferee and providing for notices to be sent to the Transferee at the address set forth below and in all other respects identical to the Letter of Credit.

Transferee hereby certifies that it is a duly authorized transferee under the terms of said Letter of Credit and is accordingly entitled, upon presentation of the drafts and certificates called for therein, to receive payment thereunder. Notices under the Letter of Credit should be sent to us as follows: [Name], [Address, [Telex Number], Attention: _____, [Answerback].

_____
[Name of Transferor]

_____
[Name and Title of Authorized Representative of Transferor]

_____
[Name of Transferee]

_____
[Name and Title of Authorized Representative of Transferee]

ASSIGNMENT, ASSUMPTION
AND
FURTHER AGREEMENT

dated as of December 1, 1986

between

EL PASO ELECTRIC COMPANY,

and

THE FIRST NATIONAL BANK OF BOSTON,

not in its individual capacity, but solely as Owner
Trustee under a Trust Agreement dated as of December 1, 1986
with Chrysler Financial Corporation

Sale and Leaseback of an Undivided Interest
in Palo Verde Nuclear Generating Station Unit 2
and Certain Common Facilities

THIS ASSIGNMENT, ASSUMPTION AND FURTHER AGREEMENT, dated as of December 1, 1986, between EL PASO ELECTRIC COMPANY, a Texas corporation (El Paso), and THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as Owner Trustee (the Owner Trustee), under a Trust Agreement, dated as of December 1, 1986, with Chrysler Financial Corporation, a Michigan corporation, as Owner Participant (the Owner Participant).

WITNESSETH:

WHEREAS, El Paso and the other ANPP Participants are parties to the ANPP Participation Agreement (such terms and all other terms used in these recitals without definition having the respective definitions to which reference is made in Article I below); and

WHEREAS, El Paso has sold, and the Owner Trustee has purchased, the Undivided Interest and the Real Property Interest for and in consideration of the payment to El Paso by the Owner Trustee of the Purchase Price, the purchase price of the Real Property Interest and the assignments and assumptions herein set forth;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. *General.* For purposes hereof, unless otherwise defined herein capitalized terms used herein shall have the meanings assigned to such terms in Appendix A hereto. References in this Agreement to articles, sections and clauses are to articles, sections and clauses in this Agreement unless otherwise indicated.

SECTION 1.02. *Undivided Interest and Real Property Interest.* Attached as Exhibit A hereto is a description of the Real Property Interest and attached as Exhibit B is a description of the Undivided Interest.

ARTICLE II

NONPARTITIONMENT

SECTION 2.01. *Nonpartitionment.* The Owner Trustee hereby waives any rights it may have to partition Unit 2, whether by partitionment in kind or by sale and division of proceeds, and further agrees that it will not resort to any action in law or in equity to partition Unit 2, and it waives the benefits of all laws that may now or hereafter authorize such partition, for a term (i) which shall be coterminous with the ANPP Participation Agreement or (ii) which shall be for such lesser period as may be required under Applicable Law.

ARTICLE III

ASSIGNMENTS; EXERCISE OF RIGHTS

SECTION 3.01. *Assignment of Warranties.* El Paso hereby *ASSIGNS* to the Owner Trustee an undivided interest equal to the Applicable Unit 2 Percentage to and under any and all warranties of and other claims against dealers, manufacturers, vendors, contractors and subcontractors relating to Unit 2.

SECTION 3.02. *Assignment of the ANPP Participation Agreement.* (a) El Paso hereby *ASSIGNS* to the Owner Trustee an undivided interest equal to the Applicable Unit 2 Percentage in, to and under all of El Paso's rights under the ANPP Participation Agreement, to the extent that such rights relate to Unit 2 (including, but without limitation, a 2.183647% entitlement to the Net Energy Generation and Available Generating Capability (as each such term is defined in the ANPP Participation Agreement) of Unit 2).

(b) The Owner Trustee hereby *ASSIGNS* to El Paso the rights assigned under paragraph (a) until the Lease Termination Date.

SECTION 3.03. *Exercise of Rights as Participant under the ANPP Participation Agreement.* (a) Except as provided in Sections 15.2.2, 15.6.4 and Section 15.10 of the ANPP Participation Agreement (or any comparable successor provision), El Paso shall be and remain the sole "Participant" for all purposes of the ANPP Participation Agreement and the sole representative (with power to bind) in all dealings with the other ANPP Participants in relation to the Undivided Interest, the Real Property Interest and the rights assigned to the Owner Trustee pursuant to this Agreement: *provided, however*, that the foregoing shall not limit in any way any liability or obligation that El Paso may incur to the Owner Trustee or the Owner Participant under any Transaction Document as a result thereof.

(b) Unless the ANPP Participation Agreement shall otherwise permit, any right conferred on the Owner Trustee by Section 15.2.2 of the ANPP Participation Agreement shall be exercised as required by Section 15.6.3.3 of said Agreement.

(c) The provisions of this Section 3.03 shall remain in full force and effect until such time as the ANPP Administrative Committee or the ANPP Participants shall otherwise consent by amendment to the ANPP Participation Agreement or otherwise.

ARTICLE IV

ASSUMPTION; RELEASE

SECTION 4.01. *Assumption by Owner Trustee.* Except as contemplated by Section 5(a) of the Facility Lease, the Owner Trustee agrees that, effective on and as of the Lease Termination Date (unless a Transferee (Transferee) shall have qualified under Section 15.10 of the ANPP Participation Agreement or any comparable successor provision), unless a Default or Event of Default shall have occurred and be continuing or an Event of Loss shall have occurred or a Deemed Loss Event shall have been declared, the Owner Trustee shall assume and agree to pay, perform and discharge a percentage equal to the Applicable Unit 2 Percentage of all liabilities and obligations of El Paso under or with respect to, the ANPP Project Agreements, attributable to Unit 2, other than any and all costs relating to, allocable to, or incurred in connection with, Decommissioning.

SECTION 4.02. *Release.* Upon the assumption and agreement by a Transferee pursuant to Section 4.01 (whether at the Lease Termination Date or thereafter), the Owner Trustee shall therewith and thereupon be released and discharged from its obligations under Section 4.01 arising on or after such assumption and agreement.

ARTICLE V

NO RELEASE OF EL PASO; REIMBURSEMENT

SECTION 5.01. *No Release of El Paso.* Notwithstanding the provisions of Article IV or any other provision hereof or of any other Transaction Document, and except to the extent provided in Section 15.10 of the ANPP Participation Agreement (or any comparable successor provision), El Paso shall not be released from any liability or obligation under the ANPP Project Agreements, or otherwise, with respect to PVNGS, and El Paso shall remain liable for the payment and performance of all such liabilities and obligations, including, without limitation, any and all liabilities and obligations not assumed by the Owner Trustee or a Transferee pursuant to Section 4.01.

SECTION 5.02. *Reimbursement.* Unless a Default or an Event of Default shall have occurred and be continuing or an Event of Loss shall have occurred or a Deemed Loss Event shall have been declared, from and after the Lease Termination Date, upon the payment or performance by El Paso of any liability or obligation in respect of which the Owner Trustee shall also have become obligated in consequence of Article IV, and for so long as the Owner Trustee shall be so liable, El Paso shall

entitled to prompt reimbursement by the Owner Trustee from the Trust Estate for all amounts expended in connection with such payment or performance.

ARTICLE VI

FURTHER AGREEMENTS OF EL PASO

SECTION 6.01. *Agreement to Sell or Lease Unit 2 Retained Assets.* Upon a transfer to a Transferee, El Paso agrees in respect to the Undivided Interest and the Real Property Interest, (i) if such Transferee is a purchaser of the Undivided Interest and the Real Property Interest, to sell to such Transferee, at a price equal to the then Fair Market Sales Value thereof (determined on the basis of the then actual condition of the Unit 2 Retained Assets), a .727881% undivided interest in and to the Unit 2 Retained Assets, or (ii) if the Transferee is a lessee of the Undivided Interest and the Real Property Interest, to lease or otherwise make available to the Transferee, at a rent equal to the then Fair Market Rental Value (determined on the basis of the then actual condition of the Unit 2 Retained Assets) a .727881% undivided interest in and to the Unit 2 Retained Assets. Any such sale or lease by El Paso shall be accomplished by an appropriate bill of sale or lease. The Bill of Sale referenced in the definition of Unit 2 Retained Assets as set forth in Appendix A hereto was recorded December , 1986 as Instrument No. , records of Maricopa County, Arizona, and is hereby incorporated herein by reference.

SECTION 6.02. *Agreement to Assign or Make Available ANPP Project Agreements.* Upon a transfer to a Transferee, El Paso agrees in respect of the Undivided Interest and the Real Property Interest, (i) if the Transferee is a purchaser of the Undivided Interest and the Real Property Interest, to assign to such Transferee an undivided interest equal to a .727881% undivided interest in the ANPP Project Agreements (other than the ANPP Participation Agreement) to the extent relating to Unit 2 and the Unit 2 Retained Assets, and (ii) if the Transferee is a lessee of the Undivided Interest and the Real Property Interest, to assign for the term of such lease to such Transferee an undivided interest equal to a .727881% undivided interest in the ANPP Project Agreements (other than the ANPP Participation Agreement) to the extent relating to Unit 2 and the Unit 2 Retained Assets. Any assignment pursuant to this Section 6.02 shall be accomplished by an appropriate instrument of assignment.

SECTION 6.03. *Agreements to Seek Amendment to the ANPP Participation Agreement and the License.* El Paso agrees to use its best efforts to obtain any required amendments to the ANPP Participation Agreement and the License to permit El Paso to act as Agent of the Owner Trustee in the manner contemplated by Section 7.01 hereof, if (i) El Paso shall not have elected to purchase the Undivided Interest and the Real Property Interest as provided in Section 13 of the Facility Lease and (ii) there shall not be a Transferee in respect of the Undivided Interest and the Real Property Interest.

SECTION 6.04 *Sale Proceeds.* If, on or after the occurrence of a Determination Event (as such term is defined in the Deed), the Lessee shall sell or otherwise convey all or any portion of the Undivided Interest (or any interest therein), the Lessee shall pay, upon demand (but in no event later than 10 days after such sale or conveyance), the proceeds of such sale or conveyance to the Owner Participant.

ARTICLE VII

INTERIM AGENCY ARRANGEMENTS

SECTION 7.01. *Designation of Agent.* From and after the Lease Termination Date and until a transfer to a Transferee in respect of the Undivided Interest and the Real Property Interest (such period being referred to as the Agency Period), El Paso shall be, and the Owner Trustee hereby designates El Paso as, the initial agent (the Agent) of the Owner Trustee in the exercise of all rights assigned to the Owner Trustee hereunder. The Owner Trustee may terminate such agreement and the Agency Period at any time.

SECTION 7.02. *Operation of Unit 2.* During the Agency Period, the Agent shall administer the operation of the Undivided Interest and the Real Property Interest in accordance with this Agreement

and all instructions of the Owner Trustee in accordance with Applicable Law. If, however, the Owner Trustee shall, prior to or at any time during the Agency Period, enter into any joint ownership and operating agreement with other Persons having a legal right to, or right to use, any other undivided interest in Unit 2, the Agent agrees to join in, and be bound by, the terms of such agreement if the Agent's performance thereunder shall not violate, or result in a violation of, any Applicable Law or the License. The Owner Trustee agrees to give the Agent reasonable prior written notice of the commencement of the negotiation of any such agreement.

SECTION 7.03. *ANPP Participation Agreement.* El Paso agrees that, at all times during the Agency Period, it will perform all obligations and discharge all liabilities for which it is responsible as a "Participant" under the ANPP Participation Agreement in respect of the Undivided Interest and the Real Property Interest. In the performance of the foregoing agreement, El Paso shall not exercise its rights as an ANPP Participant to cause Capital Improvements to be made to Unit 2 unless the Owner Trustee shall have agreed to provide funds for the payment of the Owner Trustee's share of the cost of such Capital Improvements to El Paso prior to the date on which such amounts shall be due with respect thereto under the ANPP Participation Agreement.

SECTION 7.04. *Support.* Except with respect to the Unit 2 Retained Assets for which provision is made in Section 7.06, El Paso covenants and agrees that, at all times during the Agency Period, it will provide, or make available, to the Owner Trustee all El Paso's rights in and to other assets owned by El Paso and the ANPP Project Agreements to the extent necessary for the operation, servicing and use of the Undivided Interest and the Real Property Interest.

SECTION 7.05. *Compensation.* As compensation for its obligations under Sections 7.02, 7.03 and 7.04 and so long as no Event of Default shall have occurred and be continuing, El Paso shall be entitled to receive, and the Owner Trustee hereby agrees to pay, an amount equal to the sum of (i) the Owner Trustee's share of (a) the aggregate of amounts paid by El Paso as provided in Section 7.03 to the extent reasonably allocable to Unit 2 and (b) reasonable compensation for the Unit 2 Retained Assets and (ii) out-of-pocket expenses incurred by El Paso or the Agent, as the case may be, in connection with the performance of its agreements in this Article VII. Compensation under this Section 7.05 shall be paid promptly upon receipt of an invoice from El Paso.

SECTION 7.06. *Transmission; Transmission Agreement.* (a) El Paso covenants and agrees that, at all times during the Agency Period, the Owner Trustee shall have the right to wheel, under normal transmission operating conditions, the Owner Trustee's share of up to 1270 MW of power and energy, under normal transmission operating conditions, over transmission equipment in which El Paso now owns or may hereafter acquire an ownership interest, between Unit 2 and the ANPP Switchyard.

(b) If El Paso shall fail or decline to give the notice of renewal of the Facility Lease or purchase of the Undivided Interest, in each case as provided in Section 13 of the Facility Lease, El Paso and the Owner Trustee shall forthwith commence the negotiation in good faith of a definitive transmission agreement, not inconsistent with the terms and provisions of Section 7.06(a), but containing sufficient detail for the proper wheeling of power and energy, under normal transmission operating conditions, over the equipment of El Paso referred to in such Section 7.06(a) under then existing circumstances. El Paso and the Owner Trustee shall complete such negotiations and execute such definitive transmission agreement prior to the Lease Termination Date and such definitive transmission agreement shall provide for compensation to El Paso for the transmission services so provided at the Fair Market Sales Value thereof.

ARTICLE VIII

MISCELLANEOUS

SECTION 8.01. *Successors and Assigns.* This Agreement shall be binding upon the successors and assigns of each of El Paso and the Owner Trustee.

SECTION 8.02. *Governing Law.* The interpretation of this Agreement and the rights and obligations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of New York.

SECTION 8.03. *Counterpart Execution.* This Agreement may be executed in any number of counterparts and by each of the parties hereto on separate counterparts, all such counterparts together constituting but one and the same instrument.

SECTION 8.04. *Amendments.* The terms of this Agreement shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever, except by written instrument signed by El Paso and the Owner Trustee.

SECTION 8.05. *Severability of Provisions.* Any provision of this Agreement which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and no such prohibition or unenforceability in any jurisdiction shall invalidate or render unenforceable such provisions in any other jurisdiction. To the extent permitted by Applicable Law, El Paso hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

SECTION 8.06. *Headings.* The division of this Agreement into sections, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

SECTION 8.07. *Disclosure of Beneficiary.* Pursuant to Arizona Revised Statutes 33.401, the beneficiary of the Trust Agreement is Chrysler Financial Corporation, a Michigan corporation, whose address is Greenwich Office Park I, Greenwich, Connecticut 06836. A copy of the Trust Agreement is available for inspection at the offices of the Owner Trustee at 100 Federal Street, Boston, Massachusetts 02110, Attention of Corporate Trust Division.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be duly executed in New York, New York by their respective officers thereunto duly authorized.

EL PASO ELECTRIC COMPANY

By: _____
Vice President

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as Owner Trustee under a Trust Agreement, dated as of December 1, 1986, with Chrysler Financial Corporation

By: _____
Assistant Vice President

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

The foregoing instrument was acknowledged before me this 16 day of December, 1986 William J. Johnson, Vice President of EL PASO ELECTRIC COMPANY, a Texas corporation, on be of the corporation.

Delia T. Santiago
Notary Public
DELIA T. SANTIAGO
Notary Public, State of New York
No. 41-3451130
Qualified in Queens County
Commission Expires March 30, 19 87

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

The foregoing instrument was acknowledged before me this 16 day of December, 1986, by Martin P. Henry, an Assistant Vice President of THE FIRST NATIONAL BANK OF BOSTON, a national banking association, on behalf of the banking association under that certain Trust Agreement dated as of December 1, 1986.

Delia T. Santiago
Notary Public
DELIA T. SANTIAGO
Notary Public, State of New York
No. 41-3451130
Qualified in Queens County
Commission Expires March 30, 1987

EXHIBIT A
TO
ASSIGNMENT, ASSUMPTION
AND
FURTHER AGREEMENT

DESCRIPTION OF REAL PROPERTY INTEREST

The Real Property Interest consists of a .727881% undivided interest in the following: 1. PVNGS PLANT SITE.

PARCEL NO. 1: Lot Four (4); the Southwest quarter of the Northwest quarter; and the West half of the Southwest quarter, all in Section Two (2), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 2: All of Section Three (3), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 3: The East half of Section Four (4), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 4: The West half of Section Twenty-six (26), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 5: Section Twenty-seven (27), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the Northwest quarter of Section 27.

PARCEL NO. 6: The Southeast quarter of Section Twenty-eight (28), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT 50% of all oil, gas and other mineral deposits and geothermal resources recovered from or developed on the property, as reserved in instrument recorded May 10, 1974 in Docket 10647, page 136.

PARCEL NO. 7: The East half of Section Thirty-three (33), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 8: All of Section Thirty-four (34), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 9: The West half of Section Thirty-five (35), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 10: The Southeast quarter of Section Nine (9), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the Northwest quarter thereof.

PARCEL NO. 11: All of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the East half of the Southeast quarter thereof; and EXCEPT the North half of the South half of the Northwest quarter of the Northwest quarter thereof.

PARCEL NO. 12: That part of the East half of the Southwest quarter of Section Twenty-three (23), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Southeast corner of the said East half of the Southwest quarter of Section 23; thence West, an assumed bearing along the South line of the said East half of the Southwest quarter of Section 23, for a distance of 762.04 feet; thence North 0 degrees 03 minutes 39 seconds West; parallel to the East line of the said East half of the Southwest quarter of Section 23, for a distance of 1946.46 feet to a point on the South right-of-way line of the 200 foot wide HASSAYAMPA-SALOME HIGHWAY, as recorded in Book 12 of Road Maps, page 82, Maricopa

County Recorder, Maricopa County, Arizona; thence continuing North 0 degrees 03 minutes 39 seconds West for a distance of 234.15 feet to a point on the North right-of-way line of said highway; thence South 58 degrees 43 minutes 35 seconds East, along said North right-of-way li[redacted] for a distance of 892.17 feet to a point on the said East line of the East half of the Southw[redacted] quarter of Section 23; thence South 0 degrees 03 minutes 39 seconds East, along said East line for a distance of 234.15 feet to a point on the said South right-of-way line; thence continuing South 0 degrees 03 minutes 39 seconds East for a distance of 1483.31 feet to the true point of beginning;

EXCEPT the East 305 feet of the South 305 feet thereof; and EXCEPT one-half of the minerals and mineral rights and mineral estates of every kind and nature, as set forth in Deed recorded in Docket 11652, page 52, Maricopa County Records.

PARCEL NO. 13: The North half of the South half of the Northwest quarter of the Northwest quarter of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

II. HASSAYAMPA PUMPING STATION AND EFFLUENT PIPELINE.

All real property, leases, licenses, easements, rights-of-way and other property held by Title USA Company of Arizona Trust No. 530 established by that certain Trust Agreement dated October 15, 1975, as amended, but excluding therefrom all improvements.

III. MISCELLANEOUS REAL PROPERTY INTERESTS.

Those ANPP Project Agreements (as defined in the ANPP Participation Agreement), other than the Trust Agreement for Title USA Company of Arizona Trust 530, consisting of leases, licenses, easements, and permits, which provide land and land rights for (a) the pipeline to supply waste wat[redacted] effluent to PVNGS from the 91st Avenue sewage treatment plant serving the Phoenix metropolitan a[redacted] and (b) railroad access to the Nuclear Plant Site (as defined in the ANPP Participation Agreement).

EXHIBIT B
TO
ASSIGNMENT, ASSUMPTION
AND
FURTHER AGREEMENT

DESCRIPTION OF UNDIVIDED INTEREST

The Undivided Interest consists of a 2.183647% undivided interest in and to the property described under A below and a .727881% undivided interest in and to the property described under B below.

A. Unit 2 of the Palo Verde Nuclear Generating Station (PVNGS), located in Maricopa County, Arizona, approximately 55 miles west of the City of Phoenix, Arizona, and approximately 16 miles west of the City of Buckeye, Arizona, consisting of:

I. Unit 2 Combustion Engineering "System 80" pressurized water reactor nuclear steam supply system (the NSSS). The NSSS is comprised of a reactor vessel containing 241 fuel assemblies with approximately 100 tons of enriched uranium (fuel assemblies, however, are not part of Unit 2 and are not included in the Undivided Interest being sold), two steam generators, four reactor coolant pumps and various additional systems and subsystems. The licensed thermal rating of the NSSS is 3800 MW.

II. Unit 2 GE TC6F-43, 1800 RPM tandem-compound, six flow, reheat turbine-generator including turbine, generator, moisture separator-reheater, exciter, controls, and auxiliary subsystems. The turbine-generator is conductor cooled and rated at 1,554 MVA at 24,000 V, 3 phase, 60 Hz, 1.5 in Hg ABS back pressure, and approximately 1,363 MW maximum gross electric output.

III. Unit 2 146 ft. inside diameter, steel-lined, pre-stressed concrete cylindrical containment building with a hemispherical dome designed for 60 psig. The containment building houses the reactor system.

IV. Unit 2 auxiliary systems and equipment including engineered safeguards systems, reactor auxiliary systems and turbine-generator auxiliary systems associated with items I, II, and III above, extending to and including the Unit 2 start-up transformer.

V. Unit 2 cooling tower system consisting of three (3) mechanical draft cooling towers, including a closed cycle circulating water system, makeup water systems and essential spray ponds.

VI. Unit 2 radioactive waste treatment system, including liquid, gaseous, and solid waste subsystems, controls, instrumentation, storage, handling and shipment facilities.

VII. Unit 2 emergency diesel-generator system, including a diesel-generator building which contains two diesel generators, fuel oil systems, storage tanks, control and instrumentation systems and other equipment.

VIII. Unit 2 internal communication systems, including associated interconnections and computer data links.

BUT EXCLUDING:

I. Nuclear fuel for Unit 2, including spare fuel assemblies, and nuclear waste.
II. Spare Parts (Unit 2).
III. Transmission facilities (including any and all facilities and equipment providing interconnection between the Unit 2 turbine generator and the ANPP High Voltage Switchyard, including step-up transformers and standby equipment and systems).
IV. Oil and diesel fuel inventories (Unit 2).

B. All PVNGS common facilities, INCLUDING BUT NOT LIMITED TO:

I. Surveillance systems, including associated radioactive monitoring systems and equipment.
II. Water treatment facilities and transport systems for supply of waste water effluent.

III. Related storage facilities and equipment (excluding Warehouses).

BUT EXCLUDING:

I. Nuclear fuel, including spare fuel assemblies, and nuclear waste.

II. Electrical power facilities including Construction Switchyard and all transmission and ANPP High Voltage Switchyard facilities.

III. Administration Building.

IV. Administration Annex Building.

V. Technical Support Center.

VI. Visitor Center.

VII. External communication systems and equipment, including associated interconnections and computer data links.

VIII. Parking lot improvements, road improvements, site improvements, fencing and dikes.

IX. Spare parts (Common Facilities).

X. Simulator.

XI. Oil and diesel fuel inventories.

XII. Evaporation Pond.

XIII. Guard house.

XIV. Coating facility.

XV. Fire pump house.

XVI. Radiation Instrument calibration lab.

XVII. Service building.

XVIII. Water treatment building.

XIX. Shooting range.

XX. WRF operations building.

XXI. Warehouses.

XXII. Real Property, beneficial interest in Title USA Company of Arizona Trust 530, and Project Agreement interests described in Exhibit A.

When recorded, return to:

Greg Nielsen
Snell & Wilmer
3100 Valley Bank Center
Phoenix, Arizona 85073

DEED AND BILL OF SALE

dated as of December 18, 1986

between

EL PASO ELECTRIC COMPANY,
a Texas corporation
as Seller
and

THE FIRST NATIONAL BANK OF BOSTON,
a national banking association, not in its individual capacity, but solely as Owner Trustee under a Trust Agreement, dated as of December 1, 1986, with Chrysler Financial Corporation, as Buyer.

DEED AND BILL OF SALE, dated as of December 18, 1986 between EL PASO ELECTRIC COMPANY, a Texas corporation (the Seller), and THE FIRST NATIONAL BANK OF BOSTON, a national banking association, not in its individual capacity, but solely as Owner Trustee (in such capacity, the Owner Trustee) under the Trust Agreement, dated as of December 1, 1986, with Chrysler Financial Corporation (such Owner Trustee being herein referred to as the Buyer).

WITNESSETH:

WHEREAS, the Seller desires to sell, and the Buyer desires to purchase, the Undivided Interest, for and in consideration of the amounts paid by the Buyer to the Seller pursuant to the Participation Agreement (as hereinafter defined);

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. For the purpose hereof, capitalized terms used herein, unless otherwise defined herein, shall have the meanings assigned to such terms in Appendix A attached hereto.

The property described on Exhibit B hereto is collectively referred to herein as Unit 2 and the undivided interests therein being conveyed pursuant hereto are referred to collectively herein as the Undivided Interest. The Undivided Interest is located on the PVNGS Site described in Part I of Exhibit A hereto and the land subject to the agreements described in Parts II and III of said Exhibit A.

2. The Seller does hereby GRANT, BARGAIN, CONVEY, SELL, ASSIGN, TRANSFER AND SET OVER unto the Buyer (i) a 2.183647% undivided interest in and to the property described in Exhibit B, Section A hereto (the Generating Unit) and (ii) a .727881% undivided interest in and to all of the property described in Exhibit B, Section B hereto (the Common Facilities), TO HAVE AND TO HOLD the same unto the Buyer, its successors and assigns, FOREVER. It is the intent of this Deed and Bill of Sale, that, from and after the date as of which this Deed and Bill of Sale is executed and delivered, Buyer will own an undivided 2.183647% interest in the Generating Unit, as a tenant in common with the owners of the remaining undivided interests in the Generating Unit, and an undivided .727881% interest in the Common Facilities, as a tenant in common with the owners of the remaining undivided interests in the Common Facilities.

3. The Seller does hereby WARRANT AND COVENANT that it is the true and lawful owner of the Undivided Interest and has good right to sell the Undivided Interest, that title to the Undivided Interest is on the date of execution hereof free and clear of all claims, liens, security interests and encumbrances of any nature, other than Permitted Liens described in clauses (i), (v) (aggregating not more than 14.00% of $5,000,000), (vi), (ix), (x) and (xi) of the definition thereof and 1986 taxes not yet due and payable, that good, marketable and indefeasible title to the Undivided Interest is hereby conveyed to the Buyer, and that the Seller will forever warrant and defend such title against the claims of all Persons. The foregoing warranties of the Seller are to the restraint of any other covenant of the Seller otherwise arising by implication by virtue of Arizona Revised Statutes Section 33-435.

4. The Seller and the Buyer hereby acknowledge and confirm that, as between the Seller and the Buyer, the Undivided Interest is and will remain personal property, and is not, and will not become, an accession to the PVNGS Site or to the Real Property Interest, title thereto being separate and distinct from title to such real property. The Buyer hereby waives any rights it may have to partition Unit 2, whether by partitionment in kind or by sale and division of proceeds, and further agrees that it will not resort to any action in law or in equity to partition Unit 2 and it waives the benefits of all laws that may now or hereafter authorize such partition for a term (i) which shall be coterminous with the ANPP Participation Agreement or (ii) which shall be for such lesser period as may be required by Applicable Law.

5. Pursuant to the Participation Agreement and the Assignment and Assumption, the Seller has agreed to pay certain costs and expenses relating to Unit 2, including, without limitation, with respect

to decommissioning and retirement of Unit 2, and to perform and comply with certain obligations relating to transfers of interests in Unit 2. All such agreements and obligations of the Seller are hereby incorporated by reference in this Deed and Bill of Sale as if set forth in full herein.

6. Pursuant to Arizona Revised Statutes Section 33-401, the beneficiary of the Trust Agreement is Chrysler Financial Corporation, a Michigan corporation, whose address is Greenwich Office Park I, Greenwich, Connecticut 06836. A copy of the Trust Agreement is available for inspection at the offices of the Owner Trustee at 100 Federal Street, Boston, Massachusetts 02110, Attention of Corporate Trust Division.

IN WITNESS WHEREOF, the parties hereto have caused this Deed and Bill of Sale to be executed as of the 18th day of December, 1986.

EL PASO ELECTRIC COMPANY,
a Texas corporation

By _____
Vice President

THE FIRST NATIONAL BANK
OF BOSTON, a national banking
association, not in its individual
capacity, but solely as Owner
Trustee under the Trust Agreement

By _____
Assistant Vice President

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

The foregoing instrument was acknowledged before me this 16th day of December, 1986, by WILLIAM J. JOHNSON, Vice President of EL PASO ELECTRIC COMPANY, a Texas corporation, on behalf of the corporation.

David A. Spivak

Notary Public

DAVID A. SPIVAK
Notary Public, State of New York
No. 31-4693468
Qualified in New York County
Commission Expires March 30, 1987

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

The foregoing instrument was acknowledged before me this 16th day of December, 1986, by MARTIN P. HENRY, Assistant Vice President of THE FIRST NATIONAL BANK OF BOSTON, a national banking association, on behalf of the banking association as trustee under that certain Trust Agreement dated as of December 1, 1986.

David A. Spivak

Notary Public

DAVID A. SPIVAK
Notary Public, State of New York
No. 31-4693468
Qualified in New York County
Commission Expires March 30, 1987

EXHIBIT A
to
DEED AND
BILL OF SALE

PVNGS SITE DESCRIPTION

1. PVNGS PLANT SITE.

PARCEL NO. 1: Lot Four (4); the Southwest quarter of the Northwest quarter; and the West half of the Southwest quarter, all in Section Two (2), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 2: All of Section Three (3), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 3: The East half of Section Four (4), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 4: The West half of Section Twenty-six (26), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 5: Section Twenty-seven (27), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the Northwest quarter of Section 27.

PARCEL NO. 6: The Southeast quarter of Section Twenty-eight (28), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT 50% of all oil, gas and other mineral deposits and geothermal resources recovered from or developed on the property, as reserved in instrument recorded May 10, 1974 in Docket 10647, page 136.

PARCEL NO. 7: The East half of Section Thirty-three (33), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 8: All of Section Thirty-four (34), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 9: The West half of Section Thirty-five (35), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 10: The Southeast quarter of Section Nine (9), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the Northwest quarter thereof.

PARCEL NO. 11: All of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the East half of the Southeast quarter thereof; and EXCEPT the North half of the South half of the Northwest quarter of the Northwest quarter thereof.

PARCEL NO. 12: That part of the East half of the Southwest quarter of Section Twenty-three (23), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Southeast corner of the said East half of the Southwest quarter of Section 23; thence West, an assumed bearing along the South line of the said East half of the Southwest quarter of Section 23, for a distance of 762.04 feet; thence North 0 degrees 03 minutes 39 seconds West; parallel to the East line of the said East half of the Southwest quarter of Section 23, for a distance of 1946.46 feet to a point on the South right-of-way line of the 200 foot wide HASSAYAMPA-SALOME HIGHWAY, as recorded in Book 12 of Road Maps, page 82, Maricopa

County Recorder, Maricopa County, Arizona: thence continuing North 0 degrees 03 minutes 39 seconds West for a distance of 234.15 feet to a point on the North right-of-way line of said highway; thence South 58 degrees 43 minutes 35 seconds East, along said North right-of-way line for a distance of 892.17 feet to a point on the said East line of the East half of the Southwest quarter of Section 23; thence South 0 degrees 03 minutes 39 seconds East, along said East line for a distance of 234.15 feet to a point on the said South right-of-way line; thence continuing South 0 degrees 03 minutes 39 seconds East for a distance of 1483.31 feet to the true point of beginning;

EXCEPT the East 305 feet of the South 305 feet thereof; and EXCEPT one-half of the minerals and mineral rights and mineral estates of every kind and nature, as set forth in Deed recorded in Docket 11652, page 52, Maricopa County Records.

PARCEL NO. 13: The North half of the South half of the Northwest quarter of the Northwest quarter of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

II. HASSAYAMPA PUMPING STATION AND EFFLUENT PIPELINE.

All real property, leases, licenses, easements, rights-of-way and other property held by Title USA Company of Arizona Trust No. 530 established by that certain Trust Agreement dated October 15, 1975, as amended, but excluding therefrom all improvements.

III. MISCELLANEOUS REAL PROPERTY INTERESTS.

Those ANPP Project Agreements (as defined in the ANPP Participation Agreement), other than the Trust Agreement for Title USA Company of Arizona Trust 530, consisting of leases, licenses, easements, and permits, which provide land and land rights for (a) the pipeline to supply waste water effluent to PVNGS from the 91st Avenue sewage treatment plant serving the Phoenix metropolitan area and (b) railroad access to the Nuclear Plant Site (as defined in the ANPP Participation Agreement

EXHIBIT B
to
DEED AND
BILL OF SALE

UNIT 2 DESCRIPTION

A. Unit 2 of the Palo Verde Nuclear Generating Station (PVNGS), located in Maricopa County, Arizona, approximately 55 miles west of the City of Phoenix, Arizona, and approximately 16 miles west of the City of Buckeye, Arizona, consisting of:

I. Unit 2 Combustion Engineering "System 80" pressurized water reactor nuclear steam supply system (the NSSS). The NSSS is comprised of a reactor vessel containing 241 fuel assemblies with approximately 100 tons of enriched uranium (fuel assemblies, however, are not part of Unit 2 and are not included in the Undivided Interest being sold), two steam generators, four reactor coolant pumps and various additional systems and subsystems. The licensed thermal rating of the NSSS is 3800 MW.

II. Unit 2 GE TC6F-43, 1800 RPM tandem-compound, six flow, reheat turbine-generator including turbine, generator, moisture separator-reheater, exciter, controls, and auxiliary subsystems. The turbine-generator is conductor cooled and rated at 1,554 MVA at 24,000 V, 3 phase, 60 Hz, 1.5 in Hg ABS back pressure, and approximately 1,363 MW maximum gross electric output.

III. Unit 2 146 ft. inside diameter, steel-lined, pre-stressed concrete cylindrical containment building with a hemispherical dome designed for 60 psig. The containment building houses the reactor system.

IV. Unit 2 auxiliary systems and equipment including engineered safeguards systems, reactor auxiliary systems and turbine-generator auxiliary systems associated with items I, II, and III above, extending to and including the Unit 2 start-up transformer.

V. Unit 2 cooling tower system consisting of three (3) mechanical draft cooling towers, including a closed cycle circulating water system, makeup water systems and essential spray ponds.

VI. Unit 2 radioactive waste treatment system, including liquid, gaseous, and solid waste subsystems, controls, instrumentation, storage, handling and shipment facilities.

VII. Unit 2 emergency diesel-generator system, including a diesel-generator building which contains two diesel generators, fuel oil systems, storage tanks, control and instrumentation systems and other equipment.

VIII. Unit 2 internal communication systems, including associated interconnections and computer data links.

BUT EXCLUDING:

I. Nuclear fuel for Unit 2, including spare fuel assemblies, and nuclear waste.

II. Spare Parts (Unit 2).

III. Transmission facilities (including any and all facilities and equipment providing interconnection between the Unit 2 turbine generator and the ANPP High Voltage Switchyard, including step-up transformers and standby equipment and systems).

IV. Oil and diesel fuel inventories (Unit 2).

B. All PVNGS common facilities, INCLUDING BUT NOT LIMITED TO:

I. Surveillance systems, including associated radioactive monitoring systems and equipment.

II. Water treatment facilities and transport systems for supply of waste water effluent.

III. Related storage facilities and equipment (excluding Warehouses).

BUT EXCLUDING:

I. Nuclear fuel, including spare fuel assemblies, and nuclear waste.

II. Electrical power facilities including Construction Switchyard and all transmission and ANPP High Voltage Switchyard facilities.

III. Administration Building.

IV. Administration Annex Building.

V. Technical Support Center.

VI. Visitor Center.

VII. External communication systems and equipment, including associated interconnections and computer data links.

VIII. Parking lot improvements, road improvements, site improvements, fencing and dikes.

IX. Spare parts (Common Facilities).

X. Simulator.

XI. Oil and diesel fuel inventories.

XII. Evaporation Pond.

XIII. Guard house.

XIV. Coating facility.

XV. Fire pump house.

XVI. Radiation Instrument calibration lab.

XVII. Service building.

XVIII. Water treatment building.

XIX. Shooting range.

XX. WRF operations building.

XXI. Warehouses.

XXII. Real Property, beneficial interest in Title USA Company of Arizona Trust 530, and Project Agreement interests described in Exhibit A.

When recorded, return to: Greg R. Nielsen
Snell & Wilmer
3100 Valley Bank Center
Phoenix, Arizona 85073

DEED

For the consideration of Ten Dollars ($10.00) and other valuable considerations, EL PASO ELECTRIC COMPANY, a Texas corporation ("Grantor"), hereby grants, conveys, sells, transfers and assigns to THE FIRST NATIONAL BANK OF BOSTON, a national banking association, as Owner Trustee (the "Owner Trustee") under that certain Trust Agreement (the "Trust Agreement"), with the beneficiary identified below, dated as of December 1, 1986 (the Owner Trustee being hereinafter referred to as "Grantee"), (A) an undivided .727881% interest in the land that is more particularly described on Exhibit A attached hereto and by this reference incorporated herein until the occurrence of the Determination Event, as hereinafter defined, and (B) an undivided .727881% interest in those ANPP Project Agreements (as defined in the Arizona Nuclear Power Project Participation Agreement dated August 23, 1973, among Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company, Public Service Company of New Mexico, El Paso Electric Company, Southern California Public Power Authority and Los Angeles Department of Water and Power, as amended, recorded on December 31, 1985 as Instrument No. 85-620132, records of Maricopa County, Arizona (the "ANPP Participation Agreement"), other than the Trust Agreement for the Title USA Company of Arizona Trust 530), consisting of leases, licenses, easements and permits, which provide land and land rights for (a) the pipeline to supply waste water effluent to the Palo Verde Nuclear Generating Station (as defined in the ANPP Participation Agreement) from the 91st Avenue sewage treatment plant serving the Phoenix, Arizona metropolitan area and (b) railroad access to the Nuclear Plant Site (as defined in the ANPP Participation Agreement) (such ANPP Project Agreements being hereinafter referred to as the "Assigned Project Agreements", and the land described in Exhibit A together with the land subject to the Assigned Project Agreements being hereinafter collectively referred to as the "Land"), together with all rights and privileges of Grantor appurtenant thereto, including but not limited to the perpetual (subject to the Possibility of Reversion, as hereinafter defined) right to locate, maintain and use the Improvements (as hereinafter defined) on the Land and the perpetual (subject to the Possibility of Reversion) right of ingress and egress over, upon and across the Land to the Improvements, BUT excepting and excluding from the transfer being made pursuant to this Deed any and all facilities, structures, improvements, equipment and property of whatever kind and nature now or hereafter constructed, placed or affixed on the Land (collectively, the Improvements), Grantor and Grantee hereby acknowledging and agreeing that the interest in the Improvements was acquired by Grantee pursuant to a separate Deed and Bill of Sale dated as of the date hereof between Grantor and Grantee and not pursuant to this Deed.

1. The interest being transferred pursuant to this Deed is subject to the ANPP Participation Agreement, the Project Agreements as defined in said ANPP Participation Agreement, any Permitted Liens described in clauses (i), (v) (aggregating not more than 14.00% of $5,000,000), (vi), (ix), (x) and (xi) of the definition thereof and to the matters set forth on Exhibit B attached hereto and incorporated herein by this reference.

2. Grantor hereby warrants that it is the true and lawful owner of the undivided interest conveyed hereby in the property described on Exhibit A attached hereto and has good right to sell the undivided interest in such property; that Grantor has good and marketable title to the undivided interest in the property described in Exhibit A and that title to such property is on the date of execution hereof free and clear of all claims, liens, encumbrances, security interests, covenants, assessments, rights, reservations, easements, restrictions and conditions save and except for any Permitted Liens described in clauses (i), (v) (aggregating not more than 14.00% of $5,000,000), (vi), (ix), (x) and (xi) and those matters set forth on Exhibit B attached hereto. Grantor hereby warrants

that good and marketable title to the undivided interest in the property described on Exhibit A is hereby conveyed to Owner Trustee subject to the Possibility of Reversion; and that the title to the undivided interest in the property described on Exhibit A conveyed to the Owner Trustee is determinable to the extent that such title shall automatically terminate and revert to the Grantor, its successors and assigns, without any further act or deed by any person whatsoever upon the occurrence of the Determination Event (such possibility of automatic termination and reversion being herein referred to as the "Possibility of Reversion"). Subject only to the Possibility of Reversion and to the matters set forth on Exhibit B attached hereto, Grantor hereby warrants, and will forever defend, the title to the undivided interest in the property described in Exhibit A conveyed hereby against all persons whomsoever. Any attempt by Grantor or its successors and assigns to release to Grantee or otherwise terminate the Possibility of Reversion shall be null, void and of no force and effect whatsoever.

3. Grantor intends by this Deed that (i) from and after the date as of which this Deed is executed and delivered, but subject to the Possibility of Reversion, Grantee will own an undivided .727881% interest in the property described in Exhibit A, as a tenant in common with the owners of the remaining undivided interests in such property and (ii) from and after the date as of which this Deed is executed and delivered, Grantee will own an undivided .727881% interest in the Assigned Project Agreements as a tenant in common with the owners of the remaining undivided interests in the Assigned Project Agreements.

4. Determination Event as used herein means the commencement of Decommissioning.

5. Pursuant to Arizona Revised Statutes Section 33-401, the beneficiary of the Trust Agreement is Chrysler Financial Corporation, a Michigan corporation, whose address is Greenwich Office Park I, Greenwich, Connecticut 06836. A copy of the Trust Agreement is available for inspection at the offices of the Owner Trustee at 100 Federal Street, Boston, Massachusetts 02110, Attention of Corporate Trust Division.

6. Terms used herein and not otherwise defined herein shall have the meanings set forth in Appendix A attached hereto.

IN WITNESS WHEREOF, Grantor has caused this Deed to be executed as of the 18th day of December, 1986.

EL PASO ELECTRIC COMPANY,
a Texas corporation

By: _____
Vice President

ACCEPTED AND AGREED TO:

THE FIRST NATIONAL BANK
OF BOSTON,
a national banking
association, not in
its individual capacity,
but solely as Trustee
under the Trust Agreement.

By _____
Assistant ~~Vice President~~

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

The foregoing instrument was acknowledged before me this 16th day of December, 1986, by WILLIAM J. JOHNSON, the Vice President of EL PASO ELECTRIC COMPANY, a Texas corporation, on behalf of the corporation.

David A. Spivak

Notary Public

DAVID A. SPIVAK
Notary Public, State of New York
No. 31-4693468
Qualified in New York County
Commission Expires March 30, 1987

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

The foregoing instrument was acknowledged before me this 16th day of December, 1986, by MARTIN P. HENRY, an Assistant Vice President of THE FIRST NATIONAL BANK OF BOSTON, a national banking association, on behalf of the banking association as trustee under that certain Trust Agreement dated as of December 1, 1986.

David A. Spivak

Notary Public

DAVID A. SPIVAK
Notary Public, State of New York
No. 31-4693468
Qualified in New York County
Commission Expires March 30, 1987

PVNGS Plant Site

PARCEL NO. 1: Lot Four (4); the Southwest quarter of the Northwest quarter; and the West half of the Southwest quarter, all in Section Two (2), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 2: All of Section Three (3), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 3: The East half of Section Four (4), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 4: The West half of Section Twenty-six (26), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 5: Section Twenty-seven (27), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the Northwest quarter of Section 27.

PARCEL NO. 6: The Southeast quarter of Section Twenty-eight (28), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT 50% of all oil, gas and other mineral deposits and geothermal resources recovered from or developed on the property, as reserved in instrument recorded May 10, 1974 in Docket 10647, page 136.

PARCEL NO. 7: The East half of Section Thirty-three (33), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 8: All of Section Thirty-four (34), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 9: The West half of Section Thirty-five (35), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 10: The Southeast quarter of Section Nine (9), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the Northwest quarter thereof.

PARCEL NO. 11: All of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the East half of the Southeast quarter thereof; and

EXCEPT the North half of the South half of the Northwest quarter of the Northwest quarter thereof.

PARCEL NO. 12: That part of the East half of the Southwest quarter of Section Twenty-three (23), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Southeast corner of the said East half of the Southwest quarter of Section 23; thence West, an assumed bearing along the South line of the said East half of the Southwest quarter of Section 23, for a distance of 762.04 feet; thence North 0 degrees 03 minutes 39 seconds West; parallel to the East line of the said East half of the Southwest quarter of Section 23, for a distance of 1946.46 feet to a point on the South right-of-way line of the 200 foot wide HASSAYAMPA-SALOME HIGHWAY, as recorded in Book 12 of Road Maps, page 82, Maricopa

County Recorder, Maricopa County, Arizona; thence continuing North 0 degrees 03 minutes 39 seconds West for a distance of 234.15 feet to a point on the North right-of-way line of said highway; thence South 58 degrees 43 minutes 35 seconds East, along said North right-of-way line for a distance of 892.17 feet to a point on the said East line of the East half of the Southwest quarter of Section 23; thence South 0 degrees 03 minutes 39 seconds East, along said East line for a distance of 234.15 feet to a point on the said South right-of-way line; thence continuing South 0 degrees 03 minutes 39 seconds East for a distance of 1483.31 feet to the true point of beginning;

EXCEPT the East 305 feet of the South 305 feet thereof; and

EXCEPT one-half of the minerals and mineral rights and mineral estates of every kind and nature, as set forth in Deed recorded in Docket 11652, page 52, Maricopa County, Records.

PARCEL NO. 13: The North half of the South half of the Northwest quarter of the Northwest quarter of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

1. The right to enter upon, occupy and use, any part of all of that portion of the West half of the West half of Section 27, lying within 20 feet of the center line of the transmission line right of way of the Central Arizona Light and Power Company for the purposes provided in the Act of June 10, 1920 (41 STAT., 1063), and subject to the conditions and limitations of Section 24 of said Act, as amended by the Act of August 26, 1935 (49 STAT., 846), as reserved unto the United States of America in instrument recorded September 30, 1949 in Docket 442, page 577. (Part of Parcel 5—South half of said Section 27)

2. Roadway over the South 65 feet of said Sections 9 and 10, as shown on Book 13 of Road Maps, page 48. (Parcels 10 and 11)

3. Easement and rights incident thereto for electric lines approximately 28 feet South of the North line of said Section 34, as set forth in instrument recorded February 20, 1952 in Docket 878, page 548. (Parcel No. 8)

4. All the Oil and Gas in said lands, as reserved unto the United States of America, and the right to prospect for, mine and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the Act of June 17, 1914 (38 Stat. 509), as set forth in Patent recorded June 4, 1957 in Docket 2194, page 409. (Part of Parcel No. 11)

5. Easement and rights incident thereto for transmission line over said Section 34, said easement being 10 feet in width, the centerline described as follows: Beginning at a point approximately 28 feet South and 2445.5 feet East of the Northwest corner of said Section 34; thence Southerly along, parallel to and approximately 2620 feet to a point; thence Easterly along, parallel to, and approximately 2648 feet South of the North line of said Section 34, a distance of approximately 1556 feet to a point, as set forth in instrument recorded January 15, 1962 in Docket 3992, page 49. (Parcel No. 8)

6. One-Sixteenth of all gas, oil, metals and mineral rights as reserved unto the State of Arizona, in Patent recorded January 11, 1974 in Docket 10473, page 477. (Parcel 1)

7. Easement and rights incidents thereto for highway purposes over the West 55 feet of the East half of said Section 4, as set forth in the instrument recorded October 10, 1975 in Docket 11370, page 142. (Parcel 3)

8. Easement and rights incident thereto for highway purposes over the West 55 feet of the Southeast quarter of said Section 28, as set forth in instrument recorded October 10, 1975 in Docket 11370, page 142. (Parcel 6)

9. Easement and rights incident thereto for highway purposes over the West 55 feet of the East half of said Section 33, as set forth in instrument recorded October 10, 1975 in Docket 11370, page 142. (Parcel 7)

10. Easement and rights incident thereto for highway purposes over the West 55 feet of the Southeast quarter of said Section 9, as set forth in instrument recorded October 10, 1975 in Docket 11370, page 142. (Part of Parcel 10)

11. Easement and rights incident thereto for electric lines over the North 10 feet of the following described property: The Southeast quarter of Section 28, Township 1 North, Range 6 West Except the West 55 feet thereof for roadway, as set forth in instrument recorded June 25, 1976 in Docket 11736, page 1089. (Parcel 6)

12. Easement for highway purposes over said premises, as granted to Maricopa County, a Political Subdivision, by instrument recorded December 15, 1977 in Docket 12602, page 575, described as follows: The South 40 feet of the East one-half of the Southeast quarter of Section 9; the South 40 feet of the Southwest quarter of Section 10; the South 40 feet of the West one-half of the Southeast quarter of Section 10; the South 40 feet of the Southwest quarter of the Southeast quarter of Section 9;

All being in Township 1 South, Range 6 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

13. A roadway of a width consistent with the right of way over the Southerly portion of Section 9 and 10 of the within described property, and other property designated County Road on Book 25 of Road Maps, page 47, recorded December 26, 1978. (Also known as Ward Road from the Hassayampa-Salome Highway to the South entrance of the Palo Verde Nuclear Generating Station)

14. 1986 taxes not yet due and payable.

15. Easement and rights incident thereto for transmission lines over a portion of said premises, as set forth in instrument recorded November 15, 1985 in Document No. 85-544604. (Parcels 1, 2, 8, 9 and 11)

16. Easement and rights incident thereto for highway over a portion of said premises, as set forth in instrument recorded February 3, 1959 in Docket 2740, page 309, and as shown in Book 12 of Road Maps, page 82. (Parcel 12)

17. Easement and rights incident thereto for roadway 20 feet in width, over the East 20 feet of the within described property, by instrument recorded October 19, 1976, in Docket 11907, page 115. (Parcel 12)

DEED AND ASSIGNMENT OF BENEFICIAL INTEREST
TITLE USA TRUST NO. 530

EL PASO ELECTRIC COMPANY, a Texas corporation (the "Assignor"), as the present owner of an undivided 4.181673% of the entire beneficial interest under Title USA Company of Arizona Trust No. 530, formerly known as US Life Title Company of Arizona Trust No. 530 ("Trust 530") established by that certain Trust Agreement dated October 15, 1975 (the "Trust 530 Agreement"), for and in consideration of the sum of Ten and no/100 Dollars ($10.00) and other valuable consideration, does by these presents sell, assign, convey, transfer and set over to THE FIRST NATIONAL BANK OF BOSTON, a national banking association, not in its individual capacity, but solely as Owner Trustee (the "Owner Trustee") under that certain Trust Agreement (the "Trust Agreement") with the beneficiary identified below, dated as of December 1, 1986 (the Owner Trustee being referred to herein as the "Assignee") an undivided .727881% beneficial interest in Trust 530.

1. It is the intent of this Deed and Assignment of Beneficial Interest that, from and after the date as of which this instrument is executed and delivered, Assignee will own an undivided .727881% of the entire beneficial interest in Trust 530, as a tenant in common with other beneficiaries.

2. Assignor hereby warrants that it is the true and lawful owner of the beneficial interest being transferred hereby and has good right to sell such interest; that Assignor has good and marketable title to such beneficial interest and that title to such beneficial interest is on the date of execution hereof free and clear of all claims, liens, security interests, covenants, rights, restrictions, conditions and encumbrances of any nature, save and except only those matters set forth in paragraph 3 below; that good, marketable and indefeasible title to such beneficial interest is hereby conveyed to Owner Trustee; and that, subject only to the matters set forth in paragraph 3 below, Assignor warrants and will forever defend such title against the claims of all persons whomsoever.

3. This Deed and Assignment of Beneficial Interest is given and accepted with the understanding and agreement that Assignor and Assignee hereby ratify, confirm and approve all proper actions heretofore taken by Title USA Company of Arizona, as Trustee of Trust 530 (the "Trustee") and all proper disbursements heretofore made by the Trustee, and is given and accepted with the understanding and agreement that the interest in Trust 530 which is being transferred hereby is being transferred and assigned, and the property held under Trust 530 is, subject to all the terms and conditions of (i) the Arizona Nuclear Power Project Participation Agreement dated August 23, 1973, among Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company, Public Service Company of New Mexico, El Paso Electric Company, Southern California Public Power Authority and Los Angeles Department of Water and Power, as amended, (ii) the Project Agreements as defined in said Arizona Nuclear Power Project Participation Agreement and (iii) the Trust 530 Agreement, including all supplements and amendments thereto; and is subject to all obligations and liabilities under the Trust 530 Agreement heretofore accrued or hereafter arising under the terms thereof. Assignee hereby accepts, assumes and agrees to be bound by all of the terms, conditions, stipulations and obligations of the Trust 530 Agreement. Trustee is authorized to substitute Assignee in place of Assignor under the Trust 530, to the extent of the interest hereby assigned to Assignee.

4. Assignee hereby advises the Trustee that, until further notice, Assignee's address for all Trust 530 purposes is:

100 Federal Street
Boston, Massachusetts 02110
Attention of Corporate
Trust Division

5. Pursuant to Arizona Revised Statutes Section 33-401, the beneficiary of the Trust Agreement is Chrysler Financial Corporation, a Michigan corporation, whose address is Greenwich Office Park I, Greenwich, Connecticut 06836. A copy of the Trust Agreement is available for inspection at the offices of the Owner Trustee at 100 Federal Street, Boston, Massachusetts 02110; Attention of Corporate Trust Division. Assignee is entering into this Deed and Assignment of Beneficial Interest solely as trustee under the Trust Agreement; only the Trust Estate thereunder, and not Assignee in its individual capacity nor the beneficiary of the Trust Agreement, is liable for any of the obligations of Assignee hereunder.

IN WITNESS WHEREOF, Assignor has caused this Deed and Assignment of Beneficial Interest to be executed as of the 18th day of December, 1986.

EL PASO ELECTRIC COMPANY,
a Texas corporation

By: W J Johnson
Vice President

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

The foregoing instrument was acknowledged before me this 16 day of December, 1986, by WILLIAM J. JOHNSON, the Vice President of EL PASO ELECTRIC COMPANY, a Texas corporation, on behalf of the corporation.

Delia T. Santiago
Notary Public
DELIA T. SANTIAGO
Notary Public, State of New York
No. 41-4451130
Qualified in Queens County
Commission Expires March 30, 1987

ACCEPTANCE BY ASSIGNEE

The foregoing Deed and Assignment of Beneficial Interest is hereby accepted and all terms and conditions are hereby approved, and Assignee hereby acknowledges receipt of a copy of the Trust 530 Agreement and all amendments and supplements thereto, and hereby agrees to be bound by and to comply with all the terms and obligations of the Trust 530 Agreement.

Dated as of December 18, 1986.

THE FIRST NATIONAL BANK OF BOSTON,
a national banking association,
not in its individual capacity but
solely as Trustee under the Trust
Agreement

By: _____
Assistant Vice President

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

The foregoing instrument was acknowledged before me this 16 day of December, 1986, by Martin P. Henry, an Assistant Vice President of The First National Bank of Boston, a national banking association, on behalf of the banking association as Trustee under that certain Trust Agreement dated as of December 1, 1986.

_____
Notary Public
DELIA T. SANTIAGO
Notary Public, State of New York
No. 41-4811130
Qualified in Queens County
Commission Expires March 30, 1987

ENDORSEMENT OF TRUSTEE

The foregoing Deed and Assignment of Beneficial Interest is hereby accepted, and filed in the Trust Department of TITLE USA COMPANY OF ARIZONA this day of December, 1986.

TITLE USA COMPANY OF ARIZONA,
Trustee

By: _____
Authorized Signature

NOTE: Trustee's endorsement hereon shall be effective only after all assignment fees and other fees currently due Trustee with respect to the interest being assigned have been paid in full.

STATE OF ARIZONA
COUNTY OF MARICOPA } ss.:

The foregoing instrument was acknowledged before me this day of December, 1986, by , a trust officer of TITLE USA COMPANY OF ARIZONA, an Arizona corporation, on behalf of the corporation, as Trustee under the Trust 530 Agreement.

_____
Notary Public

December 18, 1986

FIRST CITY NATIONAL BANK OF HOUSTON
not in its individual
capacity, but solely as Collateral
Trust Trustee
First City Financial Center
1301 Fannin Street, 21st Floor
Houston, Texas 77002
Attention: Corporate Trust Department

EL PASO ELECTRIC COMPANY
PALO VERDE NUCLEAR GENERATING STATION UNIT 2 LEASE

Dear Sirs:

Reference is made to the Participation Agreement, dated as of December 1, 1986 (the Participation Agreement), among the parties whose signatures appear at the foot hereof. All capitalized terms used herein without definition shall have the meanings set forth in Appendix A to the Participation Agreement.

1. **Representations, Warranties and Agreements.** The Loan Participant, the Owner Participant, FNB, the Owner Trustee, the Indenture Trustee and El Paso Electric Company (EL Paso) hereby confirm for your benefit that their respective representations and warranties (in the capacity given therein) and, in the case of EL Paso, agreements contained in Sections 6, 7, 8, 9, 10, 13 and 14 of the Participation Agreement and, in the case of the Owner Participant, the agreements contained in Section 14(a) of the Participation Agreement, are true and correct and hereby respectively repeat such representations, warranties and agreements, in the case of EL Paso and the Owner Participant, to the same extent as if such

representations, warranties and agreements were set forth herein in full, whether or not the same are amended after the date hereof.

2. **Survival of Representations, Warranties and Agreements.** All representations, warranties and agreements contained herein shall survive the execution and delivery of this letter.

3. **Successors and Assigns.** All terms and provisions of this letter shall inure to your benefit and the benefit of your successors and assigns and each holder from time to time of each Bond.

4. **Consequences of Breach.** A breach of the representations, warranties and agreements contained herein will not entitle you or any holder of a Bond to exercise remedies or take other action under the Participation Agreement or any other Transaction Document, but you may pursue all other rights you have at law or in equity in consequence of such a breach.

5. **Governing Law.** This letter shall in all respects be governed by, and construed in accordance with, the laws of the State of New York.

CHRYSLER FINANCIAL CORPORATION

By: _____
Attorney-in-Fact

EL PASO FUNDING CORPORATION

By: C. D. Dunlop
Vice President

FIRST CITY NATIONAL BANK OF HOUSTON,
as Indenture Trustee

By: _____
Assistant Vice President

EL PASO ELECTRIC COMPANY

By: _____
Vice President

THE FIRST NATIONAL BANK OF BOSTON,
in its individual capacity
and as Owner Trustee

By: _____
Assistant Vice President

EL PASO ELECTRIC COMPANY

Sale and Leaseback of an Undivided Interest in Palo Verde Nuclear Generating Station Unit 2 and Certain Common Facilities

COMMERCIAL FEDERAL INVESTMENT CORPORATION

December 18, 1986

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PARTICIPATION AGREEMENT

dated as of December 1, 1986

among

COMMERCIAL FEDERAL INVESTMENT CORPORATION,

as Owner Participant

EL PASO FUNDING CORPORATION,

as Loan Participant

THE FIRST NATIONAL BANK OF BOSTON,

in its individual capacity and as Owner Trustee
under a Trust Agreement,
dated as of December 1, 1986
with Commercial Federal Investment Corporation,
as Owner Trustee

FIRST CITY NATIONAL BANK OF HOUSTON,

in its individual capacity and as Indenture Trustee
under a Trust Indenture, Mortgage, Security Agreement
and Assignment of Rents, dated as of December 1, 1986
with the Owner Trustee, as Indenture Trustee

and

EL PASO ELECTRIC COMPANY,

as Lessee

Sale and Leaseback of an Undivided Interest in
Palo Verde Nuclear Generating Station Unit 2
and Certain Common Facilities

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PARTICIPATION AGREEMENT

PARTICIPATION AGREEMENT, dated as of December 1, 1986, among COMMERCIAL FEDERAL INVESTMENT CORPORATION, a Nebraska corporation (the Owner Participant), EL PASO FUNDING CORPORATION, a Delaware corporation (the Loan Participant), THE FIRST NATIONAL BANK OF BOSTON, a national banking association, in its individual capacity (FNB) and as Owner Trustee (the Owner Trustee) under a Trust Agreement, dated as of December 1, 1986, with the Owner Participant, FIRST CITY NATIONAL BANK OF HOUSTON, a national banking association, in its individual capacity (FCNB) and as Indenture Trustee (the Indenture Trustee) under a Trust Indenture, Mortgage, Security Agreement and Assignment of Rents, dated as of December 1, 1986, with the Owner Trustee, and EL PASO ELECTRIC COMPANY, a Texas corporation (the Lessee).

WITNESSETH:

WHEREAS, the Owner Participant desires to cause the Trust to acquire the Undivided Interest and the grant of the Real Property Interest and to lease them to the Lessee under the Facility Lease;

WHEREAS, the Lessee desires to sell the Undivided Interest and grant the Real Property Interest to the Trust and lease them back from the Trust under the Facility Lease;

WHEREAS, the Owner Trustee and the Lessee will enter into the Purchase Documents with respect to the sale and purchase of the Undivided Interest and the grant of the Real Property Interest;

WHEREAS, pursuant to the terms and provisions of the Indenture, the Owner Trustee will authorize the creation, issuance and sale and delivery of the Initial Series Notes and the granting of the security therefor, and the Indenture Trustee will authenticate the Initial Series Notes; and

WHEREAS, the Loan Participant is willing to purchase the Initial Series Notes on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Definitions.

For the purposes hereof, capitalized terms used herein shall have the meanings assigned to such terms in Appendix A; provided, however, that, for all purposes of this Participation Agreement, to the extent different from Appendix A hereto, the terms Deemed Loss Event, Event of Loss, Economic Useful Life and Final Shutdown (including for purposes of such definitions, all defined terms contained in or relating to any of such definitions) shall have the respective meanings set forth or appended to the Facility Lease as amended from time to time in accordance with its terms. References in this Participation Agreement to sections, paragraphs and clauses are to sections, paragraphs and clauses in this Participation Agreement unless otherwise indicated.

SECTION 2. Participation by the Loan Participant; Releveraging; Refunding; Reoptimization; Issuance of Initial Series Bonds.

(a) *Loan Participant's Commitment.* Subject to the satisfaction of the conditions in Sections 5(a) and 11(a), on the Closing Date the Loan Participant agrees to lend to the Owner Trustee, on a nonrecourse basis, an amount (the Loan) equal to the Loan Percentage of the Purchase Price and to issue the Initial Series Bonds in a public offering to be consummated on the Closing Date for the purposes of funding the Loan.

(b) *Payment; Terms of the Initial Series Notes.* Proceeds of the Loan shall be made available in such manner as the parties may agree upon. The Loan shall be evidenced by the Initial Series Notes. The Initial Series Notes shall be issued by the Owner Trustee under and pursuant to the Indenture, shall be the aggregate principal amount of the Loan and shall bear interest at the rate or rates per annum and shall be payable as set forth in the Indenture.

(c) *Releveraging.* Upon the occurrence of an adjustment pursuant to Section 3(d) of the Facility Lease, subject to the conditions set forth in Section 11(c), on the Releveraging Date the Loan Participant agrees to lend to the Owner Trustee, on a nonrecourse basis, an additional amount (a Releveraging Loan) equal to the applicable Releveraging Amount. There may be up to two Releveraging Loans under this Section 2(c), the Releveraging Date or Dates of which shall be mutually acceptable to the Lessee, the Owner Participant and the Loan Participant. Proceeds of each Releveraging Loan shall be paid directly to the Indenture Trustee, in immediately available funds, at the Indenture Trustee's Office, and such proceeds shall be applied forthwith as a partial refund of the Investment. Each Releveraging Loan shall be evidenced by a Releveraging Note, which Note shall be issued by the Owner Trustee under and pursuant to the Indenture, be in the principal amount of the Releveraging Loan in respect of which it is issued, and bear interest at the rate or rates per annum and be payable as set forth in the Indenture. No releveraging shall increase the principal amount of the Notes above 80 percent of the Purchase Price.

(d) *Refunding.* Subject to the satisfaction of the conditions set forth in Section 11(d), if El Paso and the Owner Participant agree that the Initial Series Notes should be refunded on the Refunding Date, if any, the Loan Participant agrees to lend to the Owner Trustee, on a nonrecourse basis, an amount (the Refunding Loan) equal to the sum of (i) the amount necessary to refund the principal amounts of the Initial Series Notes plus any premium thereon and each Releveraging Note theretofore issued and to pay accrued interest on each thereof from, and including, the last date as of which interest was payable thereon (or, if no such date has occurred the date of issue thereof) to, but excluding, the Refunding Date and (ii) if any releveraging is to occur on the Refunding Date, an amount equal to the applicable Releveraging Amount. Proceeds of the Refunding Loan shall be paid directly to the Indenture Trustee at the Indenture Trustee's Office and applied (x) to the extent necessary to refund the unpaid principal of, and such premium and accrued interest on, the Initial Series Notes and each Releveraging Note (if theretofore issued), and (y) to the extent of such Releveraging Amount, for the account of the Owner Trustee, as a partial refund of the Investment, in each case in immediately available funds. The Refunding Loan shall be evidenced by the Refunding Note or Notes, which Note or Notes shall be issued by the Owner Trustee under and pursuant to the Indenture, be in the principal amount of the Refunding Loan, and bear interest at the rate or rates per annum and be payable as set forth in the Indenture. On the Refunding Date the Refunding Note or Notes shall be exchanged by the Owner Trustee for the Initial Series Notes and each Releveraging Note theretofore issued. The Lessee shall give the parties hereto written notice of the Refunding Date (if a refunding shall have been agreed to by the Owner Participant) no less than seven Business Days prior thereto. Not less than four Business Days prior to the Refunding Date, the Loan Participant shall deliver to the Owner Participant and the Lessee a certificate setting forth the information necessary to complete the form of Refunding Notes (including the schedules thereto). Upon such delivery, and upon approval by the Lessee and the Owner Participant of the terms thereof, the Owner Participant and the Lessee shall cause the form of Refunding Notes to be completed. The parties hereto shall make a good faith effort to cooperate to effect such amendments of the Transaction Documents as may be necessary or appropriate to effect such refunding, so long as such amendments do not, in the opinion of Cravath, Swaine & Moore, adversely affect the tax benefits contemplated by the Owner Participant in entering into the transactions contemplated by this Participation Agreement and the other Transaction Documents. No refunding shall increase the principal amount of the Notes above 80 percent of the Purchase Price.

(e) *Reoptimization.* Subject to the satisfaction of the conditions set forth in Section 11(e), if the Lessee, in a timely manner, provides the Owner Trustee and the Owner Participant with information sufficient for the Owner Trustee to direct the adjustments described in Section 3.12 of the Indenture, together with a certificate (in form and substance reasonably satisfactory to the Owner Participant) to the effect that such adjustments minimize the aggregate increase in Basic Rent occurring as a result of the operation of Section 3(d) of the Facility Lease while preserving Net Economic Return, the Owner Trustee shall deliver to the Indenture Trustee a certificate pursuant to such Section 3.12. Notwithstanding the foregoing, the Owner Participant and the Owner Trustee may rely on the certificate

delivered by the Lessee and shall have no obligation to verify the same. No reoptimization pursuant to this Section 2(e) shall occur without the consent of the Owner Participant during the month of May or June of any year.

SECTION 3. Participation by the Owner Participant; Partial Refund of the Investment.

(a) *Owner Participant's Commitment.* Subject to the satisfaction of the conditions in Sections 5(a) and 11(a), on the Closing Date the Owner Participant agrees to (i) cause the Trust to make an equity investment in the Undivided Interest in an amount (the *Investment*) equal to the Investment Percentage of the Purchase Price and (ii) cause the Trust to make an equity investment in the Real Property Interest for the amount set forth in Schedule 2 as the "Real Estate Investment" (the *Real Estate Investment*). On the Closing Date, the Owner Participant shall provide to the Owner Trustee an amount equal to the Estimated Transaction Expenses. Proceeds of the Investment and the Real Estate Investment shall be made available in such manner as the parties may agree upon.

(b) *Partial Refund.* In the event that the Indenture Trustee shall have received the proceeds of a Releveraging Loan or that portion of the Refunding Loan equal to the applicable Releveraging Amount, the Indenture Trustee shall, immediately upon its receipt thereof, return the same to the Owner Participant as a partial refund of the Investment, and for purposes hereof the "Investment" shall thereupon be reduced accordingly.

SECTION 4. Purchase, Sale, Financing and Lease of the Undivided Interest and the Real Property Interest.

(a) *The Undivided Interest.* Subject to the satisfaction of the conditions in Sections 5(a) and 11(a), receipt from the Owner Participant of the Investment and receipt from the Loan Participant of the proceeds of the Loan, the Owner Trustee shall (i) on the Closing Date cause the Trust to purchase the Undivided Interest from the Lessee for the amount specified in Schedule 2 as the "Purchase Price" (the *Purchase Price*), and (ii) promptly after receipt of the amount thereof from the Owner Participant reimburse the Estimated Transaction Expenses, in each case in accordance with the payment instructions in the Notice of Closing. Subject to the satisfaction of the conditions in Section 11(b), on the Closing Date the Lessee shall sell the Undivided Interest to the Trust for the Purchase Price. Concurrently with such purchase and sale, the Trust shall lease the Undivided Interest to the Lessee, and the Lessee shall lease the Undivided Interest from the Trust, pursuant to the Facility Lease.

(b) *The Real Property Interest.* Subject to the satisfaction of the conditions in Sections 5(a) and 11(a) and receipt from the Owner Participant of the Real Estate Investment, on the Closing Date the Owner Participant shall cause the Trust to acquire the Real Property Interest from the Lessee for a purchase price equal to the amount set forth in Schedule 2 as the "Real Estate Investment." Subject to the satisfaction of the conditions in Section 11(b), on the Closing Date the Lessee shall grant the Real Property Interest to the Trust for the amount set forth in Schedule 2 as the "Real Estate Investment." Concurrently with such acquisition by the Trust, the Trust shall lease the Real Property Interest to the Lessee, and the Lessee shall lease the Real Property Interest from the Trust, pursuant to the Facility Lease.

SECTION 5. Notice of Closing; Closing.

(a) *Notice of Closing.* Not later than two Business Days prior to the Closing Date the Lessee shall deliver to the Owner Participant, the Owner Trustee, the Loan Participant, the Collateral Trust Trustee and the Indenture Trustee a notice, substantially in the form of Schedule 1 (the Notice of Closing), which shall (i) state that the Closing Date shall occur on the date specified therein, (ii) list the then known Transaction Expenses payable by the Owner Trustee pursuant to Section 14(a) (the Estimated Transaction Expenses), and (iii) provide payment instructions in respect of the disposition of the Purchase Price and acquisition price of the Real Property Interest.

(b) *Closing.* Upon satisfaction of the conditions in Section 5(a) and 11(a) and receipt from the Owner Participant of the Investment and the Real Estate Investment and receipt from the Loan

Participant of the proceeds of the Loan, on the Closing Date the Owner Trustee shall cause the Purchase Price to be paid and the acquisition price of the Real Property Interest to be paid, in e[redacted] case in accordance with the payment instructions in the Notice of Closing. Upon satisfaction of [redacted] conditions in Section 11(b), on or as of the Closing Date the Lessee shall deliver to the Owner Trustee the Purchase Documents.

SECTION 6. Representations, Warranties, Agreements and Directions of the Loan Participant.

(a) *Representations and Warranties.* The Loan Participant represents and warrants that:

(1) *Due Organization.* The Loan Participant is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware and has the corporate power and authority to carry on its business as presently conducted, own its properties, and enter into and perform its obligations under this Participation Agreement and each other Transaction Document and each Financing Document to which it is a party.

(2) *Due Authorization.* This Participation Agreement and each other Transaction Document and each Financing Document to which the Loan Participant is a party has been duly authorized by all necessary corporate action on the part of the Loan Participant and does not require the consent or approval of its stockholders or any trustee or holder of any of its indebtedness or other obligations, except such as have been, or on or before the Closing Date will have been, duly obtained, given or accomplished.

(3) *Execution and Enforceability.* This Participation Agreement and each other Transaction Document and each Financing Document to which the Loan Participant is a party has been duly executed and delivered by the Loan Participant and constitutes its legal, valid and binding agreement, enforceable against it in accordance with its terms.

(4) *No Violation.* Neither the execution, delivery or performance by the Loan Participant [redacted] this Participation Agreement, any other Transaction Document or any Financing Document to which it is a party, nor the consummation by the Loan Participant of the transactions contemplated hereby or thereby, nor compliance by the Loan Participant with the provisions hereof or thereof, conflicts with, or results or will result in the breach of any provision of, or is inconsistent with, the Certificate of Incorporation or ByLaws of the Loan Participant or contravenes any Federal, Delaware or New York law applicable to it, or any indenture, mortgage or agreement to which the Loan Participant is a party or by which it or its property is bound, or requires any Governmental Action with respect to the Loan Participant under any Federal, Delaware or New York law applicable to it, except such as have been, or on or before the Closing Date will have been, duly obtained, given or accomplished.

(5) *No Other Business.* Except as contemplated by this Participation Agreement, the other Transaction Documents and the Financing Documents and except as otherwise contemplated by the Section 6(e) Application, the Loan Participant has not engaged in any business or activity of any type or kind whatever.

(6) *ERISA.* The Loan Participant is not acquiring, and will not acquire, any Note with the "plan assets" of any "employee benefit plan," within the meaning of section 3(3) of ERISA, or any "plan," within the meaning of section 4975(e)(1) of the Code.

(7) *Investment Representation.* The Loan Participant is acquiring, and will acquire, each Note to be acquired by it hereunder and under the Indenture solely for purposes of pledging such Notes to the Collateral Trust Trustee to secure Bonds issued from time to time under the Collateral Trust Indenture. The Loan Participant understands that no Note to be acquired by [redacted] hereunder or under the Indenture will have been registered under the Securities Act and t[redacted] each such Note will bear the legend set forth in Section 4.5 of the Indenture.

(b) *Agreements.* The Loan Participant agrees that:

(1) *Transfers of Notes.* Any transfer or assignment of any Note or of all or any part of the Loan Participant's interest hereunder or under any other Transaction Document or any Financing Document shall be effected in a transaction constituting an exempted transaction under the Securities Act and on the express condition that each transferee, assignee or participant shall agree to be bound by the terms and provisions hereof and thereof. Neither the Loan Participant nor any subsequent Holder of a Note may sell, exchange or transfer any Note to any other Person (other than the Collateral Trust Trustee) unless such transferee delivers to the other parties hereto a representation and warranty (and an opinion of counsel satisfactory to each of the other parties hereto) to the effect that neither the transfer of such Note to, nor the ownership of such Note by, such transferee will cause such transferee, or any other party hereto, to be engaged in a "prohibited transaction," as defined in section 406 of ERISA or section 4975 of the Code, which is not at such time subject to an exemption contained in ERISA or in the rules, regulations, releases or bulletins adopted thereunder.

(2) *Payment of Bonds.* Except as provided in this Participation Agreement, without the consent of the Owner Participant and the Lessee, the Loan Participant will not refund or optionally prepay any Bond issued in respect of any Note except in connection with the refunding or optional prepayment of an equal principal amount of the corresponding Notes pledged pursuant to the Collateral Trust Indenture in respect thereof.

(3) *Quiet Enjoyment.* The Loan Participant acknowledges Section 6(a) of the Facility Lease.

(4) *No Other Business.* During such time as any Note is outstanding and held by the Loan Participant or the Collateral Trust Trustee, the Loan Participant will not (i) engage in any business or activity other than (1) in connection with the Transaction Documents or the Financing Documents or (2) as otherwise contemplated by the Section 6(c) Application or (ii) amend or engage in any activity or take any action not permitted by Article THIRD, FOURTH or SIXTH of its Certificate of Incorporation, as in effect on the date of execution and delivery hereof, without, in each case, the consent of the other parties hereto.

(c) *Direction to the Indenture Trustee.* The Loan Participant, as purchaser of each Note, (i) authorizes and directs the Indenture Trustee to execute, deliver and perform this Participation Agreement, (ii) authorizes and directs the Indenture Trustee to register such Note in the name of the Loan Participant and, upon authentication and delivery thereof pursuant to this Participation Agreement and the Indenture, to deliver such Note (upon completion by the Loan Participant of the assignment attached thereto) to the Collateral Trust Trustee pursuant to the Collateral Trust Indenture, (iii) acknowledges and agrees that, in connection with this Participation Agreement, the Indenture Trustee shall have the benefits and protections of Article VIII of the Indenture and (iv) agrees that, in the event of a conflict between the provisions of this Participation Agreement and the Indenture, the Indenture Trustee shall, as between the Indenture Trustee and the Loan Participant, be fully protected in relying on the express terms of the Indenture.

SECTION 7. Representations, Warranties and Agreements of the Owner Participant.

(a) *Representations and Warranties.* The Owner Participant represents and warrants that:

(1) *Due Organization.* The Owner Participant is a corporation duly organized and validly existing in good standing under the laws of the State of Nebraska and has the corporate power and authority to enter into and perform its obligations under this Participation Agreement and each other Transaction Document to which it is a party.

(2) *Due Authorization.* This Participation Agreement and each other Transaction Document to which the Owner Participant is a party has been duly authorized by all necessary corporate action on the part of the Owner Participant and does not require the consent or

approval of its stockholders or any trustee or holder of any of its indebtedness or other obligations, except such as have been duly obtained, given or accomplished.

(3) *Execution and Enforceability.* This Participation Agreement and each other Transaction Document to which the Owner Participant is a party has been duly executed and delivered by the Owner Participant and constitutes its legal, valid and binding agreement, enforceable against it in accordance with its terms.

(4) *No Violation.* Neither the execution, delivery or performance by the Owner Participant of this Participation Agreement or any other Transaction Document to which it is a party, nor the consummation by the Owner Participant of the transactions contemplated hereby or thereby, nor compliance by the Owner Participant with the provisions hereof or thereof, conflicts with, or results in the breach of any provision of, or is inconsistent with, its documents of incorporation or By-Laws or contravenes any Applicable Law applicable to it, or any indenture, mortgage or agreement for borrowed money to which the Owner Participant is a party or any other agreement or instrument to which the Owner Participant is a party or by which it or its property is bound or requires any Governmental Action with respect to the Owner Participant under Federal, Texas or Nebraska law applicable to it on or before the Closing Date, except such as are contemplated by the Transaction Documents or the Financing Documents or such as have been, or on or before the Closing Date will have been, duly obtained, given or accomplished; provided, however, that the Owner Participant makes no representation or warranty as to any Applicable Law or Governmental Action relating to the Securities Act, the Securities Exchange Act, the Trust Indenture Act, the Federal Power Act, the Atomic Energy Act, the Nuclear Waste Act, the Holding Company Act, the New Mexico Public Utility Act, the Texas Public Utility Regulatory Act, the Arizona Public Utility Act, energy or nuclear matters, public utilities, the environment, health and safety or Unit 2.

(5) *No Owner Participant's Liens.* Neither the execution and delivery by the Owner Participant of this Participation Agreement or any other Transaction Document to which the Owner Participant is or is to become a party, nor the performance by the Owner Participant of its obligations hereunder or thereunder, will subject the Trust Estate or the Lease Indenture Estate, or any portion of either thereof, to any Owner Participant's Lien.

(6) *Acquisition for Investment.* The Owner Participant is acquiring the beneficial interest in the Trust and the Trust Estate for its own account, for investment and not with a view to, or for, sale in connection with, any distribution thereof in violation of Section 5 of the Securities Act, but subject, nevertheless, to any requirement of law that the disposition of the Owner Participant's property shall at all times be within its control.

(7) *No Prior Security Interest.* There exists no security interest in or other Lien on the Lease Indenture Estate in the States of Texas, New Mexico, Arizona or Nebraska arising as a result of claims against the Owner Participant unrelated to the transactions contemplated by the Transaction Documents or the Financing Documents which is prior to the Indenture Trustee's security interest in the Lease Indenture Estate.

(8) *Securities Act.* Neither the Owner Participant nor anyone authorized to act on its behalf has directly or indirectly offered or sold any security issued or to be issued to finance Unit 2, or any security the offering of which for the purposes of the Securities Act would be deemed to be part of the offerings contemplated by the Transaction Documents and the Financing Documents, or solicited any offer to acquire any such security from any Person, in violation of Section 5 of the Securities Act.

(9) *ERISA.* The Owner Participant is not acquiring its interest in the Trust with the "plan assets" of any "employee benefit plan" within the meaning of section 3(3) of ERISA or any "plan" within the meaning of section 4975(e)(1) of the Code.

(b) *Agreements.* The Owner Participant agrees that:

(1) *No Owner Participant's Liens.* The Owner Participant will not create or permit to exist, and, at its own cost and expense, will promptly take such action as may be necessary duly to discharge, all Owner Participant's Liens.

(2) *Quiet Enjoyment.* The Owner Participant acknowledges the provisions of Section 6(a) of the Facility Lease and Section 8(c) of this Participation Agreement.

(3) *No Petition Agreement.* Prior to the 181st day following the payment in full of the Bonds and the discharge in accordance with its terms of the Collateral Trust Indenture, the Owner Participant agrees that it will not file a petition, or join in the filing of a petition, seeking reorganization, arrangement, adjustment or composition of, or in respect of, the Loan Participant under the Bankruptcy Code or any other applicable Federal or state law or the law of the District of Columbia.

(4) *Transfer of Interest in the Trust Estate.* If the Lessee shall not have assumed the Notes as contemplated by Section 3.9(b) of the Indenture and the Lessor shall not have Transferred the Undivided Interest and the Real Property Interest to the Lessee in accordance with Section 9(c), 9(d), 13(c) or 16(e) of the Facility Lease or Section 10(b) (3) (xvii) hereof, then, upon receipt by the Owner Participant, from the Indenture Trustee or otherwise, of the payments specified in Sections 9(c), 9(d), 13(c) or 16(e) of the Facility Lease or Section 10(b) (3) (xvii) hereof, the Owner Participant shall assign, convey and transfer (the Special Transfer) to the Lessee all of the Owner Participant's right, title and interest in, to and under the Trust Estate (except the right to receive Excepted Payments), such transfer to be effected by the execution and delivery by the Owner Participant of a Bill of Sale and Assignment substantially in the form of Exhibit A hereto but without any further act (whether under any Transaction Document or otherwise) by the Owner Trustee, the Owner Participant, the Lessee, the Indenture Trustee or any other Person, whereupon the Lessee shall be deemed for all purposes to have assumed, and the Owner Participant shall be deemed for all purposes to have been released from, all obligations and liabilities of the Owner Participant under this Participation Agreement and the other Transaction Documents.

At any time following the occurrence of an Event of Loss or the declaration of a Deemed Loss Event, or at any time when an Event of Default shall have occurred and be continuing, the Owner Participant may, in lieu of a Transfer referred to in Section 9(c), 9(d) or 16(a) of the Facility Lease, as the case may be, effect the Special Transfer, whether or not the Owner Participant shall have received the payments referred to in the preceding sentence or the payments specified in Section 16(a) of the Facility Lease, as the case may be.

The Lessee hereby agrees to accept and cooperate in receiving the Special Transfer. If at the time of the Special Transfer the Owner Participant shall not have received the payments specified in the first sentence of this Section 7(b)(4) or the payments specified in Section 16(a) of the Facility Lease, as the case may be, the obligation of the Lessee to make such payments (together with interest thereon at the Penalty Rate) shall continue until so received, and such obligation shall be secured by (and the Lessee hereby grants to the Owner Participant a security interest in and general lien upon) all the Lessee's right, title and interest in, to and under the Trust Estate. In connection therewith, the Lessee hereby agrees that (i) the Owner Participant shall have all the rights and remedies of a secured party under the UCC and the Texas Business and Commerce Code, (ii) the Lessee hereby appoints the Owner Participant as its attorney-in-fact, irrevocably, with full power of substitution, to ask, require, demand, receive and give acquittance for any and all moneys and claims for moneys due and to become due to the Lessee under or arising out of the Trust Estate, to endorse any checks or other instruments or orders in connection therewith, and to take any action (including the filing of financing statements or other documents and the delivery of written instructions to the Owner Trustee and the Indenture Trustee specifying that all payments to be made to the Lessee under the Trust Agreement and the Indenture shall be made directly to the Owner Participant) or institute any proceedings which the Owner Participant may

deem necessary or appropriate to protect and preserve such security interest and the rights of the Owner Participant to receive payments thereunder, (iii) until all amounts due to the Owner Participant have been received by the Owner Participant, the Lessee (in its capacity as such as transferee under the Special Transfer) shall not, without the prior written consent of the Owner Participant, take any action under, accept or approve any amendment to, or deliver any instruction under, any Transaction Document the effect of which would be to (A) relieve or otherwise affect the obligation of the Lessee to make such payments, (B) terminate the Trust Agreement, (C) terminate or rescind the Facility Lease or (D) sell, assign, transfer or deliver the Trust Estate to any Person and (iv) the Lessee agrees, from time to time, to do all such acts and execute all such instruments of further assurance as shall be reasonably requested from time to time by the Owner Participant for the purpose of fully carrying out and effectuating this Section 7(b)(4) and the intent hereof.

On the date which is 100 days after the receipt by the Owner Participant of all amounts due to the Owner Participant, the security interest and lien hereinabove provided shall, so long as the Lessee is not then the subject of any bankruptcy, insolvency or similar proceeding, terminate, and the Owner Participant, at the request of the Lessee, shall execute and deliver to the Lessee such termination statements, releases or other instruments presented to the Owner Participant as shall be reasonably required to effect such termination.

(5) *Letter of Credit Drawings.* The Owner Participant will, not later than the later of (a) a reasonably practicable period after delivery of a notice under Section 9(c) or 9(d) of the Facility Lease and (b) the time when a failure of the Lessee to pay the amounts specified in such section in and of itself becomes an Event of Default under the Facility Lease, attempt once to draw under the Letter of Credit, if one is in effect and drawable in an amount at least equal to the applicable Equity Portion of Rent; *provided, however,* that the failure of the Owner Participant so to attempt to draw shall have no consequence but to limit its claim against the Lessee to an amount equal to what the Owner Participant would have been entitled to had such failure to pay of the Lessee not in and of itself become an Event of Default.

SECTION 8. Representations, Warranties and Agreements of the Owner Trustee and FNB.

(a) *Representations and Warranties.* FNB, as Owner Trustee and (except as otherwise provided in the last sentence of this Section 8(a)) in its individual capacity, represents and warrants that:

(1) *Due Organization.* FNB is a national banking association duly organized and validly existing in good standing under the laws of the United States of America and has all requisite corporate power and authority to enter into and perform its obligations under (x) the Trust Agreement and, to the extent it is a party hereto in its individual capacity, this Participation Agreement and (y) acting as Owner Trustee, this Participation Agreement and each other Transaction Document to which FNB is a party as Owner Trustee.

(2) *Due Authorization; Enforceability; etc.* This Participation Agreement and each other Transaction Document to which FNB is a party have been duly authorized by all necessary corporate action of FNB (in its individual capacity or as Owner Trustee, as the case may be) and, upon execution and delivery hereof and thereof, each of this Participation Agreement and each such other Transaction Document will have been duly executed and delivered and will be a legal, valid and binding agreement of FNB (in its respective capacities), enforceable against it (in its respective capacities) in accordance with its terms; *it being understood* that FNB is not making any representation or warranty as to the priorities of the Liens created or to be created under any Transaction Document, title to the Trust Estate or recordings or filings necessary in connection therewith.

(3) *Notes.* Upon execution of the Initial Series Note, authentication thereof pursuant to the Indenture and delivery thereof against payment therefor in accordance with this Participation Agreement, such Note will be a legal, valid and binding obligation of the Owner Trustee, enforceable against the Owner Trustee in accordance with its terms.

(4) *No Violation.* Neither the execution and delivery by (x) FNB of the Trust Agreement and, to the extent FNB is a party hereto in its individual capacity, this Participation Agreement and (y) the Owner Trustee of this Participation Agreement and each other Transaction Document (*other than* the Trust Agreement) to which the Owner Trustee is a party, nor the performance by FNB, in its individual capacity or as Owner Trustee, as the case may be, of its obligations under each thereof, conflicts with, or results in the breach of any provision of, its Articles of Association or By-Laws and does not contravene any Applicable Law of the United States of America or The Commonwealth of Massachusetts governing the banking or trust powers of FNB, and does not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which FNB is a party or by which it is bound or require any Governmental Action with respect to the Owner Trustee under any Federal or Massachusetts law, *except* such as are contemplated by the Transaction Documents or the Financing Documents or such as have been duly obtained, given or accomplished; *provided, however*, that no representation or warranty is made (i) with respect to the right, power or authority of FNB or the Owner Trustee to act under the ANPP Participation Agreement or the License in respect of the Undivided Interest or Unit 2, or (ii) as to any Applicable Law or Governmental Action relating to the Securities Act, the Securities Exchange Act, the Trust Indenture Act, the Federal Power Act, the Atomic Energy Act, the Nuclear Waste Act, the Holding Company Act, the New Mexico Public Utility Act, the Texas Public Utility Regulatory Act, the Arizona Public Utility Act, energy or nuclear matters, public utilities, the environment, health and safety or Unit 2.

(5) *Defaults.* To the best knowledge of the Owner Trustee, no Indenture Default or Indenture Event of Default has occurred and is continuing. The Owner Trustee is not in violation of any of the terms of this Participation Agreement or any other Transaction Document to which it is a party.

(6) *Litigation.* There is no action, suit, investigation or proceeding pending or, to the knowledge of FNB, threatened against FNB (in any capacity) before any court, arbitrator or administrative or governmental body and which relates to its banking or trust powers which, individually or in the aggregate, if decided adversely to the interests of FNB in such capacity, would have an adverse effect upon the ability of FNB (in any capacity) to perform its obligations under this Participation Agreement or any other Transaction Document to which it (in any capacity) is a party.

(7) *Location of the Chief Place of Business and Chief Executive Office, etc.* The chief place of business and chief executive office of the Owner Trustee and the office where its records concerning the accounts or contract rights relating to the transactions contemplated hereby are kept are located in Boston, Massachusetts.

(8) *No Prior Security Interest.* There exists no security interest in the Lease Indenture Estate in the States of Texas, New York or Arizona or in The Commonwealth of Massachusetts arising as a result of any claim against FNB unrelated to the transactions contemplated by the Transaction Documents or the Financing Documents which is prior to the Indenture Trustee's security interest in the Lease Indenture Estate.

(9) *No Lessor's Liens.* Neither the execution by FNB (in any capacity) of this Participation Agreement or any other Transaction Document to which it (in any capacity) is a party, nor the performance in such capacity by it of its obligations hereunder or thereunder, will subject the Trust Estate or the Lease Indenture Estate, or any portion thereof, to any Lessor's Lien.

The representations and warranties in Section 8(a)(2) and Section 8(a)(3), as to Transaction Documents and each Note being legal, valid and binding obligations enforceable in accordance with their respective terms, are given only by FNB in its capacity as Owner Trustee and not in its individual capacity, except that FNB does represent in its individual capacity that it is authorized under the laws of the United States of America and The Commonwealth of Massachusetts to execute and deliver the Transaction Documents to which it is a party.

(b) *Agreements.* FNB agrees, in its individual capacity, that:

(1) *Discharge of Liens.* FNB will not create or permit to exist, and will, at its own cost and expense, promptly take such action as may be necessary duly to discharge, all Lessor's Liens.

(2) *Certain Amendments. Unless* a Default or an Event of Default has occurred and is continuing or an Event of Loss has occurred or a Deemed Loss Event has been declared, FNB will not amend any of the payment terms of any Note or take any action to refund any Note after the date of issue thereof pursuant to the terms of this Participation Agreement and the Indenture without the prior written consent of the Lessee. *Except* for amendments or supplements made pursuant to Article X of the Trust Agreement or contemplated by Section 7(b)(4), FNB will not amend or supplement, or consent to any amendment of or supplement to, the Trust Agreement without the prior written consent of the Lessee *unless* a Default or an Event of Default has occurred and is continuing or the Lease Termination Date has occurred or an Event of Loss has occurred or a Deemed Loss Event has been declared, if such amendment would materially and adversely affect the rights of the Lessee under the Facility Lease or this Participation Agreement.

(3) *Change in Location of Chief Place of Business and Chief Executive Office, etc.* FNB shall notify the Lessee, the Loan Participant and the Indenture Trustee promptly after any change in the location of its chief executive office, principal and chief place of business or place where its records concerning the accounts or contract rights relating to the transactions contemplated hereby are kept.

(4) *No Petition Agreement.* Prior to the 181st day following the payment in full of the Bonds and the discharge in accordance with its terms of the Collateral Trust Indenture, FNB (in any capacity) agrees that it will not file a petition, or join in the filing of a petition, seeking reorganization, arrangement, adjustment or composition of or in respect of the Loan Participant under the Bankruptcy Code or any other applicable Federal or state law or the law of the District of Columbia.

(5) *Quiet Enjoyment.* FNB acknowledges Section 6(a) of the Facility Lease.

(c) *Agreements.* The Owner Trustee agrees that:

(1) *Rights in Relation to ANPP Participants.* The rights and remedies of the Owner Trustee and the Owner Participant in the Undivided Interest and in the Real Property Interest are subject and subordinate to the rights and remedies of the ANPP Participants (*other than* (i) the Lessee or (ii) any Person who shall become an ANPP Participant in respect of the Lessor's Interest) under the ANPP Project Agreements.

(2) *Lessee to be Participant. Except* as provided in Sections 15.2.2, 15.6.4 and 15.10 (or any comparable successor provisions) of the ANPP Participation Agreement, the Lessee shall be and remain the sole "*Participant*" for all purposes of the ANPP Participation Agreement and the sole representative (with power to bind the Lessor and the Indenture Trustee) in all dealings with the other ANPP Participants in relation to the property, rights, titles and interests of the Lessee transferred to the Lessor pursuant to the Transaction Documents; *provided, however*, that the foregoing shall not limit in any way any liability or obligation that the Lessee may incur to the Owner Trustee or the Owner Participant under any Transaction Document as a result thereof.

(3) *Cash Bids.* On the Lease Termination Date and upon the Lessee failing to purchase or otherwise reacquire all the right, title and interest in PVNGS and contractual rights related thereto necessary for the operation of the interest (the *Lessor's Interest*) acquired by the Lessor pursuant to the Transaction Documents, the Lessor shall, and, subject to the rights of the Lessee under Sections 12 and 13(b) of the Facility Lease, at any time prior to the Lease Termination Date the Lessor may, entertain cash bids from each ANPP Participant for the Lessor's Interest.

(4) *Survival.* The provisions of Sections 8(c)(1), (2) and (3) shall remain in full force and effect until such time as the ANPP Administrative Committee or the ANPP Participants shall otherwise consent, by amendment to the ANPP Participation Agreement or otherwise.

The Owner Trustee acknowledges that before taking possession of the Undivided Interest or any part thereof or of any other interest in PVNGS, either of the following may be required: (i) the issuance of an appropriate license from the NRC, whether by amendment to the License or otherwise, or (ii) a partial transfer of the License authorizing the Lessor to possess its interest in PVNGS, to the extent of the Undivided Interest, upon application for partial transfer of such License to such extent filed pursuant to Applicable Law.

(5) *Affidavit.* The Owner Trustee will, upon the request of the Owner Participant, execute and cause to be filed with the County Recorder, Maricopa County, Arizona, a duly completed affidavit in substantially the form of Exhibit B.

(6) *Reimbursement for Certain Insurance Costs.* The Owner Trustee will reimburse the Lessee, or shall cause the Lessee to be reimbursed, for the incremental costs incurred by the Lessee in obtaining the nuclear liability insurance required by Section 10(a)(2)(ii) of the Facility Lease to be maintained after the Lease Termination Date to the extent such costs are attributable to the marginal cost of providing such coverage for the Owner Trustee and the Owner Participant; *provided, however*, that the Owner Trustee's obligation for such reimbursement shall not include any costs of such insurance attributable to coverage for the Lessee's continuing obligations set forth in Section 10(b)(3)(xi) or 13(a) or attributable to the Lease Term.

SECTION 9. Representations, Warranties and Agreements of FCNB.

(a) *Representations and Warranties.* FCNB represents and warrants that:

(1) *Due Organization.* FCNB is a national banking association duly organized and validly existing in good standing under the laws of the United States of America and has the corporate power and authority and legal right to enter into and perform its obligations under the Indenture, this Participation Agreement and each other Transaction Document to which it is a party.

(2) *Due Authorization; Enforceability; etc.* This Participation Agreement and each other Transaction Document to which FCNB is a party have been or will be duly authorized by all necessary corporate action on the part of FCNB and each has been duly executed and delivered by FCNB.

(3) *Authentication of Each Note.* The individual who shall on behalf of FCNB authenticate each Note to be issued pursuant to the Indenture shall be, at the time of such authentication, an Authorized Officer.

(4) *No Violation.* Neither the execution and delivery by FCNB of this Participation Agreement or the Indenture, nor the authentication on its behalf of any Note, nor the consummation by it of the transactions contemplated hereby or thereby, nor the compliance by it with the provisions hereof or thereof, will contravene any Applicable Law governing its banking or trust powers, or contravene or result in a breach of, or constitute a default under, its Articles of Incorporation or By-Laws, or require any Governmental Action under any Federal or Texas law, *except* such as have been, or on or before the Closing Date will have been, duly obtained, given or accomplished; *provided, however*, that no representation or warranty is made as to any Applicable Law or Governmental Action relating to the Securities Act, the Securities Exchange Act, the Trust Indenture Act, the Federal Power Act, the Atomic Energy Act, the Nuclear Waste Act, the Holding Company Act, the New Mexico Public Utility Act, the Texas Public Utility Regulatory Act, the Arizona Public Utility Act, energy or nuclear matters, public utilities, the environment, health and safety or Unit 2.

(b) *Agreements.* FCNB agrees that:

(1) *Agreement to Discharge Liens.* FCNB will not create or permit to exist, and will prom[illegible] take such action as may be necessary duly to discharge, all Indenture Trustee's Liens.

(2) *No Petition Agreement.* Prior to the 181st day following the payment in full of the Bonds and the discharge in accordance with its terms of the Collateral Trust Indenture, the Indenture Trustee agrees that it will not file a petition, or join in the filing of a petition, seeking reorganization, arrangement, adjustment or composition of or in respect of the Loan Participant under the Bankruptcy Code or any other applicable Federal or state law or the law of the District of Columbia.

(3) *Quiet Enjoyment.* The Indenture Trustee acknowledges Section 6(a) of the Facility Lease.

SECTION 10. Representations, Warranties and Agreements of the Lessee.

(a) *Representations and Warranties.* The Lessee represents and warrants that, as of the date of execution and delivery hereof and as of the Closing Date:

(1) *Due Organization.* The Lessee is a corporation duly organized and validly existing in good standing under the laws of the State of Texas and has the corporate power and authority to carry on its business as presently conducted, to own or hold under lease its properties and to enter into and perform its obligations under this Participation Agreement and each other Transaction Document and Financing Document to which it is a party. The Lessee is duly qualified and in good standing to do business as a foreign corporation in the States of New Mexico and Arizona and has not failed to qualify to do business or to be in good standing in any other jurisdiction where failure so to qualify or be in good standing would materially and adversely affect the financial condition of the Lessee or its ability to perform any obligations under this Participa[illegible] Agreement, any other Transaction Document or any Financing Document to which it is a pa[illegible]

(2) *Due Authorization.* The execution, delivery and performance by the Lessee of this Participation Agreement and each other Transaction Document and Financing Document to which it is a party have been duly authorized by all necessary corporate action on the part of the Lessee and do not, and will not, require the consent or approval of the stockholders of the Lessee or any trustee or holder of any indebtedness or other obligation of the Lessee, other than (i) the Mortgage Releases, (ii) the finding of the ANPP Administrative Committee described in Section 15.6.2 of the ANPP Participation Agreement and (iii) such other consents and approvals as have been duly obtained, given or accomplished, with true copies thereof delivered to the Owner Participant.

(3) *Execution.* This Participation Agreement has been, and each other Transaction Document and Financing Document to which the Lessee is a party and which is to be executed on or prior to the Closing Date have been duly executed and delivered by the Lessee, and each Transaction Document to be executed and delivered subsequent to the Closing Date will be duly executed and delivered by the Lessee, and this Participation Agreement constitutes, and each such Transaction Document and Financing Document constitutes, or will constitute upon the due execution thereof, the legal, valid and binding agreement of the Lessee, enforceable against it in accordance with its terms.

(4) *No Violation, etc.* Neither the execution, delivery or performance by the Lessee of this Participation Agreement or any other Transaction Document or Financing Document to which it is a party, nor the consummation by the Lessee of the transactions contemplated hereby or thereby, nor compliance by the Lessee with the provisions hereof or thereof, conflicts or will conflict with, or results or will result in a breach or contravention of any of the provisions of, Restated Articles of Incorporation or By-Laws of the Lessee or any subsidiary of the Lessee o[illegible] the best of its knowledge, any other Affiliate of the Lessee, or any Applicable Law applicable to it,

or any indenture, mortgage, lease or any other agreement or instrument to which the Lessee or any subsidiary of the Lessee or, to the best of its knowledge, any other Affiliate of the Lessee, is a party or by which the property of the Lessee or any such subsidiary or, to the best of its knowledge, any other Affiliate of the Lessee, is bound, or results or will result in the creation or imposition of any Lien (other than Permitted Liens) upon any property of the Lessee, any such subsidiary or, to the best of its knowledge, any other Affiliate of the Lessee. There is no provision of the Restated Articles of Incorporation or By-Laws of the Lessee, or any Applicable Law applicable to it, or any such indenture, mortgage, lease or other agreement or instrument which materially adversely affects, or in the future is likely (so far as the Lessee can now foresee) to materially adversely affect, the business, operations, affairs, condition, properties or assets of the Lessee, or its ability to perform its obligations under this Participation Agreement or any other Transaction Document or Financing Document to which it is a party.

(5) *Governmental Actions.* No Governmental Action under any Federal, Texas, New Mexico, Arizona or New York law is or will be required in connection with the execution, delivery or performance by the Lessee of, or the consummation by the Lessee of the transactions contemplated by, this Participation Agreement or any other Transaction Document or Financing Document to which it is a party, except such Governmental Actions (i) as have been, or on or before the Closing Date will have been, duly obtained, given or accomplished, with true copies thereof delivered to the Owner Participant and the Loan Participant, (ii) as may be required under existing Federal, Texas, New Mexico, Arizona or New York law to be obtained, given or accomplished from time to time after the Closing Date in connection with the maintenance, use, possession or operation of Unit 2 or otherwise with respect to Unit 2 and the Lessee's or the Operating Agent's involvement therewith and which are, for PVNGS, routine in nature and which the Lessee has no reason to believe will not be timely obtained and (iii) as may be required under Applicable Law not now in effect. No Governmental Action by any Federal, Texas, New Mexico, Arizona or New York Governmental Authority relating to the Securities Act, the Securities Exchange Act, the Trust Indenture Act, the Federal Power Act, the Atomic Energy Act, the Nuclear Waste Act, the Holding Company Act, the New Mexico Public Utility Act, the Texas Public Utility Regulatory Act, the Arizona Public Utility Act, energy or nuclear matters, public utilities, the environment, health and safety or Unit 2 is or will be required: (a) by virtue of the participation by the Owner Trustee, the Indenture Trustee, the Owner Participant or the Loan Participant in the consummation of the transactions contemplated by this Participation Agreement, any other Transaction Document or any Financing Document or (b) to be obtained with respect to Unit 2 by any of such Persons during the Lease Term, except such Governmental Actions (i) as have been, or on or before the Closing Date will have been, duly obtained, given or accomplished, with true copies thereof delivered to the Owner Participant and the Loan Participant, (ii) as may be required by Applicable Law not now in effect, (iii) as may be required in consequence of any transfer of ownership of any Note or Bond by the Holder thereof, the beneficial interest in the Trust by the Owner Participant, or the Undivided Interest or the Real Property Interest by the Owner Trustee, (iv) as may be required in consequence of the issuance, sale or exchange and delivery of Bonds (other than the Initial Series Bonds), (v) as would be required by Applicable Law existing on the Lease Termination Date in connection with taking possession of an interest in Unit 2, (vi) as may be required by existing Applicable Law if, after the Lease Termination Date, the Lessee should provide transmission services for the Owner Trustee or cease to be agent for the Owner Trustee as provided under the Assignment and Assumption, or (vii) as may be required in consequence of any exercise of remedies or other rights by any such Person in connection with taking possession of an interest in Unit 2. Nothing in the License or the License Amendment or any other Governmental Action with respect to the NRC will materially interfere with the ability of the Owner Trustee to transfer or convey the Undivided Interest and the Real Property Interest to a person, partnership, corporation or governmental corporation or agency engaged in the generation, transmission or distribution of energy who will be in a position to enjoy all the benefits of, have all the rights of, and be an ANPP Participant, so long as such

person, partnership, corporation or governmental corporation or agency complies with licensing requirements of the NRC and obtains, or becomes a transferee of, a license from NRC.

(6) *Securities Act.* Neither the Lessee nor anyone acting on its behalf has directly or indirectly offered or sold any Bond, any interest in any Note, any note issued with respect to any other undivided interest in Unit 2, the Undivided Interest or any other undivided interest in Unit 2, the Facility Lease or any other lease of an undivided interest in Unit 2, or any similar security or lease, or any interest in any security or lease the offering of which, for purposes of the Securities Act, would be deemed to be part of the same offering as the offering of the aforementioned securities or leases, or solicited any offer to acquire any of the aforementioned securities or leases, in violation of Section 5 of the Securities Act, and, except as contemplated by this Participation Agreement, neither the Lessee nor any one authorized to act on its behalf will take any action which would subject the issuance or sale of any Note or any interest in the Facility Lease or any other debt instrument (other than the Bonds) issued or to be issued to finance the Undivided Interest to the registration requirements of such Section 5.

(7) *Title to the Undivided Interest; Real Property Interest; Security Interest.* On the Closing Date, (i) good and marketable title to the Undivided Interest will be duly, validly and effectively conveyed and transferred to the Owner Trustee, free and clear of all Liens, except (A) Permitted Liens described in clauses (i), (vi), (ix), (x) and (xi) of the definition of such term, (B) the matters set forth in the exceptions to the title report delivered pursuant to Section 11(a)(19) (which, in the case of accrued taxes shall not exceed 12.65% of $1,750,000) and (C) Permitted Liens described in clause (v) of the definition of such term aggregating not more than 12.65% of $5,000,000, (ii) good and marketable title to the Real Property Interest will be duly, validly and effectively conveyed and transferred to the Owner Trustee, as provided in the Deed and the Assignment of Beneficial Interest, (iii) El Paso will have good and marketable title to its ownership interest in the Retained Assets, free and clear of all Liens except Permitted Liens, the Lien of the Existing Mortgages and matters disclosed in the title report referred to in Section 11(a)(19), (iv) the Lessee will have good and valid title to its ownership interest in the PVNGS Site, (v) Unit 2 will be wholly located on the PVNGS Site without any material encroachments by any portion thereof on any other property, (vi) all filings and recordings necessary or advisable to perfect the Owner Trustee's right, title and interest in and to the Undivided Interest and the Real Property Interest, and to perfect for the benefit of the Indenture Trustee and the Holder of the Notes the first priority security interest, mortgage and assignment of rents provided for in the Indenture, will have been duly made and (vii) no other action, including any action under any fraudulent conveyance statute, will be required to protect the right, title and interest of the Owner Trustee in and to the Undivided Interest and the Real Property Interest, in each case against the claims of all Persons (other than the Permitted Lien described in clause (xi) of the definition thereof), or to perfect such first priority security interest, mortgage and assignment of rents in favor of the Indenture Trustee under and pursuant to the Indenture.

(8) *Non-Interference.* None of the Permitted Liens described in clauses (ii), (iii), (iv), (v), (vii), (viii) and (xii) of the definition of such term will, on and after the Closing Date, materially interfere with the use or possession of the Undivided Interest or the Real Property Interest or the use of or the exercise by the Owner Trustee of its rights under the Purchase Documents and the Assignment and Assumption with respect to the interests in PVNGS granted or to be granted under the Purchase Documents and the Assignment and Assumption. Nothing in the ANPP Participation Agreement or in any ANPP Project Agreement will materially interfere with the ability of the Owner Trustee, subject to Applicable Law, to transfer or convey the Undivided Interest and the Real Property Interest to a person, partnership, corporation or governmental corporation or agency engaged in the generation, transmission or distribution of energy, who will be in a position to enjoy all the benefits of, have all the rights of, and be an ANPP Participant

(9) *Personal Property.* Unit 2, based on the agreements of El Paso and the other ANPP Participants in the ANPP Participation Agreement and of the Lessee and the Owner Trustee herein and in the other Transaction Documents, is to the full extent permitted by Applicable Law, personal property.

(10) *Location of Chief Executive Office.* The chief executive office and place of business of the Lessee and the office where it keeps its records concerning its accounts or contract rights is located at 303 North Oregon Street, El Paso, Texas 79901.

(11) *Financial Statements.* The consolidated balance sheets of the Lessee and subsidiary (A) as of December 31, 1985 and 1984, respectively, and the related consolidated statements of income, retained earnings and sources of funds invested in utility plant and other plant for each of the years in the three-year period ended December 31, 1985, together with the notes accompanying such financial statements, all certified by Peat, Marwick, Mitchell & Co., and (B) as of September 30, 1986 and 1985, respectively, and the related consolidated statements of income, retained earnings and sources of funds invested in utility plant and other plant for the nine-month periods ended September 30, 1986 and September 30, 1985, respectively, together with the notes accompanying such financial statements, all certified by the Chief Financial Officer, the Controller or an Assistant Controller of the Lessee, as furnished to the Owner Participant, fairly present the financial position of El Paso and its subsidiary taken as a whole at each such date and the results of their operations for each of the periods then ended, in conformity with generally accepted accounting principles applied on a consistent basis, subject in the case of the consolidated balance sheets and the related consolidated statements described in clause (B) above, to the condensation of certain financial information and the omission of certain footnote disclosures as permitted by the rules and regulations of the SEC and to year-end audit adjustments. The Lessee knows of no such adjustments which would, if made on the date hereof, be material.

(12) *Disclosure.* Neither any of the financial statements to which reference is made in paragraph 11 above, nor the reports to which reference is made in this paragraph 12, nor any certificate, written statement or other document prepared by or for, or at the direction of, the Lessee and furnished to the Owner Participant in connection with the transactions contemplated hereby (under the circumstances at the time and for the purposes for which any statement made therein was made) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. There is no fact known to the Lessee that materially and adversely affects or, so far as the Lessee can now reasonably foresee, is likely to materially and adversely affect, the business or financial condition of the Lessee or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligations under this Participation Agreement or any other Transaction Document or Financing Document to which the Lessee is a party, except as disclosed in the Lessee's Annual Report on Form 10-K for the year ended December 31, 1985, as amended by Amendment No. 1 on Form 8 dated April 2, 1986, the Lessee's Quarterly Reports on Form 10-Q for the quarters ended March 31, 1986, June 30, 1986 and September 30, 1986 and the Lessee's Current Reports on Form 8-K dated June 16, 1986, July 22, 1986, August 29, 1986, September 11, 1986 and October 1, 1986, copies of which have been provided to the Owner Participant.

(13) *Litigation.* There is no action, suit, investigation or proceeding pending or, to the knowledge of the Lessee, threatened against the Lessee before any court, arbitrator or administrative or governmental body which questions the validity or enforceability of this Participation Agreement or any other Transaction Document or Financing Document to which the Lessee is a party, and, except as disclosed in the reports to which reference is made in paragraph 12, there is no action, suit, investigation or proceeding pending or, to the best knowledge of the Lessee, threatened against the Lessee before any court, arbitrator, or administrative or governmental body which, individually or in the aggregate, if decided adversely to the interests of the Lessee, would have a material adverse effect on the business or financial condition of the Lessee or

materially and adversely affect the ability of the Lessee to perform its obligations under this Participation Agreement or any other Transaction Document or Financing Document.

(14) *Tax Returns.* The Lessee has filed all Federal, state, local and foreign, if any, tax returns which were required to be filed, and has paid all Taxes shown to be due and payable on such returns and has paid all other Taxes in respect of the Lessee's interest in Unit 2 and in the real property described in the Real Property Interest which are payable by the Lessee to the extent the same have become due and payable and before they have become delinquent, except for (i) any Taxes the amount, applicability or validity of which may be in dispute and which are currently being contested in good faith by appropriate proceedings and with respect to which the Lessee has set aside on its books reserves (segregated to the extent required by generally accepted accounting principles) deemed by it to be adequate and (ii) any Taxes relating to PVNGS in respect of which the Operating Agent has not given notice to the Lessee that the same are due and payable. The Federal income tax returns of the Lessee have been audited by the IRS for taxable years through 1973.

(15) *ERISA.* In reliance upon, and subject to the accuracy of the representations made by the Loan Participant in Section 6(a)(6) and the Owner Participant in Section 7(a)(9), the execution and delivery of this Participation Agreement and the other Transaction Documents and Financing Documents to which the Lessee is a party will not involve any prohibited transaction within the meaning of ERISA or section 4975 of the Code.

(16) *Regulation.* So long as the Facility Lease is in effect, assuming the proper filing of Form U-7D with the SEC on or within 30 days after the Closing Date, under Applicable Law now in effect, neither the Loan Participant, the Owner Participant, FNB nor the Owner Trustee will be or become, solely by reason of either its entering into this Participation Agreement or any other Transaction Document or Financing Document to which any of them is a party, or the transactions contemplated hereby or thereby, subject to regulation (i) as an electric utility, public utility or a holding company of a public utility or an electric utility by any Federal, state or local public utility commission or other regulatory body, authority or group (including, without limitation, the SEC, the FERC, the NMPSC, the Arizona Corporation Commission or Texas Public Utility Commission) or (ii) in any manner by the NRC. The Lessee is not subject to regulation by the Arizona Corporation Commission as a public utility or a public service corporation.

(17) *Authorizations, etc.* The Lessee has not failed to obtain any Governmental Action or other authorization, license, approval, permit, consent, right or interest where a failure to obtain such would materially and adversely affect the ability of the Lessee to carry on its business as presently conducted.

(18) *No Default, etc.* The Lessee is not in default, and no condition exists that, with the giving of notice or lapse of time or both, would constitute a default by the Lessee, under either Existing Mortgage or any other material mortgage, deed of trust, indenture, lease, contract or other instrument or agreement to which the Lessee is a party or by which it or any of its properties or assets may be bound.

(19) *Certain Documents.* True and correct copies of the ANPP Participation Agreement, the Material Project Agreements and the Existing Mortgages have been delivered to Cravath, Swaine & Moore. No ANPP Project Agreement will, on and after the Closing Date, materially and adversely interfere with (i) except, in the case of the Generation Entitlement Share only, for the ANPP Participation Agreement, the title of the Owner Trustee to the Undivided Interest or the Real Property Interest or (ii) except for the ANPP Participation Agreement, the use of, or the exercise by the Owner Trustee of its rights under the Facility Lease, the Purchase Documents and the Assignment and Assumption with respect to, the Undivided Interest and the interests in the PVNGS Site (including the Real Property Interest) granted or to be granted under the Purchase Documents and the Assignment and Assumption. No payment default or other default of material nature by the Lessee has occurred and is continuing under either Existing Mortgage or

any ANPP Project Agreement. Each of the ANPP Participation Agreement and the other ANPP Project Agreements is in full force and effect, and no breach of any thereof, to the Lessee's knowledge, by any other party thereto has occurred and is continuing, except where the failure to be in force and effect or such breach would not have a material and adverse effect on the Undivided Interest, the Real Property Interest, Unit 2 or the rights, interests and benefits of the Owner Trustee or the Owner Participant under any Transaction Document. Upon execution and delivery of the Mortgage Releases and the recordation thereof or of UCC-3 releases in respect thereof, (i) the respective mortgagees and secured parties thereunder will have released the lien of the Existing Mortgages on the Undivided Interest and the Real Property Interest and (ii) the rights of the Owner Trustee in the Undivided Interest and the Real Property Interests will not be, and will not become, subject or subordinate to the rights of any Person, except the Indenture Trustee under the Indenture and the ANPP Participants under, and to the extent expressly set forth in, the ANPP Participation Agreement (as in effect on the Closing Date), and except as may otherwise expressly be permitted by the Facility Lease. The lien of the Existing Mortgages does not extend to rights of the Lessee under any Transaction Document (other than the Lessee's leasehold interest under the Facility Lease), or to the Generation Entitlement Share included in the Undivided Interest.

(20) *Unit 2.* The description of Unit 2 set forth in Exhibit B to the Bill of Sale, as delivered on the Closing Date, will be correct and sufficiently complete to identify such property.

(21) ***Investment Company Act, Etc.*** The Lessee is not (a) an "investment company," or a company "controlled" by an "investment company," within the meaning of the Investment Company Act or (b) a "holding company" or a "subsidiary company" or an affiliate of a "holding company," within the meaning of the Holding Company Act.

(b) *Agreements.*

(1) ***Delivery of Documents.*** The Lessee shall deliver to the Owner Participant and the Loan Participant (and, in the case of Sections 10(b)(1)(iii) and 10(b)(1)(iv), the Owner Trustee):

(i) FINANCIAL STATEMENTS: (A) as soon as practicable, and in any event within 120 days, after the end of each fiscal year of the Lessee, a consolidated balance sheet of the Lessee as of the end of such fiscal year and related consolidated statements of income, retained earnings and sources of funds invested in utility plant and other plant for such year, all in reasonable detail and certified in an opinion by a nationally recognized firm of independent public accountants, and the annual and interim reports of the Lessee to its stockholders as soon as the same have been mailed to such stockholders, (B) as soon as practicable, and in any event within 60 days, after the end of each fiscal quarter (other than the last fiscal quarter) of each fiscal year of the Lessee, a consolidated balance sheet of the Lessee as of the end of said period and a related consolidated statement of income, retained earnings and sources of funds invested in utility plant and other plant for said period, all in reasonable detail, and certified by the Chief Financial Officer, the Controller or an Assistant Controller of the Lessee and (C) as soon as practicable after the same have been filed, a copy of all documents filed by the Lessee with the SEC pursuant to the reporting requirements of the Securities Exchange Act;

(ii) OTHER REPORTS: promptly upon their becoming available, any registration statement, offering statement, investment memorandum or prospectus prepared by the Lessee in connection with the public offering of securities (other than public offerings of securities under employee benefit plans, customer stock purchase plans or dividend reinvestment plans);

(iii) NOTICE OF DEFAULT: promptly upon the Lessee becoming aware of the existence thereof, written notice specifying any condition which constitutes a Default or an Event of

Default or a default by any ANPP Participant under the ANPP Participation Agreement, and, in each case, the nature and status thereof;

(iv) ANNUAL CERTIFICATE: within 120 days after the end of each fiscal year of the Lessee, a certificate of the Lessee, signed by the Chief Financial Officer, the Controller or an Assistant Controller of the Lessee, to the effect that such officer has reviewed, or caused to be reviewed by individuals under his supervision, this Participation Agreement and each other Transaction Document and each Financing Document to which the Lessee is a party, and has made, or caused to be made under his supervision, a review of the transactions contemplated hereby and thereby and the condition of the Lessee during such preceding fiscal year, and such review has not disclosed the existence during such fiscal period, nor does such officer have knowledge of the existence as of the date of such certificate, of any condition or event that constitutes a Default or Event of Default or, if any such condition or event exists, specifying the nature and period of existence thereof and any action the Lessee has taken, is taking, or proposes to take with respect thereto;

(v) OPINION OF COUNSEL: within 120 days after the end of each fiscal year of the Lessee, an opinion or opinions, satisfactory to the Owner Participant, the Owner Trustee, the Collateral Trust Trustee and the Indenture Trustee, of Kemp, Smith, Duncan & Hammond, counsel for the Lessee, Snell & Wilmer, special Arizona counsel for the Lessee, and/or other counsel acceptable to the Owner Participant (A) either to the effect that (1) all filings and recordations (or refilings and rerecordations) required to (i) convey to the Owner Trustee, and preserve the title of the Owner Trustee to, the Undivided Interest and the Real Property Interest, and (ii) so long as any Note is Outstanding, grant, perfect, and preserve the security interest of the Indenture Trustee in the Lease Indenture Estate, have been duly made, or (2) no such additional filings, recordings, refilings or rerecordings are necessary to (i) convey to the Owner Trustee, and preserve the title of the Owner Trustee to, the Undivided Interest and the Real Property Interest, and (ii) so long as any Note is Outstanding, grant, perfect and preserve the security interest of the Indenture Trustee in the Lease Indenture Estate and (B) specifying the particulars of all action required during the period from the date of such opinion through the last day of the next succeeding calendar year, *including*, in the case of each UCC continuation statement required to be filed during such period, the office in which each such continuation statement is to be filed and the filing date and filing number of the original financing statement or fixture filing to be continued, and the dates within which such continuation statement may be filed under Applicable Law; such opinion shall address such additional matters relating to actions to be taken by the Lessee pursuant to Section 10(b)(2) as the Owner Participant or the Loan Participant may reasonably request;

(vi) ANPP INFORMATION: upon receipt by the Lessee, unless prohibited by Applicable Law and subject to applicable confidentiality undertakings with respect thereto, copies of (A) minutes of all committee meetings of the ANPP Administrative Committee, the ANPP Engineering and Operating Committee, the ANPP Auditing Committee and any other committee composed of the ANPP Participants, (B) all annual capital budgets, annual operation and maintenance budgets and monthly statistical reports on the operation of PVNGS and (C) all notices to or from the NRC with respect to violations or other material occurrences with respect to PVNGS.

(vii) REQUESTED INFORMATION: with reasonable promptness, unless prohibited by Applicable Law, such other data and information as to the business and properties of the Lessee or as to Unit 2, PVNGS or the PVNGS Site as from time to time may be reasonably requested by the Owner Participant, *subject, however,* to applicable confidentiality undertakings with respect thereto.

(2) *Further Assurances.* The Lessee shall cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents and assurances as the Ow

Participant may from time to time reasonably request in order to carry out more effectively the intents and purposes of this Participation Agreement, the other Transaction Documents and the Financing Documents, and the transactions contemplated hereby and thereby. The Lessee shall cause the financing statements (and continuation statements with respect thereto) and the documents enumerated and described in Schedule 3, and all other documents necessary or advisable in that connection, to be recorded or filed at such places and times, and in such manner, and will take all such other actions or cause such actions to be taken, as may be necessary or reasonably requested by the Owner Participant, the Collateral Trust Trustee, the Owner Trustee or the Indenture Trustee, in order to establish, preserve, protect and perfect the title of the Owner Trustee to the Undivided Interest and in order to protect the Owner Trustee's interest in the PVNGS Site granted by the Real Property Interest, and the Owner Trustee's rights and interests under this Participation Agreement and the other Transaction Documents and, so long as any Note is Outstanding, the first and prior security interest of the Indenture Trustee in the Lease Indenture Estate.

(3) *Covenants.*

(i) MAINTENANCE OF CORPORATE EXISTENCE, ETC. The Lessee shall at all times maintain its existence as a corporation under the laws of the State of Texas, *except* as permitted by paragraph (ii) below (*including* any consent given by the Owner Participant pursuant to such paragraph (ii)), and qualify and remain qualified to do business in each jurisdiction where the conduct of its business or the ownership of its properties requires such qualification. The Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its rights (charter and statutory) and franchises; *provided, however*, that the Lessee may discontinue any right or franchise if its board of directors shall determine that such discontinuance is necessary or desirable in the conduct of its business and does not materially and adversely affect or diminish any right of the Owner Participant or the Loan Participant.

(ii) MERGER, SALE, ETC.: OWNER PARTICIPANT. Without the consent of the Owner Participant, the Lessee shall not, and shall not permit any of its subsidiaries to, convey, transfer or lease to any Person any asset except for fair value. Without the consent of the Owner Participant, the Lessee shall not, and shall not permit any of its subsidiaries to, (1) consolidate with any Person, (2) merge with or into any Person or (3) *except for* (i) payments, in accordance with normal dividend policy of the Lessee, of cash dividends to holders of common stock and preferred stock, (ii) exchanges of fixed assets for other fixed assets whose fair value is equal to or greater than the fair value of the fixed assets exchanged or (iii) conveyances, transfers or leases of assets for cash where such cash is to be recorded by the Lessee, convey, transfer, lease or dividend to any Person, in any single transaction or series of related transactions, any asset or assets if the book value of such asset or assets exceeds 5% of its total assets as shown on the most recent consolidated balance sheet of the Lessee delivered to the Owner Participant pursuant to Section 10(b)(1)(i)(A): unless immediately after giving effect to such transaction:

(A) the Person who is the "*Lessee*" under the Facility Lease immediately following such consolidation, merger, conveyance, transfer, lease or dividend (the *Surviving Lessee*) shall be a corporation which (i) is organized under the laws of the United States of America, a state thereof or the District of Columbia, (ii) is a "public utility" under applicable law, (iii) is an ANPP Participant under the ANPP Participation Agreement with respect to Unit 2 (*including* the Undivided Interest), (iv) shall have assumed each covenant and condition of the Lessee under the ANPP Participation Agreement and each other ANPP Project Agreement and (v) holds a valid and subsisting license from the NRC to possess Unit 2 (*including* the Undivided Interest);

(B) the Surviving Lessee, if other than the Lessee immediately prior to such transaction, shall execute and deliver to the Owner Participant an agreement, in form

and substance reasonably satisfactory to the Owner Participant, containing the assumption by the Surviving Lessee of each covenant and condition of this Participation Agreement, each other Transaction Document and each Financing Document to which the Lessee immediately prior to such transaction was a party immediately preceding such transaction;

(C) no Default (*other than* failure to deliver documents and other information specified in Section 10(b)(1)(vi)) and no Event of Default shall have occurred and be continuing, no Event of Loss shall have occurred and no Deemed Loss Event shall have been declared;

(D) the Bonds (or, if the Bonds are not then rated, the preferred stock of the Surviving Lessee) after giving effect to such transaction, (1) shall be rated at least *"investment grade"* by Standard & Poor's Corporation and Moody's Investors Service, Inc. and (2) shall have an investment rating by Standard & Poor's Corporation and Moody's Investors Service, Inc. not less than one *"smallest notch"* below the rating assigned to the Bonds (or, if the Bonds are not then rated, the preferred stock of the Surviving Lessee) immediately prior to such transaction (or, if neither of such rating organizations shall rate the Bonds (or, if applicable, the preferred stock of the Surviving Lessee) at the time, by any nationally recognized rating organization in the United States of America);

(E) the Surviving Lessee shall have a Net Worth equal to or greater than the Net Worth of the Lessee immediately prior to such transactions and equal to or greater than $500,000,000;

(F) the Surviving Lessee shall have delivered to the Owner Participant and the Indenture Trustee an Officers' Certificate and an opinion, reasonably satisfactory to the Owner Participant, of counsel to the Surviving Lessee, each stating that (1) such transaction complies with this subparagraph (ii) and (2) all conditions precedent to the consummation of such transaction have been satisfied and any Governmental Action required in connection with such transaction has been obtained, given or accomplished;

(G) the Surviving Lessee shall have delivered to the Owner Participant an opinion, reasonably satisfactory to the Owner Participant, of independent counsel to the Surviving Lessee stating that such transaction would not result in a loss of any of the tax benefits described in Section 13(c)(1);

(H) such transaction is otherwise permitted by and in compliance with the ANPP Participation Agreement;

(I) the Coverage Ratio of the Surviving Lessee shall be at least 1.6 to 1; and

(J) such transaction does not affect the term or coverage of the Letter of Credit, if in effect at the time, or, if such term or coverage is affected, the Surviving Lessee, if other than the Lessee immediately prior to such transaction, shall have provided to the Owner Participant a Letter of Credit, if required by Section 10(b)(3)(xvii), which meets the requirements set forth in Section 10(b)(3)(xvii) and is in the same amount as the Letter of Credit in effect immediately prior to such transaction.

Upon the consummation of such transaction the Surviving Lessee, if other than the Lessee, shall succeed to, and be substituted for, and may exercise every right and power of, the Lessee immediately prior to such transaction under this Participation Agreement, each other Transaction Document and each Financing Document to which the Lessee immediately prior to such transaction was a party immediately prior to such transaction, with the same effect as if the Surviving Lessee had been named herein and therein.

(iii) MERGER, SALE, ETC.: BONDHOLDERS. The Lessee shall not enter into any transaction constituting a consolidation, merger, conveyance, transfer, lease or dividend not permitted by

Section 10(b)(3)(ii), irrespective of any consent or waiver of the Owner Participant, *unless* immediately after giving effect to such transaction, the Bonds (or, if the Bonds are not then rated, the preferred stock of the Surviving Lessee) shall be rated at least *"investment grade"* by Standard & Poor's Corporation and Moody's Investors Service, Inc.

(iv) PRIOR NOTICE TO RATING AGENCIES. Prior to entering into any transaction as to which the conditions set forth in paragraphs (ii) and (iii) above shall be applicable, the Lessee shall give notice thereof to the rating agencies specified in such paragraphs, such notice to be sufficiently in advance of such transaction to enable the rating agencies to respond thereto prior to consummation thereof.

(v) INCURRENCE OF DEBT. Without the consent of the Owner Participant, the Lessee shall not, and shall not permit any of its subsidiaries (whether consolidated or unconsolidated) to, issue, assume or become liable in respect of (A) any Debt maturing more than one year after the date of such issuance, assumption or liability (including current maturities of Debt with an original maturity of more than one year) if, immediately thereafter, (i) the total amount of all Debt of the Lessee and its subsidiaries (whether consolidated or unconsolidated) maturing more than one year after the date of such issuance, assumption or becoming liable (reduced by Cash Available for Investment and excluding $115,000,000 of such Debt until August 31, 1987) shall exceed 70% of Consolidated Capitalization, in each case as shown on a pro forma consolidated balance sheet on and as of the date of such issuance, assumption or becoming liable, or (ii) the Coverage Ratio of the Lessee would be less than 1.6 to 1, or (B) any Debt maturing one year or less after the date of such issuance, assumption or becoming liable (excluding current maturities of Debt with an original maturity of more than one year) if, immediately thereafter, the total amount of all Debt of the Lessee and its subsidiaries (whether consolidated or unconsolidated) maturing one year or less after the date of such issuance, assumption or becoming liable shall exceed 20% of Consolidated Capitalization, in each case as shown on a pro forma consolidated balance sheet on and as of the date of such issuance, assumption or becoming liable. For purposes of the foregoing clause (A), there shall be excluded any Debt which has been legally defeased or for the payment of which funds have been segregated in escrow.

(vi) CHANGE IN CHIEF EXECUTIVE OFFICE. The Lessee shall notify the Owner Trustee, the Owner Participant, the Loan Participant and the Indenture Trustee promptly after any change in the location of its chief executive office and place of business, principal place of business or place where the Lessee maintains its business records.

(vii) NO PETITION AGREEMENT. Prior to the 181st day following the payment in full of the Bonds and the discharge in accordance with its terms of the Collateral Trust Indenture, the Lessee shall not file a petition, or join in the filing of a petition, seeking reorganization, arrangement, adjustment or composition of or in respect of the Loan Participant under the Bankruptcy Code or any other applicable Federal or state law or the law of the District of Columbia.

(viii) ANPP PROJECT AGREEMENTS. Except where the failure to do so would not have a material and adverse effect on the Undivided Interest, the Real Property Interest, Unit 2 or the rights, interests and benefits of the Owner Trustee or the Owner Participant under any Transaction Document, the Lessee at all times, unless the Owner Participant shall otherwise consent, shall (1) perform its obligations under, and comply with the terms of, each ANPP Project Agreement to be complied with by it, (2) exercise its rights under the ANPP Participation Agreement to maintain each ANPP Project Agreement in full force and effect, (3) keep unimpaired all of the Lessee's rights, powers and remedies under each ANPP Project Agreement and prevent any forfeiture or impairment thereof, (4) enforce the ANPP Participation Agreement in accordance with its terms, (5) not take, fail to take or join in any action with respect to any ANPP Project Agreement *except* as otherwise permitted by

subclause (7), (6) not accept or approve any amendment or any other change to the ANPP Participation Agreement and (7) not accept or approve any amendment to any ANPP Proj Agreement the effect of which would be to (A) reduce the Generation Entitlement Sh included in the Undivided Interest, (B) relieve the Lessee of any obligation under the ANPP Participation Agreement in respect of the Undivided Interest or the Real Property Interest on or after the Closing Date, (C) impose, directly or indirectly, on the Owner Trustee or the Owner Participant at any time any obligations, (D) discriminate against (x) the Owner Trustee or the Owner Participant in its capacity as lessor in a sale and leaseback transaction or (y) any present or future ANPP Participant because such ANPP Participant derived or will derive its status as *"Participant"* under the ANPP Participation Agreement from a lessor in a sale and leaseback transaction, or (E) deprive the Owner Trustee or the Owner Participant, as the case may be, of the benefit of Sections 15.2.2, 15.10 and 32.1 of the ANPP Participation Agreement (or any comparable successor provisions). The Lessee shall (X) provide copies of any proposed amendment to or modification of the ANPP Participation Agreement to the Owner Participant not less than 45 days prior to the execution thereof by the Lessee (*except* where the Lessee is unaware thereof 45 days prior to such execution, in which case the Lessee shall provide notice thereof as promptly as possible after becoming so aware) and (Y) upon such execution furnish to the Owner Participant a copy of any such amendment or modification as executed.

(ix) NOTES AND BONDS. The Lessee will not, and will not permit any of its subsidiaries or any of its Affiliates over which it has control to, acquire any Notes or Bonds, except in strict compliance with the provisions of Section 1.04(b) of the Bond Supplemental Indenture, as in effect on the Closing Date.

(x) COOPERATION. The Lessee shall cooperate with the Owner Participant and the Owner Trustee in obtaining the valid and effective issue, or, as the case may be, transfe amendment of all Governmental Actions (including, without limitation, the License) ne sary or, in the opinion of the Owner Participant, desirable for the ownership, operation and possession of the Undivided Interest (including the related Generation Entitlement Share) or any portion of Unit 2 represented thereby, or the exercise by the Owner Trustee of the rights created by the Real Property Interest, by the Owner Trustee or any transferee, lessee or assignee of the Owner Trustee for the period from and after the Lease Termination Date. The Lessee shall accept and cooperate in receiving the Special Transfer.

(xi) DECOMMISSIONING. The Lessee shall comply with and discharge all of its obligations under the ANPP Participation Agreement and Applicable Law with respect to Decommissioning, and will use its best efforts to ensure that Decommissioning is accomplished utilizing the safest means available. The Lessee shall (i) establish the Decommissioning Trust Fund and, if the Lessee elects, a second fund in order to meet the requirements of Section 468A of the Code (the Second Fund), (ii) grant to the Owner Trustee a security interest in the Decommissioning Trust Fund and the Second Fund, if any, as security for the performance by the Lessee of its obligations under this Section 10(b)(3)(xi), and (iii) provide any additional funds required in respect of Decommissioning to the extent that the Decommissioning Trust Fund and the Second Fund, if any, are inadequate for any reason. The Lessee agrees to pay, be solely responsible for, indemnify, and hold harmless each Indemnitee and any successor, assign or transferee (including by way of a lease) of any Indemnitee, from and against all Decommissic ng Cost and all claims relating or allocable to, or incurred in connection with, Decommissioning notwithstanding (i) the occurrence of the Lease Termination Date, any Event of Default, Default, Event of Loss, Deemed Loss Event or any other event or occurrence, (ii) any provision of any Transaction Document, or other document, instrument or agreement, including the ANPP Participation Agreement, (iii) any provision of the Lice or any other license or permit, or (iv) any Applicable Law, charter or by-law provi Governmental Action or other impediment (including, without limitation, the bankruptcy

insolvency of the Lessee), either now or hereafter in effect; it being understood that the obligations of the Lessee hereunder are and shall be absolute, unconditional and irrevocable and shall not be affected by any circumstances of any character, including, without limitation, those of the type set forth in Section 4 of the Facility Lease.

Not later than July 1, 1989, the Owner Participant and the Lessee shall cause a Person or Persons, selected by the Lessee and reasonably acceptable to the Owner Participant (which may include any Person designated by the ANPP Participants to conduct a review of decommissioning costs related to PVNGS, provided such Person be reasonably acceptable to the Owner Participant), who shall be expert in the area of decommissioning of nuclear electric generating units, to establish a best estimate of Decommissioning Cost and to establish the periodic payments to be deposited on the following October 1 or April 1, as the case may be, and every six months thereafter in the Decommissioning Trust Fund and the Second Fund, if any, in order to make the aggregate amount in the Decommissioning Trust Fund and the Second Fund, if any, at October 1, 2013, equal to Decommissioning Cost. No later than one month before October 1 of each of the years 1994, 1999, 2004, 2019, 2011 and 2013, and not later than one month before October 1 of each odd-numbered year thereafter until Decommissioning shall have been completed, the Owner Participant and the Lessee shall cause such a Person or Persons to review and revise, if necessary, as of such October 1, such estimate and such amounts. The initial estimate and each such review shall take into consideration (i) the experience of the electric utility industry generally in the decommissioning of nuclear generating units, (ii) all Applicable Law and Governmental Action relating to the decommissioning of nuclear generating units, (iii) all technological or scientific developments in the decommissioning of nuclear generating units, (iv) earnings and projected earnings during the Basic Lease Term on funds paid into the Decommissioning Trust Fund and the Second Fund, if any, prior to such review, (v) the amount of periodic payments required to be made into the Decommissioning Trust Fund and the Second Fund, if any, during the Basic Lease Term subsequent to such October 1, (vi) the investments permitted under the Decommissioning Trust Agreement and (vii) any other facts or circumstances relating to the decommissioning of nuclear generating units which such Person or Persons shall deem relevant to such review. In conducting such review, such Person or Persons shall be permitted to employ, at the expense of the Lessee, such additional consultants, including, but not limited to, investment advisors and legal counsel, as it or they shall reasonably deem necessary for such review. In addition, if as a result of any Governmental Action dealing with decommissioning of nuclear generating units (including, but not limited to, the financing thereof or responsibility therefor), either the Owner Participant or the Lessee shall reasonably conclude that the Decommissioning Trust Fund and the Second Fund, if any, are inadequate or excessive for the purposes thereof, it may request a review of the Decommissioning Trust Fund and the Second Fund, if any, pursuant to this Section 10(b)(3)(xi). The determination of such Person or Persons shall be conclusive and binding as between the parties hereto. In no event shall any periodic payment be less than zero. The Lessee shall not deposit any funds in respect of Decommissioning Cost in any fund other than the Decommissioning Trust Fund and the Second Fund, if any. All costs incurred pursuant to this Section 10(b)(3)(xi) shall be paid by the Lessee.

The Lessee agrees to pay, and shall indemnify, defend and hold harmless each Indemnitee and any successor, assign or transferee (including by way of a lease) of any Indemnitee, on an After-Tax Basis, from and against any and all Taxes howsoever imposed with respect to the Decommissioning Trust Fund or the Second Fund, including, without limitation, the establishment, existence or funding of the Decommissioning Trust Fund or the Second Fund, if any, and the earnings on amounts paid into or retained by the Decommissioning Trust Fund or the Second Fund, if any (whether imposed on or with respect to such Indemnitee, successor, assign or transferee, the Decommissioning Trust Fund or the Second Fund, if any, the Decommissioning Trustee, the Lessee, or any Affiliate of any thereof). Any such

indemnity payment shall be payable not later than 10 days after demand by the Indemnitee entitled thereto. As to any matter indemnified pursuant to the foregoing sentence involvi[illegible] Federal income taxes, the contest provisions contained in Section 13(c)(9) shall ap[illegible] *mutatis mutandis*, and as to other matters indemnified pursuant to the foregoing sentence, the contest provisions contained in Section 13(b)(4) shall apply, *mutatis mutandis*.

In the event that (i) the Facility Lease shall have expired or been terminated (other than in connection with an Event of Loss, Deemed Loss Event or Event of Default), (ii) the Lessor shall (other than in connection with a termination pursuant to Section 14 of the Facility Lease) sell the Undivided Interest and the Real Property Interest to any Person (including the Lessee in connection with the exercise by the Lessee of the purchase option provided by Section 13(b) of the Facility Lease) and (iii) the net sales proceeds (discounted back semiannually to the Lease Termination Date at a rate per annum equal to the Prime Rate) received by the Lessor shall exceed 20% of Facility Cost, then the Lessor shall reimburse the Lessee from any additional net proceeds of such sale in an amount equal to such net proceeds attributable to the decommissioning obligation of the Lessee under this Section 10(b)(3)(xi) with respect to the period from and after the date of such sale through the remaining useful life of Unit 2 (whereupon the reimbursement obligations of the Lessor under this paragraph shall terminate); *provided, however*, that any such reimbursement shall not reduce the amount of such net sales proceeds (discounted as aforesaid) retained by the Lessor to an amount equal to less than 20% of Facility Cost.

The reimbursement obligations of the Lessor under the preceding paragraph are for the sole benefit of the Lessee, and no other Person shall be a third party beneficiary with respect thereto. In the event that the Lessee and the Lessor shall not agree as to the amount of net sales proceeds attributable to the decommissioning obligation of the Lessee under this Section 10(b)(3)(xi), such amount shall be determined by the Appraisal Procedure.

The Owner Trustee and El Paso shall cause the Decommissioning Trust Agreement to [illegible] executed as promptly as practicable after the Closing Date. The Decommissioning Trust Agreement shall be based upon the version thereof heretofore agreed to insofar as restrictions on permissible investments are concerned. The terms and conditions thereof shall provide that (a) the arrangements thereunder shall, to the extent consistent with this Section 10(b)(3)(xi), be structured to permit qualification under Section 468A of the Code and (b) to the maximum possible extent consistent with the Owner Trustee's being granted a security interest in the Decommissioning Trust Fund or the Second Fund of the Lessee, provide protection to the Owner Trustee and the Owner Participant against creditors of El Paso and against the bankruptcy or insolvency of El Paso.

(xii) COMMERCIAL OPERATION OF UNIT 2. On or before September 30, 1987, Unit 2 will have achieved an electric output of not less than 95% of its nominal capacity of 1,270 megawatts during a test period of at least 100 consecutive hours.

(xiii) OTHER LEASES WITH RESPECT TO PVNGS. The Lessee agrees that it will deliver to the Owner Participant, promptly following execution and delivery thereof, all transaction documents (the New Lease Documents) pertaining to any true lease transaction that the Lessee or any Affiliate of the Lessee may enter into with respect to Unit 2. The parties hereto agree, upon the written request of the Owner Participant delivered within 60 days of receipt of such transaction documents, to enter into (within a reasonable time as specified in such request) such amendments to the Facility Lease and the other Transaction Documents as are necessary or desirable to (a) include as Events of Loss, Deemed Loss Events and provisions relating to Economic Useful Life any or all (as the Owner Participant may select) comparable events, occurrences or circumstances under the New Lease Documents and (b) delete or modify any or all (as the Owner Participant may select) Events of Loss, Deemed Loss Ev[illegible] and provisions relating to Economic Useful Life in connection with the foregoing; it being

intent and purpose of the foregoing to permit the Owner Participant to cause the Facility Lease and the other Transaction Documents to be amended, as it shall elect, to augment the specified Events of Loss, Deemed Loss Events and provisions relating to Economic Useful Life to include, *mutatis mutandis*, any or all comparable events, occurrences and circumstances under the New Lease Documents; *provided, however*, that each such additional Event of Loss, Deemed Loss Event and provision relating to Economic Useful Life shall include, *mutatis mutandis*, the same qualifications and incorporate, *mutatis mutandis*, the same definitions as shall be provided in the New Lease Documents and that in connection with the foregoing the Owner Participant shall be entitled to amalgamate any such additional Events of Loss, Deemed Loss Events and provisions relating to Economic Useful Life into the then present provisions of the Facility Lease and the other Transaction Documents so as to succinctly incorporate such additional events, occurrences and circumstances. In connection with any proposed amendment under the foregoing provisions, neither the Lessor nor the Lessee shall be required to accept any change to the schedules of Casualty Values, Special Termination Values, Special Casualty Values and Termination Values attached to the Facility Lease. The Owner Participant agrees, without limiting its rights under Section 13(c), that it will not seek any amendment to the Facility Lease and the other Transaction Documents pursuant to this Section 10(b)(3)(xiii) unless the Owner Participant shall have determined, based upon an opinion of its counsel and after consultation with the Lessee, that such amendment will not materially adversely affect its status as owner of the Undivided Interest for Federal income tax purposes.

(xiv) CERTAIN CHANGES TO ANPP PARTICIPATION AGREEMENT. El Paso shall use its best efforts to grant a ground lease to the Lessor covering the PVNGS Site (which shall provide for rent of $1 per year until the expiration of the Lease Term and Fair Market Rental Value thereafter), in which case the Lessor shall simultaneously sell back to the Lessee the realty covered by the Deed and the Assignment of Beneficial Interest for a price equal to the Real Estate Investment. The parties hereto will cooperate in effecting the foregoing. El Paso shall, within a reasonable time following the Closing Date, undertake to have Section 15.6.3.1 and Section 15.8 of the ANPP Participation Agreement amended to delete the requirement in such Section 15.6.3.1 and Section 15.8 that the rights and remedies of the parties to sale and leaseback transactions be subject and subordinate to the rights and remedies of the ANPP Participants. El Paso's obligations under the preceding sentence shall be discharged if El Paso shall once introduce, for consideration by all the ANPP Participants, an amendment, in form and substance reasonably satisfactory to the Owner Participant, to the ANPP Participation Agreement and vote affirmatively for such amendment in connection with all deliberations concerning such amendment by the ANPP Participants and all committees of ANPP. If at any time, through the efforts of El Paso or otherwise, any of the restrictions on lessors contained in Sections 15.6.3, 15.8, 15.10 and 20.8 of the ANPP Participation Agreement are eliminated or reduced for or are made inapplicable to (through amendment, waiver or otherwise) any lessor acquiring an interest in all or any part of any Generating Unit or Capital Improvement (as such terms are defined in the ANPP Participation Agreement), El Paso shall cause such restrictions to be comparably eliminated or reduced or made inapplicable to the Owner Trustee. The parties hereto agree to enter into such amendments to this Participation Agreement and the other Transaction Documents and such other instruments and documents as shall be necessary or appropriate to effect the foregoing.

If for any reason any of the restrictions on lessors contained in Section 15.6.3, 15.8 or 15.10 of the ANPP Participation Agreement are applicable on the Lease Termination Date or the Lessee shall not have granted to the Lessor a ground lease as contemplated above by the Lease Termination Date, and the effect of such restriction or restrictions is to reduce the amount received by the Lessor upon a disposition (by sale, lease or otherwise) from what would have been realized had such restriction or restrictions not been applicable or had such ground lease been in effect, then the Lessee shall pay to the Lessor an amount equal to such

reduction, payable within 10 days after determination of such amount. Such amount shall be determined promptly after the Lease Termination Date by agreement between the Own Participant and the Lessee or, if they shall be unable to agree within 30 days after the Lea Termination Date, by the Appraisal Procedure.

(xv) ACQUISITION OF OTHER LEASED INTERESTS IN PVNGS. The Lessee shall not acquire, by purchase or lease, any interest in PVNGS from or through any ANPP Participant (including any interest at any time owned by any other ANPP Participant) from and after the date which is five years prior to the date on which the Lessee is required to give its notice pursuant to Section 13(a) of the Facility Lease unless and until the Lessee shall have irrevocably given the notice pursuant to Section 13(a) of the Facility Lease of its election to exercise the purchase option permitted by Section 13(b) of the Facility Lease.

(xvi) OTHER AGREEMENTS. The Lessee shall not enter into or become bound by any agreement or arrangement which would proscribe its ability to assume the obligations and liabilities of the Owner Trustee in accordance with Section 3.9(b) of the Indenture or to accept the Special Transfer.

(xvii) LETTER OF CREDIT. The Lessee shall cause a commercial bank, trust company or United States branch or agency of a foreign bank satisfactory to the Owner Participant (in its sole discretion) to issue in favor of the Owner Participant an irrevocable, transferable stand-by letter or letters of credit (such letter or letters of credit and all letters of credit or other credit support instruments issued or executed from time to time being herein referred to as the *Letter of Credit*) which, from the date of delivery of the Letter of Credit until January 2, 1992, shall (1) be in an amount equal to the excess of Special Termination Value over the principal amount of and accrued interest (from the Basic Rent Payment Date immediately preceding each date as of which Special Termination Value is determined) on the Notes Outstanding from time to time (except that if, as a result of the occurrence of an event requiring an adjustment to rent pursuant to Section 3(d) or 3(e) of the Facility Lease Section 13, the amount available to be drawn under the Letter of Credit becomes less th such amount, the Lessee shall not be in default under this provision if, within 30 days of the implementation of such adjustment pursuant to Section 3(f) of the Facility Lease, the Lessee replaces the Letter of Credit with a Letter of Credit complying with the terms and provisions of this Section 10(b)(3)(xvii)) and (2) provide for reinstatement within three Business Days from the date of any drawing thereunder in respect of Supplemental Rent (other than Casualty Value, Termination Value, Special Termination Value or Special Casualty Value) (except that the Lessee shall not be in default if such a reinstatement does not occur so long as the Lessee replaces the Letter of Credit within 30 days of the date of such a drawing with a Letter of Credit complying with the terms of this Section 10(b)(3)(xvii)). The Letter of Credit shall in all other respects be in form and substance satisfactory to the Owner Participant, in its sole judgment. Any replacement Issuing Bank must be satisfactory to the Owner Participant, in its sole judgment. It is understood that the Owner Participant and the Lessee may agree upon Letter of Credit amounts lower than those described above.

Any reimbursement agreement between the Lessee and the Issuing Bank relating to any Letter of Credit shall (i) require the Issuing Bank to pay any draws on the Letter of Credit from general funds, (ii) not permit the Issuing Bank to exercise its right to set off against any amount owed as reimbursement to the Issuing Bank for draws on the Letter of Credit and (iii) permit the Lessee to secure its obligations with the delivery of collateral to the Issuing Bank. Any such reimbursement agreement shall in all other respects be in form and substance satisfactory to the Owner Participant, in its sole judgement. The Lessee shall not amend any provision of any such reimbursement agreement with respect to any Letter of Credit in a manner materially adverse to the interests of the Owner Participant without the prior written consent of the Owner Participant.

If the obligations of the Lessee with respect to the Letter of Credit are secured t significant extent by property of the Lessee, any fees payable to the Issuing Bank for origination and maintenance of the Letter of Credit shall be payable by the Lessee: *provided*,

however, that in such event the Owner Participant shall pay to the Lessee during the term of the Letter of Credit an annual transaction fee (a *Fee Obligation)* in such amount as may be reasonably agreed by the Lessee and the Owner Participant but in no event to exceed an amount equal to 2% of the maximum drawable amount as of the anniversary date of the issuance of the Letter of Credit (such transaction fee to be paid in quarterly installments). In the event that the obligations of the Lessee with respect to the Letter of Credit are not secured to a significant extent by property of the Lessee, any fees payable to the Issuing Bank for the origination and maintenance of the Letter of Credit, up to a maximum of 2% annually of the maximum drawable amount thereunder (also a *Fee Obligation*) shall be payable by the Owner Participant. Any amounts payable with respect to origination shall be amortized in equal amounts annually over the term of the Letter of Credit and shall be included in the annual computation of the 2% maximum responsibility of the Owner Participant for the Letter of Credit fees. If the annual aggregate cost of the maintenance of the Letter of Credit not secured to a significant extent by property of the Lessee exceeds 2% of the maximum drawable amount thereunder, the Lessee may, in its sole discretion, pay such excess; provided that if the Lessee does not pay such excess, the Owner Participant may cause the termination of the Letter of Credit, in which event the Lessee shall be deemed to be in breach of this Section 10(b)(3)(xvii). The Lessee will deliver any certificates required to be delivered under the Letter of Credit as and when required.

Within 15 days after any Issuing Bank shall have given not less than 30 days' notice of the termination of the Letter of Credit prior to its stated expiration date, the Lessee shall notify the Owner Participant of such fact and the Owner Participant shall have the opportunity to find a Person acceptable to it willing to issue a Letter of Credit for the account of the Lessee on substantially the same terms as the Letter of Credit then in effect, including the amount of and responsibility for the annual fee payable under such replacement Letter of Credit. If the Owner Participant has not so found a Person within 25 days after any Issuing Bank shall have given not less than 30 days' notice of the termination of its Letter of Credit prior to its stated expiration date, or, when the Issuing Bank may terminate the Letter of Credit on less than 30 days' notice, at least five days prior to the termination of the Letter of Credit pursuant to such notice, the Lessee shall, unless an Event of Default shall have occurred and be continuing or an Event of Loss shall have occurred or Deemed Loss Event shall have been declared, have the right to purchase the Undivided Interest and the Real Property Interest at any time thereafter at least two business days before the expiration date of the Letter of Credit for an amount equal to *the excess of* (i) the greater of (x) Fair Market Sales Value of the Undivided Interest and the Real Property Interest and (y) the Special Termination Value *over* (ii) the unpaid principal amount of, and (if such Special Termination Value is equal to or greater than such Fair Market Sales Value) accrued interest since the last preceding Basic Rent Payment Date on, the Notes Outstanding on such purchase date after giving effect to the payment, if any, of the principal installment due and payable and paid in respect of the Notes on such date. If the Lessee shall have made such payment and shall have assumed all obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Lessor shall Transfer the Undivided Interest and the Real Property Interest to the Lessee. If the Lessee shall have made such payment but shall not have assumed all obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Owner Participant shall effect the Special Transfer, *in which case, without further act on the part of the Lessor or the Lessee*, (i) the obligation of the Lessee to pay further Basic Rent shall be reduced to an amount, payable on each Basic Rent Payment Date thereafter, equal to the aggregate amount of principal, premium, if any, and accrued interest then payable on all Notes then Outstanding and (ii) this Facility Lease shall become a security agreement for all purposes of Applicable Law.

The Lessee's obligations under this Section 10(b)(3)(xvii) shall terminate on the fifth anniversary of the Closing Date, *provided that*, prior to such termination, the Lessee shall, upon the request of, and at the sole expense of, the Owner Participant, exercise its reasonable

efforts to secure a replacement Letter of Credit containing such terms as are mutually agreeable to the Owner Participant and the Lessee.

The foregoing provisions of this Section 10(b)(3)(xvii) are for the benefit only of the Owner Participant and the Lessee.

Section 11. Conditions Precedent.

(a) *Owner Participant and Loan Participant Conditions.* The obligation of (x) the Loan Participant to make the Loan on the Closing Date, and (y) the Owner Participant to make the Investment and the Real Estate Investment on the Closing Date, shall be subject to the fulfillment, on or prior to the Closing Date, of the following conditions precedent (each instrument, document, certificate, opinion, policy or writing referred to below to be in form and substance satisfactory to the Loan Participant and the Owner Participant):

(1) *Notice of Closing; Transaction Documents.* Each shall have received executed copies, or sets of executed counterparts, of the Notice of Closing, each Transaction Document (other than the Letter of Credit and the Letter of Credit Agreement), each Financing Document and such other documents as are contemplated by this Participation Agreement.

(2) *Authentication Request.* The Owner Trustee shall have delivered to the Indenture Trustee a request, dated the Closing Date, authorizing the Indenture Trustee to authenticate and deliver to the Collateral Trust Trustee (pursuant to the Loan Participant's order herein contained) the Initial Series Notes upon the Loan Participant's payment of the proceeds of the Loan.

(3) *Original Counterpart of the Facility Lease.* The Owner Trustee shall have delivered to the Indenture Trustee the counterpart of the Facility Lease marked "THIS COUNTERPART IS THE ORIGINAL COUNTERPART."

(4) *Due Authorization, Execution and Delivery.* All of the documents described in clause (1) of this Section 11(a) shall have been duly authorized, executed and delivered by the respective parties thereto and shall be in full force and effect on the Closing Date, and the Loan Participant and the Owner Participant shall have received evidence as to such authorization, execution and delivery.

(5) *Initial Series Note and Bond Transactions; Investment.* In the case of the Loan Participant, (A) the Loan Participant shall have received the proceeds from the sale of the Initial Series Bonds as a result of the consummation of the transactions contemplated by the Underwriting Agreement, (B) the Owner Trustee shall have executed, and the Indenture Trustee shall have authenticated and delivered to the Loan Participant, the Initial Series Notes evidencing the Loan made on the Closing Date, (C) the Collateral Trust Trustee shall have accepted the Bond Supplemental Indenture and shall have released the amount of the Loan from the lien of the Collateral Trust Indenture, and (D) the Owner Participant shall have made the Investment and the Real Estate Investment.

(6) *Loan.* In the case of the Owner Participant, the Loan Participant shall have made the Loan.

(7) *ANPP Administrative Committee.* The ANPP Administrative Committee shall have made the finding required by Section 15.6.2 of the ANPP Participation Agreement.

(8) *No Violation.* The making by the Owner Participant of the Investment and the Real Estate Investment and by the Loan Participant of the Loan shall not violate any Applicable Law.

(9) *No Default.* No Default or Event of Default or, in the case of the Loan Participant, Indenture Default or Indenture Event of Default, shall have occurred and be continuing and no Event of Loss or Deemed Loss Event shall have occurred.

(10) *Recording and Filing.* The recordations and filings described in Schedule 3 shall have been duly made and all recording and filing fees with respect thereto shall have been paid. A certificate on Form U-7D with respect to the Facility Lease shall have been duly executed and delivered and shall be in due form for filing.

(11) *Representations and Warranties.* In the case of the Owner Participant, the representations and warranties of the Loan Participant, the Owner Participant, FNB and the Owner Trustee and the Indenture Trustee set forth in Sections 6(a), 7(a), 8(a) and 9(a), respectively, shall

true and correct on and as of the Closing Date with the same effect as though made on and as of the Closing Date, and the Loan Participant and the Owner Participant shall have received an appropriate certificate, dated the Closing Date, to such effect.

(12) *Representations and Warranties of the Lessee.* (A) The representations and warranties of the Lessee set forth in Section 10(a), in any other Transaction Document, in the Underwriting Agreement and in any certificate or other document to which the Lessee is a party executed or delivered in connection with the transactions contemplated hereby or thereby shall be true and correct on and as of the Closing Date with the same effect as though made on and as of the Closing Date and (B) no Deemed Loss Event or Event of Loss shall have occurred and no Default or Event of Default shall have occurred and be continuing and the Loan Participant and the Owner Participant shall have received an Officers' Certificate of the Lessee, dated the Closing Date, to such effect. The following statements shall be true, and such Officers' Certificate shall state that: (i) there has been no material adverse change in the properties, business, prospects or financial condition of the Lessee since September 30, 1986, and no event has occurred since that date which would materially adversely affect the ability of the Lessee to perform its obligations under this Participation Agreement or any other Transaction Document or Financing Document and (ii) to such officer's knowledge there has been no material adverse change or development since September 30, 1986 relating to Unit 2, to PVNGS or to nuclear power plants generally which affects the operation of Unit 2 or the value of the Undivided Interest or the financial condition of the Lessee.

(13) *Opinions of Counsel.* In the case of the Owner Participant, it shall have received (a) favorable opinions of Mudge Rose Guthrie Alexander & Ferdon, Shaw, Pittman, Potts & Trowbridge, Meyer, Hendricks, Victor, Osborn & Maledon, Rodey, Dickason, Sloan, Akin & Robb, P.A. and Baker & Botts, each dated the Closing Date and addressed to the Owner Participant, addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents and Financing Documents as the Owner Participant may reasonably request, and (b) a favorable opinion of Cravath, Swaine & Moore, as special counsel to the Owner Participant, with respect to such Federal tax and other tax matters as the Owner Participant may reasonably request. In the case of the Loan Participant, it shall have received favorable opinions of Cravath, Swaine & Moore and Mudge Rose Guthrie Alexander & Ferdon, each dated the Closing Date and addressed to the Loan Participant addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents and Financing Documents as the Loan Participant may reasonably request. The Loan Participant and the Owner Participant shall have received favorable opinions of Mudge Rose Guthrie Alexander & Ferdon, Kemp, Smith, Duncan & Hammond, Snell & Wilmer and Csaplar & Bok, each dated the Closing Date and addressed to each such Person, addressing such matters relating to the transactions contemplated hereby and by the other Transaction Documents and Financing Documents as either such Person may reasonably request.

(14) *Taxes.* All Taxes, if any, payable in connection with the execution, delivery, recording and filing of the Transaction Documents and Financing Documents and all the documents and instruments described in Schedule 3, or in connection with the issue and sale of the Initial Series Notes and the Initial Series Bonds and the making by the Owner Participant of the Investment and the Real Estate Investment, and all Taxes payable in connection with the consummation of the transactions contemplated hereby and by the other Transaction Documents and Financing Documents, shall have been duly paid in full.

(15) *Appraisals.* The Owner Participant shall have received a letter, dated the Closing Date and addressed to the Owner Participant, from Ebasco Business Consulting Company containing an appraisal of the Undivided Interest, which appraisal shall reflect such appraiser's reasonable conclusion that (w) the fair market value in the hands of the Owner Trustee of the Undivided Interest on the Closing Date, taking into account the effect and existence of the Real Property Interest, the Assignment and Assumption and the ANPP Participation Agreement, is equal to the Purchase Price as set forth in the Notice of Closing, (x) the estimated remaining economic useful life of Unit 2 (including the Undivided Interest) is at least thirty-eight and three-quarters years,

(y) at the expiration of the first four years of the Renewal Term the Undivided Interest will have an estimated residual value, taking into account the effect and the existence of this Participation Agreement, the Real Property Interest, the Assignment and Assumption and the ANPP Participation Agreement, in the hands of the Owner Trustee or a Person (unrelated to the Lessee) w[illegible] could lease or purchase the Undivided Interest from the Owner Trustee for commercial use, equ[illegible] to at least 20% of the Purchase Price, determined without including in such value any increase or decrease for inflation or deflation during the period from the Closing Date through the expiration of the first four years of the Renewal Term, and (z) taking into account the effect and the existence of the Real Property Interest, the Assignment and Assumption and the ANPP Participation Agreement, the use of the Undivided Interest at the Lease Termination Date by any User is feasible from an engineering and economic point of view and is commercially reasonable. The Owner Participant shall have received an appraisal of the value of the Real Property Interest, which appraisal shall reflect the appraiser's reasonable conclusion that the fair market value in the hands of the Owner Trustee of the Real Property Interest on the Closing Date is equal to the Real Estate Investment as set forth in the Notice of Closing and shall cover such other matters as the Owner Participant shall have requested.

(16) *Offering and Sale of Interest.* The Loan Participant, the Owner Trustee and the Owner Participant shall have received a letter or letters from Babcock & Brown Financial Corporation and Systems Marketing, Inc. with respect to the offering and sale of the interests in the transactions contemplated by this Participation Agreement and each other participation agreement dated the date hereof relating to an undivided interest in Unit 2.

(17) *Governmental Action.* The Lessee shall have obtained all Governmental Actions (including, without limitation, the License Amendment, the New Mexico Order, and the FERC Order, which orders shall be final and nonappealable) required or, in the opinion of the Owner Participant, advisable, for the consummation of all the transactions contemplated by this Participation Agreement and the other Transaction Documents and the Financing Documents.

(18) *No Change or Proposed Change in Tax Laws.* No change shall have occurred or been proposed in the Code or any other tax statute, the regulations thereunder or any interpretati[illegible] thereof or executive order in respect thereof that would adversely affect the tax consequen[illegible] anticipated by the Owner Participant with respect to the transactions contemplated by the Transaction Documents, unless the effect of such change or proposed change can be wholly accommodated through Section 3(d) of the Facility Lease.

(19) *Title Matters; Certain Reports.* The Owner Participant shall have received (i) an updated title report, dated the Closing Date, with respect to the Nuclear Plant Site (as defined in the ANPP Participation Agreement), which report does not disclose any exceptions materially adverse to the possession or operation of Unit 2 or the performance by the Lessee of its obligations under this Participation Agreement and the other Transaction Documents, (ii) such title insurance policies with respect to the Nuclear Plant Site (as defined in the ANPP Participation Agreement) and improvements thereon (including the Owner Trustee's interests therein) as it shall have reasonably requested, (iii) such insurance policies with respect to PVNGS or the Lessee as the Owner Participant shall have requested, (iv) a survey of the Nuclear Plant Site, (v) such certificates and reports from the Lessee, independent insurance brokers and the insurance manager for PVNGS with respect to insurance relating to PVNGS, Unit 2 or the Undivided Interest as the Owner Participant shall have requested, (vi) such certificates and reports from its independent insurance consultant as the Owner Participant shall have requested, (vii) such certificates and reports from its independent engineering consultant as the Owner Participant shall have requested and (viii) a site arrangement plan of the Nuclear Plant Site.

(20) *Special Certificate of the Lessee.* The Owner Participant shall have received a certificate of the Lessee, dated the Closing Date, to the effect that, (A) Unit 2 has been in all material respects completed in a good and workmanlike manner and in accordance with the plans and specifications relating thereto (as the same may have been modified from time to time to reflect Unit 2 as actually completed), Applicable Law (including, without limitation, the regulations of the NRC), the License and the ANPP Participation Agreement, (B) all Governmental Acti[illegible]

necessary for the commercial operation of Unit 2 (including the Undivided Interest) have been received, other than any such Governmental Action that is routine in nature for PVNGS or that cannot be obtained under Applicable Law, or is typically not applied for, prior to the time it is required, and that the Lessee expects to be obtained in due course, (C) the plans and specifications relating to Unit 2 are complete in all material respects (modified or to be modified as aforesaid) and consistent with prudent engineering practice, (D) the testing and startup procedures and the operation and maintenance programs for Unit 2 were consistent with such plans and specifications, Applicable Law and prudent engineering practice, (E) Unit 2 has been tested in accordance with all customary testing and startup procedures which would have been performed on or prior to the Closing Date, and such tests and procedures indicate that Unit 2 will have the capacity and functional ability to perform in commercial operation, on a continuing basis, the function for which it is designed in accordance with such plans and specifications and has a nominal capacity of 1,270 megawatts electric, (F) all material Governmental Actions relating to the construction, operation or maintenance of Unit 2 are listed in a schedule thereto, (G) there is no present event or condition which would materially adversely affect the capability of Unit 2 to operate in accordance with such plans and specifications and (H) based upon the Lessee's present reasonable expectations, and subject to Applicable Law, the rights and interests made available to the ANPP Participants (including the Lessee) pursuant to the ANPP Participation Agreement (including the Real Property Interest), as such rights and interests are made available or are to be made available to the Owner Trustee, any successor or assign of the Owner Trustee or any "Transferee" of the Owner Trustee under Section 15.10 of the ANPP Participation Agreement, under and pursuant to this Participation Agreement, and the Assignment and Assumption, are adequate to permit, during the period following the Lease Termination Date or the taking of possession of the Undivided Interest and the Real Property Interest in the exercise of remedies under Section 16 of the Facility Lease, in accordance with the ANPP Project Agreements (i) the construction, location, occupation, connection, maintenance, replacement, renewal, repair or removal of Unit 2, (ii) the use, operation and possession of Unit 2, (iii) the construction, use, operation, possession, maintenance, replacement, renewal and repair of all alterations, modifications, additions, accessions, improvements, appurtenances, replacements and substitutions thereof and thereto, (iv) adequate ingress to and egress from Unit 2 for any reasonable purpose in connection with the exercise of rights under the Assignment and Assumption and the ownership and possession of the Undivided Interest and the Real Property Interest and (v) the obtaining of nuclear fuel, of water and of transmission services to the ANPP Switchyard sufficient to enable delivery of the Generation Entitlement Share related to the Undivided Interest in a commercially efficient manner and on commercially reasonable terms. Nothing in the foregoing clause (H) shall be deemed to be or be construed as a warranty by the Lessee as to the performance by the Operating Agent of its obligations under the ANPP Participation Agreement. Such certificate shall also be attested to by the Vice President — Power Supply of the Lessee, who shall state that (i) as a qualified engineer, he has made such investigation, inspection and review as he deems necessary to make the statements in such certificate and (ii) to the best of his knowledge, the statements of the Lessee in such certificate are true and correct.

(21) *Registration Statement.* The Loan Participant and the Owner Participant shall have received an Officers' Certificate of the Lessee, dated the Closing Date, to the effect that on the date it became effective and on the Closing Date, the Registration Statement did not and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading, and the final prospectus did not and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading under the circumstances under which any such shall have been made.

(22) *Completion of Documentation.* All schedules to and blanks in the Transaction Documents and Financing Documents shall have been completed to the satisfaction of the parties hereto.

(23) *Unit 2 Letter.* The Owner Participant shall have received a letter from El Paso representing such matters as the Owner Participant may reasonably request.

(24) *Other Matters.* The Loan Participant and the Owner Participant shall have received such other documents, certificates and opinions as the Loan Participant or the Owner Partioip[illegible] or their respective counsel, shall reasonably request.

(b) *Lessee Conditions.* The obligation of the Lessee to sell and lease back the Undivided Interest and to grant the Real Property Interest on the Closing Date pursuant to Section 4 shall be subject to the fulfillment on or prior to the Closing Date of the following conditions precedent, in each case in form and substance satisfactory to the Lessee:

(1) *Paragraph (a) Documents.* The Lessee shall have received copies of the documents, certificates, opinions (other than the opinion referred to in clause (b) of the first sentence of Section 11(a)(13)), appraisals, letters and forms described in paragraph (a) of this Section 11. All such opinions shall be addressed to the Lessee, except the opinions of (i) Shaw, Pittman, Potts and Trowbridge, (ii) Meyer, Hendricks, Victor, Osborn & Maledon, (iii) Rodey, Dickason, Sloan, Akin & Robb, (iv) Baker & Botts; (v) Mudge Rose Guthrie Alexander & Ferdon to the Owner Participant and the Loan Participant and (vi) Cravath, Swaine & Moore to which reference is made in clause (b) of the first sentence of Section 11(a)(13).

(2) *Payment of Purchase Price.* The Owner Trustee shall have paid to the Lessee an amount, equal to the Purchase Price and the acquisition price of the Real Property Interest.

(3) *Special Opinion of the Lessee's Counsel.* The Lessee shall have received a favorable opinion of Kemp, Smith, Duncan & Hammond, dated the Closing Date and addressed to the Lessee, with respect to such Federal tax and other matters as the Lessee may reasonably request.

(4) *Orders.* The FERC Order, the NMPSC Order and the License Amendment shall be in form and substance satisfactory to the Lessee.

(5) *Registration Statement.* The Registration Statement shall have been declared effective by the SEC and the Underwriters shall have purchased, or shall substantially simultaneously purchase, the Initial Series Bonds pursuant to the Underwriting Agreement.

(6) *Completion of Documentation.* All schedules to and blanks in the Transaction Documents and Financing Documents shall have been completed to the satisfaction of the parties hereto.

(c) *Conditions to Releveraging.* The obligation of the Loan Participant to make, and the Owner Trustee to borrow the proceeds of, a Releveraging Loan on a Releveraging Date shall be subject to the fulfillment on or prior to such Releveraging Date of the following conditions precedent (each instrument, document, certificate, opinion or other writing to be in form and substance satisfactory to the Loan Participant and the Owner Participant):

(1) *Authentication Request, etc.* The Owner Trustee shall have delivered to the Indenture Trustee a request, dated such Releveraging Date, authorizing the Indenture Trustee to authenticate and deliver a Releveraging Note to the Loan Participant upon its payment to the Indenture Trustee, for the account of the Owner Trustee, of the proceeds of such Releveraging Loan.

(2) *Releveraging Note and Bond Transactions.* (A) The Loan Participant shall have received the proceeds from the sale of Releveraging Bonds in an amount sufficient to make such Releveraging Loan, (B) the Owner Trustee shall have executed, and the Indenture Trustee shall have authenticated and delivered to the Loan Participant, a Releveraging Note or Notes evidencing such Releveraging Loan and (C) the Collateral Trust Trustee shall have accepted a supplement to the Collateral Trust Indenture subjecting such Releveraging Note or Notes to the lien of the Collateral Trust Indenture and shall have released the amount of such Releveraging Loan from the lien of the Collateral Trust Indenture.

(3) *No Violation.* The return to the Owner Participant of a portion of the Investment and the making by the Loan Participant of the Releveraging Loan shall not violate any Applicable Law.

(4) *No Default.* No Default or Event of Default or (in the case of the Loan Participant) Indenture Default or Indenture Event of Default shall have occurred and be continuing, no Event of Loss shall have occurred and no Deemed Loss Event shall have been declared.

(5) *Representations and Warranties.* The representations and warranties of FNB and the Owner Trustee and the Lessee set forth in Sections 8(a) and 10(a), respectively, shall be true and correct on and as of such Releveraging Date with the same effect as though made on and as of such Releveraging Date (with all references to the Closing Date in such representations and warranties being changed to a reference to such Releveraging Date), and the Loan Participant and the Owner Participant shall have received appropriate certificates, dated such Releveraging Date, to such effect.

(6) *Opinions of Counsel.* The Loan Participant and the Owner Participant shall have received favorable opinion of each of Cravath, Swaine & Moore, as special counsel for the Owner Participant, Csaplar & Bok, as counsel for the Owner Trustee, Snell & Wilmer, as special counsel for the Lessee, and Kemp, Smith, Duncan & Hammond, as counsel for the Lessee, each dated such Releveraging Date and addressing such matters relating to the transactions in connection with the Releveraging Loan as the Loan Participant or the Owner Participant may reasonably request.

(d) *Conditions to Refunding.* The obligation of the Owner Participant and the Loan Participant to participate in a refunding of the Notes, if any, as provided in Section 2(d), shall be subject to the fulfillment on or before the Refunding Date of the following conditions precedent (each instrument, document, certificate, opinion or other writing to be in form and substance satisfactory to the Loan Participant and the Owner Participant):

(1) *Authentication Request, etc.* The Owner Trustee shall have delivered to the Indenture Trustee a request, dated the Refunding Date, authorizing the Indenture Trustee to authenticate and deliver the Refunding Note or Notes to the Loan Participant against redelivery of the Initial Series Notes (and each Releveraging Note theretofore issued) to the Indenture Trustee for cancellation.

(2) *Refunding Note and Bond Transactions.* (A) The Loan Participant shall have received the proceeds from the sale of Refunding Bonds in an amount sufficient to make the Refunding Loan, (B) the Owner Trustee shall have executed, and the Indenture Trustee shall have authenticated and delivered to the Loan Participant, the Refunding Note or Notes evidencing the Refunding Loan made on the Refunding Date and (C) the Collateral Trust Trustee shall have accepted the Refunding Supplemental Indenture subjecting the Refunding Note or Notes to the lien of the Collateral Trust Indenture and shall have released the Initial Series Notes (and each Releveraging Note, theretofore issued) from the lien of the Collateral Trust Indenture.

(3) *No Default.* No Event of Default or (in the case of the Loan Participant) Indenture Event of Default shall have occurred and be continuing, no Event of Loss shall have occurred and no Deemed Loss Event shall have been declared.

(4) *Representations and Warranties.* The representations and warranties of FNB and the Owner Trustee and the Lessee set forth in Sections 8(a) and 10(a), respectively, shall be true and correct on and as of the Refunding Date with the same effect as though made on and as of the Refunding Date (with all references to the Closing Date in such representations and warranties being changed to a reference to the Refunding Date), and the Loan Participant and the Owner Participant shall have received appropriate certificates, dated the Refunding Date, to such effect.

(5) *Refunding Registration Statement.* The Loan Participant and the Owner Participant shall have received an Officers' Certificate of the Lessee, dated the Refunding Date, to the effect that on the date it became effective and on the Refunding Date, the Refunding Registration Statement did not and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading, and the final prospectus did

not and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading under the circumstances under which any such shall have been made.

(6) *Opinions of Counsel.* The Loan Participant and the Owner Participant shall have received favorable opinions of each of Cravath, Swaine & Moore, as special counsel for the Owner Participant, Csaplar & Bok, as counsel for the Owner Trustee, Snell & Wilmer, as special counsel for the Lessee, and Kemp, Smith, Duncan & Hammond, as counsel for the Lessee, each dated the Refunding Date and addressing such matters relating to the transactions in connection with the Refunding Note or Notes as the Loan Participant or the Owner Participant may reasonably request.

(e) *Conditions to Reoptimization.* The obligation of the Owner Participant and the Loan Participant to participate in a reoptimization of the Notes, as provided in Section 2(e), shall be subject to the fulfillment on or before the date thereof of the following conditions precedent (each instrument, document, certificate, opinion or other writing to be in form and substance satisfactory to the Loan Participant and the Owner Participant):

(1) *Note and Bond Transactions.* The conditions set forth in Section 3.12 of the Indenture and Section 1.04(c) of the Bond Supplemental Indenture (and the Refunding Supplemental Indenture, if any) shall have been complied with.

(2) *No Default.* No Event of Default or (in the case of the Loan Participant) Indenture Event of Default shall have occurred and be continuing and no Event of Loss shall have occurred and no Deemed Loss Event shall have been declared.

(3) *Representations and Warranties.* The representations and warranties of FNB and the Owner Trustee and the Lessee set forth in Sections 8(a) and 10(a), respectively, shall be true and correct on and as of such date with the same effect as though made on and as of such date (with all references to the Closing Date in such representations and warranties being changed to reference to such date), and the Loan Participant and the Owner Participant shall have received appropriate certificates, dated such date, to such effect.

(4) *Opinions of Counsel.* The Loan Participant and the Owner Participant shall have received favorable opinions of each of Cravath, Swaine & Moore, as special counsel for the Owner Participant, and Kemp, Smith, Duncan & Hammond, as special counsel for the Lessee, each dated such date and addressing such matters relating to the transactions in connection with the reoptimization as the Loan Participant or the Owner Participant may reasonably request.

SECTION 12. Consent to Assignment of the Facility Lease; Consent to Indenture.

(a) *Consent to Assignment of Facility Lease.* The Lessee hereby acknowledges, and consents in all respects to, the partial assignment of the Facility Lease by the Owner Trustee to the Indenture Trustee under and pursuant to the Indenture and agrees:

(i) to make each payment of Basic Rent and Supplemental Rent due or to become due thereunder to the extent constituting Assigned Payments (excluding, in any event, all Excepted Payments) directly to the Indenture Trustee as provided in Section 11(b) of the Facility Lease, so long as any of the Notes shall be Outstanding and unpaid; and

(ii) not to seek to recover any payment (other than a payment that both the Owner Trustee and the Lessee agree was made in mistake) made to the Indenture Trustee in accordance with the Indenture once said payment is made.

(b) *Consent to Indenture.* The Lessee hereby consents in all respects to the execution and delivery of the Indenture, and to all of the terms thereof, and the Lessee acknowledges receipt of an

executed counterpart of the Indenture; it being understood that such consent shall not be construed to require the Lessee's consent to any future supplement to, or amendment, waiver or modification of the terms of, the Indenture or any Note.

(c) *Consent to Assignment by Loan Participant.* Each of the parties hereto acknowledges that the Loan Participant is assigning its right, title and interest in and to the Transaction Documents to the Collateral Trust Trustee as security for the Bonds to the extent set forth in the Collateral Trust Indenture, and each of the parties hereto consents to such assignment.

SECTION 13. Lessee's Indemnities.

(a) *General Indemnity.* The Lessee agrees, whether or not any of the transactions contemplated hereby shall be consummated and whether or not the Facility Lease, any other Transaction Document or any Financing Document shall have expired or have been terminated, to assume liability for, and the Lessee does hereby agree to indemnify, protect, defend, save and keep harmless each Indemnitee, on an After-Tax Basis, from and against, any and all Claims which may be imposed on, incurred by or asserted against any Indemnitee (whether because of an act or omission by such Indemnitee or otherwise and whether or not such Indemnitee shall also be indemnified as to any such Claim by any other Person) in any way relating to or arising out of (i) Unit 2, the Undivided Interest, the Real Property Interest, PVNGS or the PVNGS Site, or any part of any thereof, any ANPP Project Agreement, the issuance or payment of the Bonds or the Notes, this Participation Agreement or any other Transaction Document or any Financing Document (*including, without limitation*, the performance or enforcement of any of the obligations and terms hereunder or thereunder), (ii) a disposition of all or any part of the Undivided Interest, the Real Property Interest, Unit 2 or any other interest of the Owner Trustee in connection with any termination of the Facility Lease, or (iii) the design, construction, assembly, manufacture, financing, erection, purchase, acceptance, rejection, ownership, acquisition, delivery, redelivery, nondelivery, transportation, insuring, lease, sublease, preparation, installation, repair, rebuilding, improvement, modification, transfer of title, abandonment, possession, repossession, use, operation, maintenance, condition, sale, return, storage or disposition of the Undivided Interest, Unit 2, the Real Property Interest, any Capital Improvement, the PVNGS Site, any other facilities or property in or on the PVNGS Site or any other interest of the Owner Trustee in any thereof or any accident, nuclear incident or extraordinary nuclear occurrence in connection with any thereof (*including, without limitation*, (A) claims or penalties arising from any violation of law or liability in tort (strict or otherwise) or from the active or passive negligence of any Indemnitee, (B) loss of or damage to any property or the environment or death or injury to any Person, (C) latent and other defects, whether or not discoverable, (D) any claim for patent, trademark, service-mark or copyright infringement and (E) any claim of any Indemnitee incurred in the administration of this Participation Agreement, any other Transaction Document or any Financing Document and not paid as Transaction Expenses or included in Facility Cost and, if not included in Transaction Expenses, the reasonable fees and disbursements of counsel and other professionals incurred in connection therewith); *provided, however*, that the Lessee shall not be required to indemnify any Indemnitee pursuant to this Section 13(a), (1) for any Claim in respect of Unit 2, the Undivided Interest or the Real Property Interest arising from acts or events not attributable to Decommissioning or to any act or omission of the Lessee, whether as agent for such Indemnitee or otherwise, nor attributable to the period on or before the Lease Termination Date, which occur after satisfaction of the Lessee's redelivery obligations pursuant to Section 5 of the Facility Lease, except to the extent expressly provided in any Transaction Document, the ANPP Participation Agreement or any other agreement or undertaking of the Lessee, (2) for any Claim against such Indemnitee resulting solely from acts which would constitute the willful misconduct or gross negligence of such Indemnitee (*unless* imputed to such Indemnitee by reason of Unit 2, the Undivided Interest, the Real Property Interest, PVNGS, the PVNGS Site or any other facilities at the PVNGS Site or any occurrence in connection with any thereof or by reason of any act or omission of the Lessee, whether as agent for such Indemnitee or otherwise), (3) for any Transaction Expense to be paid by the Owner Trustee pursuant to Section 14(a), (4) for any Claim resulting solely from a transfer by the Owner Trustee or the Owner

Participant of all or part of its interest in the Facility Lease, Unit 2, the Real Property Interest or the Undivided Interest other than in connection with any early termination of the Facility Lease or exercise of remedies under Section 16 thereof or the transfer contemplated by Section 7(b)(4) or first transfer by the Owner Participant to an Affiliate of the Owner Participant or (5) in the case of the Loan Participant, the Indenture Trustee and the Collateral Trust Trustee, for any Claim based upon an untrue statement or alleged untrue statement or omission or alleged omission in the Registration Statement or the Refunding Registration Statement or any document or agreement in connection with the sale of the Bonds which is based upon information furnished to the Lessee or its agents by such Indemnitee expressly for use therein. To the extent that an Indemnitee in fact receives indemnification payments from the Lessee under the indemnification provisions of this Section 13(a), the Lessee shall be subrogated, to the extent of such indemnity paid, to such Indemnitee's rights with respect to the transaction or event requiring or giving rise to such indemnity, but only so long as such subrogation shall not materially adversely affect the rights of such Indemnitee or any other Indemnitee hereunder. Nothing herein or elsewhere contained shall be construed as constituting a guaranty by the Lessee of the principal of, premium, if any, or interest on the Notes or the Bonds or of the residual value or useful life of the Undivided Interest.

(b) General Tax Indemnity.

(1) *Indemnity.* All payments by the Lessee or any Issuing Bank in connection with the transactions contemplated by the Transaction Documents shall be free of withholdings of any nature whatsoever (and at the time that the Lessee or any Issuing Bank is required to make any payment upon which any withholding is required, the Lessee shall pay an additional amount such that the net amount actually received by the Person entitled to receive such payment will, after such withholding, equal the full amount of the payment then due) and shall be free of expense to each Indemnitee for collection or other charges. If, for any reason, the Lessee is required to make any payment to a taxing authority with respect to, or as a result of, any withholding tax imposed on any Indemnitee in respect of the transactions contemplated by the Transaction Documents, which withholding tax is not the responsibility of the Lessee under this Section 13(b) as determined pursuant to this Section 13(b) but without regard to the immediately preceding sentence of this Section 13(b)(1), then such Indemnitee shall pay to the Lessee an amount which equals the amount paid by the Lessee with respect to, or as a result of, such withholding tax. Whether or not any of the transactions contemplated hereby are consummated, except as provided in Section 13(b)(2), the Lessee shall pay, and shall indemnify, defend and hold each Indemnitee harmless, on an After-Tax Basis, from and against, any and all Taxes howsoever imposed (whether imposed on or with respect to the Indemnitee, the Lessee, Unit 2, the Undivided Interest, the Real Property Interest, any Capital Improvement or the PVNGS Site or any part thereof or interest therein or otherwise) by any Federal, state or local government or subdivision thereof or taxing authority in the United States of America or by any foreign country or subdivision thereof or by any foreign or international taxing authority in connection with or relating to (A) the design, construction, financing, purchase, acquisition, acceptance, rejection, delivery, nondelivery, transportation, ownership, assembly, possession, repossession, operation, use, condition, maintenance, repair, improvement, sale, return, storage, abandonment, preparation, installation, replacement, redelivery, manufacture, insuring, leasing, subleasing, modification, transfer of title, rebuilding, rental, importation, exportation or other application or disposition of, or the imposition of any Lien other than Owner Participant's Liens and Lessor's Liens (or incurrence of any liability to refund or pay over any amount as a result of any Lien other than Owner Participant's Liens and Lessor's Liens) on, Unit 2, the Undivided Interest, the Real Property Interest, any Capital Improvement or the PVNGS Site, or any part thereof or interest therein, (B) the payment of Rent or the receipts or earnings arising from or received with respect to, and the indebtedness with respect to, Unit 2, the Undivided Interest, the Real Property Interest or any Capital Improvement or any part of any thereof, interest therein or application or disposition thereof, (C) any amount paid or payable pursuant to this Participation Agreement, any other Transaction Document or

Financing Document or the transactions contemplated hereby or thereby, (D) Unit 2, the Undivided Interest, the Real Property Interest, any Capital Improvement or the PVNGS Site, or any part of any thereof or interest therein, or the applicability of the Facility Lease to the Undivided Interest, the Real Property Interest or any Capital Improvement, or any part of any thereof or interest therein, (E) this Participation Agreement, any other Transaction Document or any Financing Document or (F) otherwise with respect to or in connection with the transactions contemplated by this Participation Agreement, any other Transaction Document or any Financing Document.

(2) *Exclusions from General Tax Indemnity.* Section 13(b)(1) (except for the first two sentences thereof) shall not apply to:

(i) Taxes based on, or measured by, net income imposed by the United States Federal Government (including, without limitation, any minimum Taxes, capital gains Taxes, any Taxes on, or measured by, items of tax preference, surcharges, additions to tax, penalties, fines or other charges in respect thereof);

(ii) Taxes (other than sales, use or rental Taxes) imposed by any state or local government or subdivision thereof or other taxing authority in the United States or by any foreign country or subdivision thereof or by any foreign or international taxing authority that are based on, or measured by, the net income, items of tax preference, net worth or capital of an Indemnitee, except, with respect to the Owner Trustee, the Trust, the Trust Estate, the Owner Participant and any Affiliate of any thereof, any such Taxes imposed by a jurisdiction as a result of a relation or asserted relation of such jurisdiction to the transactions contemplated by the Transaction Documents or the Financing Documents or as a result of the activities of the Lessee, any ANPP Participant or any Affiliate of any thereof in such jurisdiction; *provided, however,* that the amount of any Taxes for which the Lessee is obligated to indemnify under the preceding exception shall be calculated on a pro forma basis as the amount by which:

(x) the incremental Taxes which the Indemnitee is obligated to pay in such jurisdiction, calculated as:

(1) the actual amount of Taxes which the Indemnitee is obligated to pay in such jurisdiction (except to the extent that any allocation or apportionment method used by such jurisdiction takes into account the income or activities of business entities organized outside the United States of America), taking into account any actual net operating loss carryovers, reduced by

(2) the amount of Taxes which the Indemnitee would be obligated to pay in such jurisdiction (except to the extent that any allocation or apportionment method used by such jurisdiction takes into account the income or activities of business entities organized outside the United States of America), assuming that the transactions contemplated by the Transaction Documents and the Financing Documents had not occurred, taking into account any net operating loss carryovers that would have been available if such transactions had not occurred,

exceeds

(y) any actual aggregate net reduction in Taxes in all other jurisdictions in which the Indemnitee is subject to tax (whether such reduction results from the operation of allocation or apportionment formulas, from credits or otherwise), such aggregate net reduction calculated as:

(1) the aggregate amount of Taxes which the Indemnitee would be obligated to pay in all other jurisdictions in which such Indemnitee is subject to tax, assuming

that the transactions contemplated by the Transaction Documents and the Financing Documents had not occurred, reduced by

(2) the actual aggregate amount of Taxes which the Indemnitee is obligated to pay in all other jurisdictions in which such Indemnitee is subject to tax:

provided further, however, that, with respect to any tax based on or measured by capital or net worth, the Lessee's indemnity obligation shall not exceed the incremental portion of such Tax attributable to the transactions contemplated by the Transaction Documents or the Financing Documents;

(iii) Taxes attributable to the Undivided Interest or the Real Property Interest that are imposed with respect to any period after the later of (a) the Lease Termination Date and (b) satisfaction of the Lessee's redelivery obligations pursuant to Section 5(a) of the Facility Lease, unless such Taxes relate to events occurring or matters arising prior to or simultaneously with such date or redelivery;

(iv) Taxes on or with respect to an Indemnitee arising from any voluntary transfer (it being understood that the term "voluntary transfer" does not include any transfer provided for in the Transaction Documents or the Financing Documents and does not include any transfer to the Lessee or any Affiliate thereof) by such Indemnitee of any interest in the Undivided Interest, the Real Property Interest, the Trust Estate, the Indenture Estate, the Notes or any other right or interest arising under the Transaction Documents or the Financing Documents, unless an Event of Default has occurred and is continuing, or Taxes arising from an involuntary transfer by such Indemnitee of any such interest arising from a bankruptcy or similar proceeding in which such Indemnitee is the debtor unless such bankruptcy or other proceeding was caused by the Lessee or any Affiliate thereof (except if such bankruptcy or other proceeding was so caused solely in connection with activities of such Indemnitee unrelated to the transactions contemplated by the Transaction Documents or the Financing Documents);

(v) Taxes based on or measured by any fees, commission or compensation received by the Owner Trustee, the Indenture Trustee or the Collateral Trust Trustee for acting as trustee, or for other services rendered, in connection with any of the transactions contemplated by the Transaction Documents or the Financing Documents;

(vi) Taxes on or with respect to an Indemnitee arising by reason of such Indemnitee's failure to file proper and timely reports or returns (unless the filing of such reports or returns is the obligation of the Lessee under the Transaction Documents or the Financing Documents) and any penalties or additions to tax imposed by reason of such Indemnitee's failure to comply with the laws imposing such Tax or its material failure to comply with its obligations under Section 13(b)(6), in each case unless such failure results from any action of the Lessee or failure by the Lessee to comply with any provision of the Transaction Documents or the Financing Documents, including the failure to provide necessary information;

(vii) Taxes on or with respect to an Indemnitee arising as a result of a material failure of such Indemnitee to fulfill its obligations with respect to the contest of any claim in accordance with Section 13(b)(4) of this Participation Agreement or to provide the Lessee with information (other than tax returns) within the knowledge of such Indemnitee reasonably and timely requested by the Lessee, and not otherwise available to the Lessee, to enable the Lessee to complete and file or furnish any report, return or statement in accordance with Section 13(b)(5);

(viii) Any Taxes imposed on the Lessor or the Owner Participant resulting from, or which would not have occurred but for, Lessor's Liens or Owner Participant's Liens and any Taxes imposed on the Indenture Trustee which would not have occurred but for Indenture Trustee's Liens;

(ix) Any Tax on or with respect to any Indemnitee resulting from the gross negligence or willful misconduct of such Indemnitee (it being understood that no Indemnitee is responsible for determining whether a Tax is payable if such Tax is the responsibility of the Lessee under this Section 13(b)); and

(x) Taxes imposed on or with respect to a transferee (or a subsequent transferee) of an original Indemnitee (other than a transferee or a subsequent transferee if such transferee or subsequent transferee is an Affiliate of the original Indemnitee) to the extent that the amount of such Taxes exceeds the amount of Taxes that would have been imposed on or with respect to such original Indemnitee but for the transfer to such transferee or, if imposed, would not have been subject to indemnification under this Section 13(b); *provided, however*, that the exception in this paragraph (x) shall not apply to any transferee where such transfer shall have occurred during the continuance of an Event of Default;

provided, however, that the foregoing paragraphs (i) through (x) shall not apply to any Tax imposed on the Collateral Trust Trustee, the Loan Participant or the indenture estate under the Collateral Trust Indenture except that the foregoing paragraph (v) shall apply in the case of the Collateral Trust Trustee.

(3) *Calculation of General Tax Indemnity Payments.* If any Indemnitee realizes a net permanent tax benefit by reason of the payment of any indemnity under Section 13(b)(1), such Indemnitee shall pay the Lessee, but not before the Lessee shall have made all payments theretofore due to such Indemnitee pursuant to this Section 13(b), an amount equal to the lesser of (x) the sum of such tax benefit plus any other net tax benefit realized by such Indemnitee as the result of any payment made by such Indemnitee pursuant to this sentence (such latter benefit being determined in a manner consistent with the definition of After-Tax Basis and with the last sentence of Section 13(b)(6)) and (y) the amount of such payment by the Lessee to such Indemnitee and any other payment by the Lessee to such Indemnitee therefore made pursuant to Section 13(b)(1) less the aggregate amount of all prior payments by such Indemnitee to the Lessee pursuant to this Section 13(b)(3) with respect to amounts paid pursuant to Section 13(b)(1), it being intended that no Indemnitee should realize a net tax benefit pursuant to this Section 13(b) unless the Lessee shall first have been made whole for any payments by it to such Indemnitee pursuant to Section 13(b)(1); *provided, however*, that (A) in computing any permanent tax benefit, such Indemnitee shall be deemed first to have utilized all deductions and credits available to it otherwise than by reason of any payment by the Lessee pursuant to this Section 13(b) and (B) notwithstanding the provisions of this Section 13(b)(3), such Indemnitee shall not be obligated to make any payment to the Lessee pursuant to this Section 13(b)(3) if at the time such payment shall be due a Default or Event of Default shall have occurred and be continuing.

(4) *General Tax Indemnity-Contests.* If a written claim shall be made against any Indemnitee for any Tax for which the Lessee is obligated pursuant to this Section 13(b), such Indemnitee shall notify the Lessee promptly of such claim, but the failure so to notify the Lessee shall not affect any obligation of the Lessee pursuant to this Section 13(b) except as provided in Section 13(b)(2)(vii). If the Lessee shall request in writing within 30 days after receipt of such notice, such Indemnitee shall in good faith and at the Lessee's expense contest the imposition (including the amount) of such Taxes; *provided, however*, that such Indemnitee may in its sole discretion select the forum for such contest and determine whether any such contest shall be by (A) resisting payment of such Taxes, (B) paying such Taxes under protest or (C) paying such Taxes and seeking a refund thereof; *provided further, however*, that (X) such Indemnitee shall not be obligated to contest any claim in which the amount in question is less than $250,000, (Y) at such Indemnitee's option, such contest shall be conducted by the Lessee in the name of such Indemnitee (subject to the preceding proviso) and (Z) in no event shall such Indemnitee be required or the Lessee permitted to contest the imposition of any Taxes for which the Lessee is obligated pursuant to this Section 13(b) unless (v) the Lessee shall have acknowledged its liability to such Indemnitee for an indemnity payment pursuant to this Section 13(b) as a result of such

claim if and to the extent such Indemnitee or the Lessee, as the case may be, shall not prevail in the contest of such claim, (w) such Indemnitee shall have received from the Lessee satisfactory indemnity for any liability, expense or loss arising out of or relating to such co including, but not limited to, (A) all reasonable legal, accountants' and investigatory fees and disbursements, (B) the amount of any interest, additions to tax or penalty that may be payable as a result of contesting such claim and (C) if such contest is to be initiated by the payment of, and the claiming of a refund for, such Tax, sufficient funds to make such payment on an After-Tax Basis and (ii) an opinion of independent tax counsel selected by the Lessee and approved by such Indemnitee (which approval shall not be unreasonably withheld) and furnished at the Lessee's sole expense to the effect that a Reasonable Basis exists for contesting such claim or, in the event of an appeal, that there exists a substantial possibility that an appellate court or an administrative agency with appellate jurisdiction, as the case may be, will reverse or substantially modify the adverse determination, (x) the Lessee shall have agreed to pay such Indemnitee on demand all reasonable costs and expenses that such Indemnitee may incur in connection with contesting such claim (including, without limitation, all costs, expenses, losses, reasonable legal and accounting fees, disbursements, penalties, interest and additions to tax), (y) such Indemnitee and the Owner Participant shall have reasonably determined that the action to be taken will not result in any danger of sale, forfeiture or loss of, or the creation of any Lien (except if the Lessee shall have adequately bonded such Lien or otherwise made provision to protect the interests of such Indemnitee in a manner satisfactory to such Indemnitee and the Owner Participant) on, Unit 2, the Undivided Interest, the Real Property Interest, or any part of or interest in any of the foregoing, and (z) if such contest shall be conducted in a manner requiring the payment of the claim, the Lessee shall have paid the amount required. The Lessee agrees to give such Indemnitee reasonable notice of any contest prior to the commencement thereof. If any Indemnitee shall obtain a refund of all or any part of any Taxes paid by the Lessee (or if any such refund would be payable to such Indemnitee in the absence of an offsetting liability for taxes payable to the taxing authority in question by such Indemnitee in respect of which the Lessee is not respons pursuant to this Section 13(b)), such Indemnitee shall pay the Lessee, but not before the Les shall have made all payments theretofore due to such Indemnitee pursuant to this Section 13(b), an amount equal to the lesser of (xx) the amount of such refund, including interest received (or receivable in accordance with the foregoing parenthetical clause) and attributable thereto, plus any permanent net tax benefit realized by such Indemnitee (determined in a manner consistent with the definition of After-Tax Basis and with the last sentence of Section 13(b)(6)) as a result of any payment by such Indemnitee made pursuant to this sentence (after taking into account the tax consequences of the receipt of such refund and such interest) or (yy) such tax payment by the Lessee to such Indemnitee theretofore made pursuant to this Section 13(b) plus the amount of any interest actually received by such Indemnitee in connection with such refund to the extent not previously reflected in such tax payment by the Lessee, in either case net of any expenses of contest not already paid or incurred by the Lessee; *provided, however*, that (I) in computing any permanent tax benefit, such Indemnitee shall be deemed first to have utilized all deductions and credits available to it otherwise than by reason of any payment by the Lessee pursuant to this Section 13(b) and (II) notwithstanding the provisions of this Section 13(b)(4), such Indemnitee shall not be obligated to make any payment to the Lessee pursuant to this Section 13(b)(4) if at the time such payment shall be due a Default or an Event of Default shall have occurred and be continuing. An Indemnitee shall not be required to make any payment pursuant to this Section 13(b)(4) before such time as the Lessee shall have made all payments and indemnities then due under the Transaction Documents to such Indemnitee. Notwithstanding anything contained in this Section 13(b)(4) to the contrary, no Indemnitee shall be required to contest any claim if the subject matter thereof shall be of a continuing nature and shall have previously been adversely decided pursuant to the contest provisions of this Section 13(b)(4) unless there shall have been a change in the law (including, without limitation, amendments to statutes or regulations, admini trative rulings and court decisions) after such claim shall have been so previously decided, such Indemnitee shall have received an opinion of independent tax counsel selected by the Less

and approved by such Indemnitee (which approval shall not be unreasonably withheld) and furnished at the Lessee's sole expense to the effect that such change provides a Reasonable Basis for the position which such Indemnitee and the Lessee, as the case may be, had asserted in such previous contest or for an alternative position based upon such change that the Lessee now desires to assert. Nothing contained in this Section 13(b) shall require any Indemnitee to contest or permit the Lessee to contest a claim which such Indemnitee would otherwise be required to contest pursuant to this Section 13(b) if such Indemnitee shall waive payment by the Lessee of any amount that might otherwise be payable by the Lessee under this Section 13(b) by way of indemnity in respect of such claim.

(5) *General Tax Indemnity — Reports.* If any report, return or statement is required to be filed with respect to any obligations of the Lessee under or arising out of this Section 13(b), the Lessee shall timely file the same, except for any such report, return or statement which such Indemnitee has notified the Lessee that it intends to file. The Lessee shall either file such report, return or statement so as to show the ownership of the Undivided Interest or the Real Property Interest, as the case may be, in the Owner Trustee and send a copy of such report, return or statement to the Owner Trustee and such Indemnitee or, where not so permitted, notify the Owner Trustee and such Indemnitee of such requirement and prepare and deliver such report, return or statement to the Owner Trustee and such Indemnitee in a manner satisfactory to the Owner Trustee and such Indemnitee within a reasonable time prior to the time such report, return or statement is to be filed or, where such return, statement or report shall be required to reflect items in addition to any obligations of the Lessee under or arising out of this Section 13(b), timely provide the Owner Trustee and such Indemnitee with information sufficient to permit such report, return or statement properly to be made with respect to any obligations of the Lessee under or arising out of this Section 13(b) (and the Lessee shall hold each Indemnitee harmless from and against any liabilities, obligations, losses, damages, penalties, claims, actions, suits and reasonable costs arising out of any insufficiency or inaccuracy in any such report, return, statement or information). The Lessee shall not have any right to examine the tax returns of any Indemnitee. The Lessee shall have the right to conduct all negotiations with the State of Arizona Department of Revenue with respect to the computation of the value of Unit 2, the Undivided Interest and the Common Facilities for purposes of computing Arizona property taxes.

(6) *General Tax Indemnity-Payment.* All Taxes shall be paid when due and payable and, unless otherwise requested by the appropriate Indemnitee, the Lessee shall pay any Taxes for which it is liable pursuant to this Section 13(b) directly to the appropriate taxing authority and shall pay each Indemnitee promptly on demand in immediately available funds any amount due such Indemnitee pursuant to this Section 13(b) with respect to such Taxes. Any such demand shall specify in reasonable detail the payment and the facts upon which the right to payment is based. Each Indemnitee shall promptly forward to the Lessee any notice, bill or advice received by it concerning any Taxes. Within 30 days after the date of each payment by the Lessee of any Taxes, the Lessee shall furnish the appropriate Indemnitee the original or a certified copy of a receipt for the Lessee's payment of such Taxes or such other evidence of payment of such Taxes as is acceptable to such Indemnitee. The Lessee shall also furnish promptly upon request such data as any Indemnitee may require to enable such Indemnitee to comply with the requirements of any taxing jurisdiction. Whenever any payment is to be made by the Lessee under this Section 13(b) and it shall be necessary, in calculating the After-Tax Basis amount of such payment, to compute the amount of any liability for federal, state or local tax imposed on or measured by the net income of any Indemnitee, such computation shall be based on the assumption that such taxes shall be payable at the highest marginal statutory rates in effect for the relevant period.

(7) *Definition of Indemnitee.* For purposes of this Section 13(b), the term Indemnitee shall include the successors and assigns of each respective Indemnitee, and for purposes of Federal income taxes, the affiliated group of corporations and each member thereof (within the meaning of Section 1504 of the Code) of which such Indemnitee is a member, if such group shall file a consolidated United States Federal income tax return, and, for purposes of income or franchise

(7) *Definition of Indemnitee.* For purposes of this Section 13(b), the term Indemnitee shall include the successors and assigns of each respective Indemnitee, and for purposes of Federal income taxes, the affiliated group of corporations and each member thereof (within the meaning of Section 1504 of the Code) of which such Indemnitee is a member, if such group shall file a consolidated United States Federal income tax return, and, for purposes of income or franchise taxes imposed by a particular state or local taxing jurisdiction, shall mean and include any consolidated or combined group of which such Indemnitee is or shall be a member that is treated as such by such state or local taxing jurisdiction.

(8) *Supporting Material.* Each Indemnitee shall provide to the Lessee such supporting material (other than tax returns) as the Lessee shall reasonably request in connection with the matters set forth in this Section 13(b). The Lessee shall reimburse to any Indemnitee any expenses incurred in providing requested supporting material to the Lessee.

(9) *Cooperation.* The Owner Participant agrees (without committing itself to take any action), upon the written request and at the expense of the Lessee, to discuss and to give reasonable consideration to suggestions of the Lessee regarding the minimization of any Taxes for which the Lessee is responsible under this Section 13(b).

(c) *Special Tax Indemnity.*

(1) *Tax Assumptions.* The Facility Lease has been entered into, and the Owner Participant's Net Economic Return has been computed, on the basis of the following assumed Federal income tax benefits:

(i) The Facility Lease will be treated as a true lease under which the Owner Trustee will be the purchaser, owner and lessor of the Undivided Interest and the Real Property Interest and the Lessee will be treated as the lessee of the Undivided Interest and the Real Property Interest.

(ii) The Owner Participant will be entitled to take into account in computing its Federal income tax liability each item of income, gain, deduction, loss and credit of the Trust.

(iii) Not less than 90.30391 percent of the property constituting the Undivided Interest constitutes "section 38 property" as such term is used in Section 48(a) of the Code (as such Section is applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986), that was placed in service not earlier than May 20, 1986 (such percentage of the property constituting the Undivided Interest being hereinafter referred to as the *Clause (iii) Property*); and not less than 90.30391 percent of the Purchase Price is attributable to Clause (iii) Property.

(iv) Not more than 9.69609 percent of the property constituting the Undivided Interest constitutes property that was placed in service prior to May 20, 1986 (the *Clause (iv) Property*); and not more than 9.69609 percent of the Purchase Price is attributable to the Clause (iv) Property.

(v) The Owner Participant will be allowed deductions under the accelerated cost recovery system with respect to the Undivided Interest pursuant to Sections 168(a) and 168(b)(1) of the Code (as such Sections are applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986); the Owner Participant will not make an election under Section 203(a)(1)(B) of the Tax Reform Act of 1986; the Owner Participant's taxable year in which the Closing Date occurs will be a 12-month taxable year; the Owner Participant's aggregate adjusted basis for purposes of computing such deductions will be equal to 100 percent of the Purchase Price; and the Owner Participant will be entitled (assuming that it does not make an affirmative election to take slower depreciation deductions pursuant to Section 168(b)(3) of the Code (as such Section is applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986), it being understood that any election imputed to, or deemed made by, the Owner Participant as a result of actions of another Person shall not be considered to be an affirmative election by the Owner Participant) to take s

Taxable Year Ending June 30	Percentage (to be applied against 100 percent of the Purchase Price)
1987	7.33%
1988	14.00%
1989	12.00%
1990	10.00%
1991	10.00%
1992	10.00%
1993	9.00%
1994	9.00%
1995	9.00%
1996	9.00%
1997	0.67%

(the deductions described in this Section 13(c)(1)(v) being hereinafter referred to as the *ACRS Deductions*).

(vi) The indebtedness evidenced by the Notes will constitute a loan made to the Owner Trustee; all amounts paid on the Notes other than payments of principal will be deductible by the Owner Participant, when paid or accrued, pursuant to Section 163(a) of the Code in accordance with the accrual method of accounting (it being understood that such deductions will not be affected by any other provisions of the Code such as Section 163(e)) (the deductions described in this Section 13(c)(1)(vi) being hereinafter referred to as the *Interest Deductions*).

(vii) The Owner Participant will be allowed current deductions for amortization of an amount equal to the Transaction Expenses computed on a straight-line basis over the Basic Lease Term (the *Amortization Deductions*).

(viii) The Owner Participant will have at all relevant times sufficient Federal taxable income against which to apply the ACRS Deductions, the Interest Deductions and the Amortization Deductions.

(ix) The Notes will bear interest pursuant to their terms at the rates applicable from time to time; the principal amount of the Notes will constitute no more than 80 percent of the Purchase Price; and the Notes will be amortized by certain payments of principal pursuant to the terms thereof.

(x) Basic Rent will be paid on the Basic Rent Payment Dates. Basic Rent will be payable in advance in semi-annual installments during the Basic Lease Term commencing on July 2, 1987, and the Renewal Term as set forth in the Facility Lease.

(xi) None of the Trust, the Owner Trustee and the Owner Participant will at any time be required to include any amount in gross income for Federal income tax purposes with respect to the transactions contemplated by the Transaction Documents or the Financing Documents other than (A) payments of Basic Rent in the amounts and no earlier than at the times such payments are required to be made in accordance with the Facility Lease, (B) payments of Casualty Value, Termination Value, Special Termination Value and Special Casualty Value and payments pursuant to the exercise of the Lessee's options to purchase the Undivided Interest as described in the Facility Lease at the time such payments are made and (C) any payments required to be made on an After-Tax Basis pursuant to the Transaction Documents at the time such payments are made.

(xii) The Owner Participant's marginal Federal rate of income tax is 46 percent for its taxable year ending June 30, 1987, and 34 percent for each taxable year thereafter, without giving effect to any credits against tax.

(xiii) The Owner Participant's cash investment in the Undivided Interest at the Closing Date will be an amount equal to the Investment Percentage of the Purchase Price.

(xiv) The Closing Date will be December 18, 1986.

(xv) The Owner Trustee and the Owner Participant will be entitled to treat each item of income, gain, deduction, loss and credit with respect to the transactions contemplated by the Transaction Documents and the Financing Documents as derived from or allocable to sources within the United States.

(2) *Tax Representations.* The Lessee represents and warrants to and covenants with the Owner Participant that:

(i) On the Closing Date and throughout the Lease Term the Undivided Interest will constitute "recovery property" and "10-year property" within the meaning of Sections 168(c)(1) and 168(c)(2)(C) of the Code (as such Sections are applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986) as in effect on the date hereof.

(ii) Assuming that the Owner Participant will be treated as the owner of the Undivided Interest for Federal income tax purposes, (x) on the Closing Date and throughout the Lease Term not less than 90.30391 percent of the property constituting the Undivided Interest will constitute "section 38 property" in the hands of the Owner Participant within the meaning of Section 48(a) of the Code (as such Section is applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986) as in effect on the date hereof that was placed in service not earlier than May 20, 1986, and (y) on the Closing Date and throughout the Lease Term not less than 90.30391 percent of the Purchase Price will be attributable, in the hands of the Owner Participant, to such property.

(iii) Unit 2 will be "placed in service" for the purposes of Section 168 of the Code (as such Section is applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986) no later than the Closing Date and each item of property constituting the Undivided Interest will be so placed in service no later than the Closing Date.

(iv) None of the property constituting the Undivided Interest and none of the Purchase Price shall be subject to the provisions of Section 168(f)(12) of the Code (as such Section is applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986).

(v) To the best of its knowledge, the Lessee and each Affiliate thereof have provided to the Appraiser all factual information in their possession which is relevant to such Appraiser's conclusions and such information is accurate and complete on the Closing Date. Neither the Lessee nor any Affiliate thereof has any reason to believe that the Appraiser's conclusions are inaccurate.

(vi) Assuming that the Owner Participant will be treated as the owner of the Undivided Interest for Federal income tax purposes, the Owner Participant will be entitled to the ACRS Deductions, the Interest Deductions and the Amortization Deductions.

(vii) None of the Trust, the Owner Trustee and the Owner Participant will at any time be required to include any amount in gross income for Federal income tax purposes with respect to the transactions contemplated by the Transaction Documents or the Financing Documents other than the amounts described in clauses (A), (B) and (C) of Section 13(c)(1)(xi) at the respective times referred to therein.

(viii) The Owner Trustee and the Owner Participant will be entitled to treat each item of income, gain, deduction, loss and credit with respect to the transactions contemplated by

Transaction Documents or the Financing Documents as derived from or allocable to sources within the United States.

(ix) The provisions of Section 168(f)(10) of the Code (as such Section is applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986) as in effect on the Closing Date (including the amendment contained in Section 1809(a) of the Tax Reform Act) will not apply to the transactions contemplated by the Transaction Documents or the Financing Documents in a manner that could cause a Loss and the Lessee will not take any action pursuant to Section 168(b)(3) or 168(f)(2)(C) of the Code (as such Sections are applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986) that is inconsistent with the Owner Participant's entitlement to the ACRS Deductions.

(x) Neither Unit 2 (other than Common Facilities) nor any item of property constituting the Clause (iii) Property was placed in service for Federal income tax purposes prior to May 20, 1986.

(xi) At all times prior to the closing on the Closing Date the Undivided Interest was owned by the Lessee.

(xii) The provisions of Section 168(e) of the Code (as such Section is applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986) will not apply to the transactions contemplated by the Transaction Documents or the Financing Documents.

(xiii) Throughout the Lease Term the Undivided Interest will not constitute "tax-exempt use property" within the meaning of Section 168(j) of the Code (as such Section is applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986) as in effect on the Closing Date (including the amendment made by Section 1802 of the Tax Reform Act of 1986) and the provisions of Section 168(j) of the Code (as such Section is applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986) as in effect on the Closing Date (including the amendment made by Section 1802 of the Tax Reform Act of 1986) will not apply to the transactions contemplated by the Transaction Documents or the Financing Documents.

(xiv) No part of the Undivided Interest will be used predominantly outside the United States within the meaning of Section 168(f)(2) of the Code (as such Section is applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986).

(xv) On the Closing Date, no improvements, modifications or additions to the Undivided Interest are required to render the Undivided Interest complete for its intended use by the Lessee.

(xvi) On the Closing Date, no part of the cost of the Undivided Interest or the Real Property Interest paid for or incurred by the Lessee or any Affiliate thereof shall not have been reimbursed by the Owner Trustee.

(xvii) On the Closing Date the fair market value of the Undivided Interest was $87,382,030, the fair market value of the Clause (iii) Property was $78,909,387.92, the fair market value of the Clause (iv) Property was $8,472,642.08 and the fair market value of the Real Property Interest was $45,021.22.

(xviii) (A) It is reasonable to expect (x) that the Undivided Interest will be useful to and useable by a Person other than the Lessee or any Person related to the Lessee at the end of the Basic Lease Term and at the end of the Renewal Term and capable of continued leasing or transfer to such a Person at such times and (y) that it will be commercially feasible for the Owner

Trustee or the Owner Participant to enter into such a lease or transfer at such times in a transaction pursuant to which the Owner Participant would realize, with respect to the Undivi Interest, the residual value set forth in the report of the Appraiser apart from any amounts t such a Person would be required to expend pursuant to the Assignment and Assumption or otherwise in connection with the acquisition, use or possession of the Undivided Interest and apart from any amounts that such a Person would be required to expend in connection with the acquisition, use or possession of the Real Property Interest and (B) the Undivided Interest does not constitute, and will not constitute during the Lease Term, "limited use property" within the meaning of Revenue Procedure 76-30; provided, however, that this representation is not a represenation that any residual value will in fact exist at the end of the Basic Lease Term and any Renewal Term.

(xix) The provisions of Section 467 of the Code (as such Section is applicable to property placed in service during 1986 as to which the Owner Participant has made no election under Section 203(a)(1)(B) of the Tax Reform Act of 1986) will not apply to the transactions contemplated by the Transaction Documents or the Financing Documents.

(xx) Neither the Lessee nor any Affiliate thereof legally or beneficially or constructively owns or will own (within the meaning of Section 318 of the Code) any capital stock of the Loan Participant.

(3) *Consistent Tax Returns.* The Lessee agrees that neither it nor any of its Affiliates will at any time take any action, directly or indirectly, or file any returns or other documents inconsistent with the assumptions and representations set forth in Sections 13(c)(1) and (2). and that the Lessee and any such Affiliate will file such returns, maintain such records, take such actions and execute such documents as reasonably requested by the Owner Participant from time to time as may be appropriate to facilitate the realization of such assumptions by the Owner Participant. The Lessee covenants agrees to maintain, or cause to be maintained, such other records as may be necessary in orde verify the factual basis for the matters referred to in this Section 13(c). Except for the Lessee's tax returns, the Lessee shall make the records referred to in the preceding sentences available, or cause such records to be made available, for inspection by the Owner Participant or its authorized agents, during normal business hours at the Lessee's office at 303 North Oregon Street, El Paso, Texas 79901, upon request by, and five days' prior notice from, the Owner Participant. The Lessee shall, at its expense, upon request by the Owner Participant, provide to the Owner Participant a copy of such records which shall be certified to be a true copy by an affidavit attached thereto and executed by an officer of the Lessee. Notwithstanding the preceding sentence, the Owner Participant or its authorized agents shall have the right to make copies and extracts of any such records at the Owner Participant's sole expense.

(4) *Indemnification — Loss of Tax Benefits.* The Lessee shall indemnify the Owner Participant on an After-Tax Basis for

(i) any loss, disallowance, delay in obtaining, or recapture of the Federal income tax benefits described in Section 13(c)(1) resulting in whole or in substantial part from any one or more of the following events or things:

(A) any representation or warranty of the Lessee in Section 13(c)(2) or elsewhere in this Participation Agreement, the other Transaction Documents or the Financing Documents shall prove inaccurate at any time or he Lessee shall breach any of its covenants in Section 13(c)(2) or any of its agreements, covenants, duties, undertakings or other obligations under this Participation Agreement or the other Transaction Documents or the Financing Documents, or

(B) any act or failure to act by the Lessee or by any Affiliate, transferee, sublessee assignee of the Lessee or by any user of the Undivided Interest or the Real Property Inte or by any person to whom the Lessee or any Affiliate thereof shall sell power or energy

generated at PVNGS, or by any person having custody or possession of Unit 2 or the Undivided Interest or the Real Property Interest or by any ANPP Participant or by any manufacturer, vendor, supplier, contractor or subcontractor of Unit 2 or any part thereof or by any Affiliate of any of the foregoing or by any subsequent transferee, sublessee or assignee or by any trustee, receiver, liquidator or debtor in possession of any of the foregoing, other than, in the case of the Lessee, the execution and delivery of one or more of the Transaction Documents or the Financing Documents and acts specifically required or expressly permitted to be performed by the Lessee under the Facility Lease or any Transaction Document or any Financing Document; provided, however, that (w) any act of the Lessee performed to satisfy a general covenant to comply with Applicable Laws or Prudent Utility Practice or to cause the Undivided Interest to be operated and maintained or to carry out obligations under the ANPP Participation Agreement and related agreements, (x) any act that is permitted by implication or because it is not required or prohibited by such documents, (y) any act that implements a general requirement or right on the part of the Lessee in a manner that is not specifically required or expressly permitted under such documents and (z) the making of any Capital Improvement shall each be an act or failure to act for which the Lessee is responsible under this Section 13(c)(4)(i)(B), or

(C) the sale or other disposition of Unit 2, the Undivided Interest, the Real Property Interest, any item of property constituting the Undivided Interest or the Real Property Interest or any interest in the Trust or the Trust Estate upon the exercise by the Owner Participant or the Owner Trustee of its remedies under the Facility Lease upon the occurrence of an Event of Default thereunder, or

(D) the bankruptcy, or other proceedings for the protection of debtors, of or involving the Lessee or any transferee, sublessee or assignee of the Lessee or any subsequent transferee, sublessee or assignee or any Affiliate of any of the foregoing (in each case other than the Lessor and the Owner Participant), or any foreclosure on any property of any of the foregoing, or

(E) any damage to or destruction, loss of use, loss of generating capacity, theft, nongovernmental taking or requisition or repair of or any addition, improvement, modification, alteration, replacement or substitution of or to Unit 2 or the Undivided Interest or the Real Property Interest or any part of any thereof, or

(F) any governmental taking or requisition of title, use or otherwise of Unit 2, the Undivided Interest or the Real Property Interest or any part of any thereof if such taking or requisition does not immediately constitute an Event of Loss under the Facility Lease, or

(G) any payment by any manufacturer or any other vendor or supplier or contractor or subcontractor with respect to any part of Unit 2 or the Undivided Interest or the Real Property Interest, but in the event of any such payment made to the Owner Participant, any indemnity pursuant to this Section 13(c)(4)(i)(G) shall take into account any economic benefit realized by the Owner Participant from the receipt of such payment without double counting for any economic loss for which such payment provided compensation, or

(H) any issuance, defeasance, refinancing, refunding, redemption, purchase, repurchase, cancelation, retirement, reoptimization, substitution, releveraging, modification or remarketing of the Notes, or the Bonds, or any other debt securities issued or assumed pursuant to the Transaction Documents or the Financing Documents or any terms or provisions of any thereof or otherwise in connection with the financing, refinancing or any Supplemental Financing of Unit 2, any Capital Improvement, the Undivided Interest or the Real Property Interest or any part of any thereof or interest therein, including, without limitation, the purchase or deemed purchase by the Lessee or the Loan Participant of any such Notes, Bonds or securities, or

(I) the presence of the Loan Participant, or any successor or assign thereof, in the transactions contemplated by the Transaction Documents and the Financing Documents,

(J) the existence or operation of the ANPP Participation Agreement, the ANPP Proj Agreements or any amendment to any of the foregoing (including without limitation the rights and remedies of the ANPP Participants) or any obligations of the Lessee or restriction of rights of the Owner Trustee or the Owner Participant or provisions of any of the Transaction Documents or the Financing Documents (including without limitation the provisions of the Assignment and Assumption) resulting from any of the foregoing, or

(K) the existence, provisions, operation or implementation of the License or the License Amendment, or

(L) the existence, provisions, operation or implementation of Title USA Company of Arizona Trust No. 530, or

(M) the existence, operation or implementation of the provisions set forth in Section 10(b)(3)(xi) hereof, or

(N) the existence, provisions, operation or implementation of Section 8(g), 15(iii) or 16(a)(vii) of the Facility Lease, or

(O) the existence or asserted existence of a partnership or association between or among the Owner Participant or the Owner Trustee and any other Person or Persons, or

(P) the existence, operation or implementation of the provisions of the Lease permitting the Lessee to elect the Renewal Term pursuant to Section 3(a)(iii) and Section 12 of the Facility Lease, and

(ii) any inclusion in the Owner Participant's gross income, for Federal income tax purpose of any amount in respect of any replacement or substitution of, any alteration to or modifica in, or any addition or improvement to, any item of property comprising the Undivided Interest any part thereof or any expenditure made, or property furnished by the Lessee in respect of such item of property or pursuant to the Transaction Documents or Financing Documents (whether or not permitted or required under the Transaction Documents or the Financing Documents)

(any such loss, disallowance, delay in obtaining, recapture or inclusion described in Section 13(c)(4)(i) or Section 13(c)(4)(ii) being referred to as a Loss).

(5) *Indemnity Payment — After-Tax Basis.* (i) In the event of a Loss, the Owner Participant, unless pursuant to Section 13(c)(8) the Owner Participant is not entitled to payment with respect to such Loss, shall notify the Lessee of such Loss and the Lessee shall pay to the Owner Participant on an After-Tax Basis an amount (the Indemnity Payment) which shall be equal to the sum of the aggregate additional Federal income taxes payable by the Owner Participant as a result of such Loss and any interest, penalties or additions to tax payable as a result of such Loss (except to the extent such penalties result from the Owner Participant's failure to file returns that are timely and proper insofar as they relate to matters unrelated to the transactions contemplated by the Transaction Documents or the Financing Documents).

(ii) If the Owner Participant, as the result of a Loss occurring with respect to any year under circumstances that require the Lessee to indemnify the Owner Participant with respect to such Loss pursuant to Section 13(c)( )(i), shall be entitled to claim (taking into account the assumptions set forth in Section 13(c)(6)) with respect to any subsequent year Federal income tax savings that would not have been realized but for such Loss, the Owner Participant shall promptly pay to the Lessee an amount equal to the sum of such Federal income tax savings plus the amount of any Federal, state or local income tax savings the Owner Participant shall rea (taking into account the assumptions set forth in Section 13(c)(6)) as the result of any payr made pursuant to this sentence; provided, however, that such sum shall not be payable (A) before

such time as the Lessee shall have made all payments or indemnities then due pursuant to the Transaction Documents and the Financing Documents and (B) while any Default or Event of Default shall have occurred and be continuing; provided further, however, that such sum shall not exceed the excess of the amounts previously paid by the Lessee to the Owner Participant pursuant to Section 13(c)(5)(i) with respect to the Loss that gave rise to such tax savings over the amounts previously paid by the Owner Participant to the Lessee pursuant to this Section 13(c)(5)(ii) with respect to such Loss.

(iii) If the amount that the Lessee would be required to pay pursuant to Section 13(c)(5)(i) with respect to a Loss shall exceed $250,000 and if (A) the Bonds (or, if the Bonds are not then rated, the preferred stock of the Lessee) shall be rated at least "investment grade" by Standard & Poor's Corporation and Moody's Investors Service, Inc. (or, if neither of such rating organizations shall rate the Bonds (or if applicable, the preferred stock of the Lessee) at the time, by any nationally recognized rating organization in the Unites States of America), or (B) the Lessee shall have provided to the Owner Participant a letter of credit or other security with respect to its obligations under this Section 13(c)(5)(iii), in each case adequate in the sole judgment of the Owner Participant, then the Lessee may elect, notice of which election shall be given by the Lessee to the Owner Participant not later than 15 days after the Owner Participant shall have requested a payment by the Lessee pursuant to this Section 13(c), to pay to the Owner Participant, in lieu of the application of Sections 13(c)(5)(i) and (ii), on an After-Tax Basis, on each succeeding Basic Rent Payment Date during the Basic Lease Term, an amount which, when added to the Basic Rent payable on such Basic Rent Payment Date, shall preserve to the Owner Participant the same Net Economic Return (after taking into account any past, present or future tax benefits reasonably expected by the Owner Participant to be available to it) that the Owner Participant would have realized if it had not suffered such Loss. The Lessee shall not be permitted to make the election set forth in this Section 13(c)(5)(iii) if the Lease Termination Date or an Event of Loss shall have occurred, a Deemed Loss Event shall have been declared or a Default or Event of Default shall have occurred and be continuing. If the Lease Termination Date shall occur after the Lessee shall have commenced making payments pursuant to this Section 13(c)(5)(iii), on the Lease Termination Date the Lessee shall pay to the Owner Participant on an After-Tax Basis in a lump sum an amount which shall preserve to the Owner Participant the same Net Economic Return (after taking into account previous payments pursuant to this Section 13(c)(5)(iii) with respect to such Loss) that the Owner Participant would have realized if it had not suffered such Loss.

(6) *Determination of Payments.* Whenever it may be necessary for purposes of this Section 13(c) to determine (a) whether a Loss has occurred, (b) the amount of taxes resulting from any Loss suffered by the Owner Participant or (c) the amount of any Federal income tax savings referred to in Section 13(c)(5), such determination shall be made on the assumptions that (a) the Federal income taxes of the Owner Participant are payable at the highest marginal statutory tax rates in effect for corporate taxpayers for the respective years to which any Loss or Losses relate (the *Effective Rate*), (b) in computing its Federal income tax liability, the Owner Participant could have currently fully utilized the tax benefits that are the subject of such Loss against taxes payable at the Effective Rate and (c) the Owner Participant can currently fully utilize any tax savings resulting from a Loss against Federal income taxes payable at the Effective Rate (it being understood, in connection with any Loss with respect to the benefits described in Section 13(c)(1)(xv), that nothing set forth in this sentence shall require the Owner Participant to assume that it can utilize any foreign tax credits that it cannot in fact utilize). For purposes of determining the amount of taxes payable by the Owner Participant upon receipt of any payment required to be made by the Lessee to the Owner Participant pursuant to this Section 13(c) and the amount of any tax savings realized by the Owner Participant as a result of any payment made by the Owner Participant pursuant to Section 13(c)(5) it shall be assumed that Federal, state, local and foreign taxes are payable by the Owner Participant at the highest marginal statutory rates in effect for the relevant period. The determination of the amount payable to or by the Owner Participant pursuant to this Section 13(c) shall be made in the first instance by the Owner

Participant, who shall furnish the Lessee with a notice setting forth in reasonable detail the computations and methods used in computing such amount; and if requested by the Lessee, such determination shall be verified in writing by a firm of nationally recognized independent public accountants selected by the Owner Participant and acceptable to the Lessee. The costs of such verification shall be borne by the Lessee unless an error (to the disadvantage of the Lessee) of 10 percent or more shall be discovered in which case such costs shall be shared equally. Any statements furnished to the Lessee pursuant to this Section 13(c)(6) shall (a) be signed by a Responsible Officer of the Owner Participant and (b) state in reasonable detail the basis upon which such amount or adjustment has been determined. The Lessee agrees that it will not have the right to inspect the tax returns, books, records or any other documents of the Owner Participant or any Affiliate thereof in order to verify the basis or the accuracy of the calculations so made or of the amounts set forth in any such statement and that the determinations made by the independent accountants in accordance with this Section 13(c)(6) shall be conclusive and binding.

(7) *Effective Date.* An Indemnity Payment shall be payable not later than 10 days after demand by the Owner Participant, except as provided in Section 13(c)(8).

(8) *Excluded Events.* The Owner Participant shall be responsible for, and shall not be entitled to any payment in respect of, any Loss occurring primarily (or, in the case of Section 13(c)(8)(ii), solely) as a direct result of one or more of the following events:

(i) a failure of the Owner Participant to claim in a proper or timely manner the ACRS Deductions, the Interest Deductions or the Amortization Deductions for the appropriate years (any disclosure or failure to make a disclosure pursuant to Section 6661 of the Code shall not cause a claim to be considered improper), unless (A) the claiming of any such deductions would be inconsistent with any prior audit adjustment by the IRS with respect to which the Lessee is required to indemnify the Owner Participant pursuant to this Section 13(c) (except to the extent such prior audit adjustment is being contested in accordance with the provisions of Section 13(c)(9)), (B) the Owner Participant shall have furnished the Lessee with an opinion of independent tax counsel, selected by the Owner Participant and reasonably satisfactory to the Lessee, to the effect that as a result of a tax law change, Event of Loss, Deemed Loss Event, Termination Event or an act, omission or misrepresentation of the Lessee (or any other Person referred to in Section 13(c)(4)(i)(B)) such claim would not be proper pursuant to the standards of ABA Formal Opinion 85-352 or (C) such failure to claim any such deductions for the appropriate year is caused by a failure of the Lessee to take any action or provide the Owner Participant with any information or document that the Lessee is required to take or provide pursuant to the Transaction Documents or the Financing Documents;

(ii) the failure of the Owner Participant to have sufficient Federal taxable income to benefit from the ACRS Deductions, the Interest Deductions or the Amortization Deductions;

(iii) any voluntary sale by the Owner Participant or any involuntary sale or other disposition resulting from the bankruptcy of, the foreclosure against, or any similar proceeding against, the Owner Participant or the Owner Trustee, of the Undivided Interest, the Trust Estate, or any beneficial interest therein, unless a Default or an Event of Default shall have occurred and be continuing;

(iv) any Event of Loss or Deemed Loss Event whereby the Lessee is required under the Facility Lease to pay, and shall have paid in full, Casualty Value or Special Casualty Value, as the case may be, for all the Undivided Interest, or any termination of the Facility Lease whereby the Lessee is required under the Facility Lease to pay, and shall have paid in full, Termination Value or Special Termination Value for all the Undivided Interest, except to the extent the payment made with respect to such Event of Loss or termination did not properly reflect the time of occurrence of (or the time of the tax effect resulting from) such Event of Loss or termination;

(v) the failure of the Owner Trustee to be taxed as a conduit entity unless such failure arises as a result in whole or in substantial part from one or more of the events or things set forth in Section 13(c)(4);

(vi) the inability of the Owner Participant to claim the ACRS Deductions, the Interest Deductions or the Amortization Deductions due to the Owner Participant or any Affiliate of any thereof or any predecessor of any thereof being or becoming an entity subject to the provisions set forth in Section 168(f)(11), 168(j), 465, 469, 501, 593, 851, 856, 871, 881, 1361, 1381 or 1391 of the Code as in effect on the date hereof, in each case unless such inability or becoming subject results in whole or in substantial part from the transactions contemplated by the Transaction Documents or the Financing Documents;

(vii) failure of the transaction to qualify as a "true lease" for Federal income tax purposes, resulting in the Owner Participant not being treated as the owner of the Undivided Interest for Federal income tax purposes, except if such failure shall result in whole or in substantial part from one or more of the events or things set forth in Section 13(c)(4);

(viii) the Owner Participant or the Owner Trustee being treated as engaged in a partnership or association with any other Person, if such partnership or association arises primarily out of any relationship among the Owner Participant or the Owner Trustee and such other Person other than a relationship arising as a result in whole or in substantial part of the existence, provisions, operation or implementation of the transaction contemplated by the Transaction Documents, the Financing Documents or the ANPP Project Agreements or as a result in whole or in substantial part from any one or more of the events or things set forth in Section 13(c)(4);

(ix) the taxable year of the Owner Participant or the Owner Trustee during which the Closing Date occurs being shorter than a taxable year containing 11 months unless the existence of such taxable year containing fewer than 11 months shall result from any aspect of the transactions contemplated by the Transaction Documents or the Financing Documents or by reason of the date Unit 2 was placed in service; and

(x) the failure of the Owner Participant to fulfill its material obligations to contest a proposed adjustment or adverse determination as provided in Section 13(c)(9).

(9) *Contests.* (i) If the IRS proposes in writing an adjustment in the Federal income tax liability of the Owner Participant, which adjustment if sustained would result in a Loss, the Owner Participant shall notify the Lessee promptly of such adjustment and of all action taken or proposed to be taken by the IRS and the Owner Participant shall for at least 30 days after giving such notice forbear, if such forbearance is permitted by law, payment of any tax (including interest, penalties and additions to tax thereon) asserted to be payable as a result of such proposed adjustment. The Lessee agrees that the Owner Participant's failure to provide any notice referred to in the preceding sentence shall not affect the Lessee's obligations under this Section 13(c) unless such failure shall preclude the Lessee from pursuing its rights under this Section 13(c)(9).

(ii) If the Lessee requests within 30 days after the Owner Participant's notice pursuant to Section 13(c)(9)(i) that the proposed adjustment be contested, the Owner Participant shall contest the proposed adjustment in good faith at the trial court level upon receipt of an opinion of independent tax counsel of nationally recognized standing selected by the Lessee and reasonably satisfactory to the Owner Participant to the effect that there exists a basis in law and fact under the standard imposed by ABA Formal Opinion 85-352 for such contest and at each appellate level upon receipt of an opinion of independent tax counsel of nationally recognized standing selected by the Lessee and reasonably satisfactory to the Owner Participant to the effect that there exists a substantial possibility that an appellate court will reverse or substantially modify the lower court decision; provided, however, that (A) the Owner Participant shall be entitled to pursue or forego any administrative appeals, proceedings, hearings and conferences, shall be required to contest any proposed adjustment beyond the level of administrative proceedings only if timely requested by the Lessee and shall not be required to pursue any appeal to the United States Supreme Court, (B) the Owner Participant shall determine the court of competent jurisdiction in which to contest

the proposed adjustment either before or after payment of the tax asserted to be payable as a result thereof, and (C) the Owner Participant shall keep the Lessee informed as to the progress of any litigation and, if requested by the Lessee, shall consult with the Lessee's counsel (provided that the conduct of all administrative proceedings and litigation shall nevertheless remain within the sole control and discretion of the Owner Participant and its tax counsel). The Owner Participant shall not be required to take any action pursuant to this Section 13(c)(9)(ii) unless (A) the amount of the Indemnity Payment (or equivalent amount payable under Section 13(c)(5)(iii)) arising from all proposed adjustments with respect to a taxable year, plus all indemnities that would arise by reason of the fact that the subject matter of any such adjustments is of a continuing nature, shall be in excess of $250,000; (B) the Lessee shall have acknowledged its liability to the Owner Participant for an indemnity payment pursuant to this Section 13(c)(9)(ii) as a result of any proposed adjustment if and to the extent the Owner Participant shall not prevail in the contest of such proposed adjustment and the Lessee shall have agreed to indemnify the Owner Participant in a manner satisfactory to the Owner Participant for any liability or loss that the Owner Participant may incur as a result of contesting such proposed adjustment; (C) the Lessee shall have agreed to pay, and shall pay, the Owner Participant on demand all reasonable costs and expenses that the Owner Participant may incur in connection with contesting such proposed adjustment (including, without limitation, reasonable legal, accounting and investigatory fees, disbursements, penalties, interest and additions to tax); (D) no Event of Default shall have occurred and be continuing; and (E) the Owner Participant shall have determined that the action to be taken will not result in any danger of sale, forfeiture or loss of, or the creation of any Lien (except for Liens permitted under the Transaction Documents and except if the Lessee shall have adequately bonded such Lien or otherwise made provision to protect the interests of the Owner Participant in a manner satisfactory to the Owner Participant) on the Undivided Interest, the Real Property Interest, Unit 2 or any part thereof or interest therein. The Owner Participant shall also not be required to contest any proposed adjustment if the subject matter thereof shall be of a continuing nature and shall have previously been decided pursuant to the contest provisions of this Section 13(c)(9), unless there shall have been a change in the law (including, without limitation, amendments to statutes or regulations, administrative rulings and court decisions) after such previous contest shall have been so decided, and the Owner Participant shall have received an opinion of independent tax counsel selected as provided in this Section 13(c)(9)(ii) and furnished at the Lessee's sole expense to the effect that the prior authorities are no longer determinative of the issue and that under such new law there exists a basis in law and fact under the standard imposed by ABA Formal Opinion 85-352 to contest such proposed adjustment.

(iii) If the Owner Participant shall elect to contest a proposed adjustment by paying the tax claimed (including such other amounts payable as interest, penalties or additions to tax) and seeking a refund, and if the proposed adjustment would be a Loss with respect to which the Lessee could be required to indemnify the Owner Participant pursuant to this Section 13(c), then the Lessee shall advance to the Owner Participant on an interest-free basis and with no additional net after-tax cost to the Owner Participant the aggregate amount of such taxes, interest, penalties and additions to tax that the Owner Participant shall have elected to pay. If the Owner Participant subsequently receives a refund, in whole or in part, of such taxes, interest, penalties or additions to tax (or if the Owner Participant would have received such a refund but for the fact that funds advanced by the Lessee were applied in payment of a tax liability of the Owner Participant for which the Lessee is not responsible under this Section 13(c)), or if the Loss is not one for which the Lessee is required to make an Indemnity Payment (or payment pursuant to Section 13(c)(5)(iii)), the Owner Participant shall promptly pay to the Lessee the amount of such refunded or credited (or refundable or creditable) taxes, money advanced, interest, penalties or additions to tax plus the amount of any related interest received (or receivable) by the Owner Participant from the taxing authority; provided, however, that the Owner Participant may offset the amount of such refunded taxes, interest, penalties or additions to tax against any amount due

and owing by the Lessee to the Owner Participant pursuant to this Section 13(c); provided further, however, that the Owner Participant shall not be required to make any payment to the Lessee pursuant to this Section 13(c)(9)(iii) to the extent such payment (minus any such interest attributable thereto not previously paid by the Lessee) would exceed the amount previously paid by the Lessee to the Owner Participant with respect to the Loss giving rise to such refund.

(iv) Notwithstanding anything to the contrary contained in this Section 13(c)(9), the Owner Participant may at any time decline to take any action or any further action with respect to a proposed adjustment that it would otherwise be required to take pursuant to this Section 13(c)(9) or may settle any contest without the consent of the Lessee; provided, however, that if the Lessee shall have properly requested such action or contest pursuant to Section 13(c)(9)(ii) and shall have duly complied with all the terms of this Section 13(c)(9), the Owner Participant shall notify the Lessee that the Owner Participant waives its right to any Indemnity Payment by the Lessee that would otherwise be payable by the Lessee pursuant to this Section 13(c) in respect of such adjustment, including any indemnities arising solely from such adjustment in subsequent years or which would arise by reason of the fact that the subject matter of such adjustment is of a continuing nature. In such event, the Owner Participant shall, within 30 days of such notice, reimburse the Lessee for the amount of all taxes, interest, penalties and additions to tax previously advanced by the Lessee to the Owner Participant pursuant to Section 13(c)(9)(iii).

(v) If the Lessee shall have appropriately requested the Owner Participant to contest any proposed adjustment as above provided and shall have duly complied with all the terms of this Section 13(c)(9), the fact of the Lessee's liability for indemnification to the extent required pursuant to this Section 13(c) shall become fixed upon a Final Determination of the liability of the Owner Participant for the tax and any interest, penalties and additions to tax asserted to be payable as a result of such proposed adjustment. A "Final Determination" with respect to a Loss shall mean (A) a decision, judgment, decree or other order by any court of competent jurisdiction, which decision, judgment, decree or other order has become final (i.e., when all allowable appeals have been exhausted by either party to the action to the extent required by this Section 13(c)(9)) or, in any case where judicial review shall at the time be unavailable by reason of the proposed adjustment involving a decrease in a net operating loss carryforward, a decision, judgment, decree or other order of an administrative official or agency of competent jurisdiction, which has become final (i.e., all administrative appeals have been exhausted by either party to the extent required by this Section 13(c)(9)), (B) a closing agreement entered into under Section 7121 of the Code or any other settlement agreement entered into in connection with an administrative or judicial proceeding, or (C) the expiration of the time for instituting a claim for refund, or if such a claim was filed, the expiration of the time for instituting suit with respect thereto. Notwithstanding anything in this Section 13(c)(9) to the contrary, the Owner Participant shall not be required to make any payments to the Lessee under this Section 13(c)(9) while there shall be an amount due and owing by the Lessee to the Owner Participant under any of the Transaction Documents or the Financing Documents, or if and for so long as an Event of Default shall have occurred and be continuing. The amount payable to the Owner Participant pursuant to this Section 13(c)(9) shall be paid upon receipt by the Lessee of a written demand therefor from the Owner Participant accompanied by a written statement describing in detail such Loss and the computation of the amount so payable.

(vi) The provisions of this Section 13(c)(9) shall apply mutatis mutandis with respect to claims for interest, penalties and additions to tax referred to in Section 13(c)(iv) of the Facility Lease unless the Owner Participant shall have received an opinion from independent tax counsel selected by it to the effect that it is more likely than not that such interest, penalties or additions to tax are payable.

(10) *Adjustments.* The assumed Federal income tax benefits set forth in Section 13(c)(1) shall be adjusted to reflect any adjustments provided for in Section 3(d) of the Facility Lease. In the event any

payments shall be due to the Owner Participant under this Section 13(c), the schedules of Casualty Values, Termination Values, Special Casualty Values and Special Termination Values shall be appropriately adjusted. If an event giving rise to the payment of an amount determined by reference to a schedule of Casualty Values, Termination Values, Special Casualty Values or Special Termination Values shall occur and the date as of which the Owner Participant shall be affected shall be earlier than the date taken into account in computing such schedule, such Values shall be appropriately increased based otherwise on the same assumptions previously used by the Owner Participant in calculating such schedule.

(11) *Affiliated Group.* For purposes of this Section 13(c), the term "Owner Participant" shall include any member of an affiliated group of corporations of which the Owner Participant is, or may become, a member if consolidated or combined returns are or shall be filed for such affiliated group for Federal, state or local income tax purposes.

(12) *Payments.* All payments to be made to the Owner Participant or the Lessee pursuant to this Section 13(c) shall be made in immediately available funds to such bank and/or account in the continental United States for the account of the Owner Participant or the Lessee as from time to time the Owner Participant shall have directed the Lessee or the Lessee shall have directed the Owner Participant, as the case may be, in writing. If the date on which any payment to be made pursuant to this Section 13(c) shall not be a Business Day, such payment shall be made on the next succeeding Business Day.

(13) *Interest.* Interest at the Penalty Rate shall be payable on any amount not paid when due under this Section 13(c) until such amount shall be paid.

SECTION 14. Transaction Expenses.

(a) *Transaction Expenses.* Subject to the provisions of Section 14(c), with funds provided by the Owner Participant, the Owner Trustee hereby agrees that it will pay when due the following costs and expenses (Transaction Expenses):

(i)(x) the reasonable legal fees and disbursements of Mudge Rose Guthrie Alexander & Ferdon (as counsel for the Loan Participant), Cravath, Swaine & Moore, Csaplar & Bok, Shaw, Pittman, Potts & Trowbridge, Meyer, Hendricks, Victor, Osborn & Maledon, Rodey, Dickason, Sloan, Akin & Robb, Baker & Botts, Fitzgerald & Brown and Willkie Farr & Gallagher (as counsel for the Indenture Trustee), for their services rendered in connection with the execution and delivery of this Participation Agreement and the other Transaction Documents and all fees, expenses and disbursements incurred by any of such law firms, the Owner Participant or the Loan Participant in connection with such transactions and (y) an amount not to exceed $25,000 to be paid to Drexel Burnham Lambert, Incorporated for financial consulting services provided to the Owner Participant;

(ii) the initial (but not the ongoing) fees and expenses of the Owner Trustee, the Paying Agent and the Indenture Trustee;

(iii) all stenographic, printing, reproduction, and other reasonable out-of-pocket expenses (other than investment banking or brokerage fees) incurred in connection with the execution and delivery of this Participation Agreement and the other Transaction Documents and Financing Documents and all other agreements, documents or instruments prepared in connection therewith (including all computer analysis and travel related costs);

(iv) the fees of the appraisers for services rendered as contemplated by Section 11(a)(15) and the fees of the consultants for services rendered as contemplated by Section 11(a)(19);

(v) all costs of issue of the Initial Series Bonds, including, without limitation, the cost of preparing the Financing Documents, filing fees relating to the Registration Statement and the fees, expenses and disbursements of Willkie Farr & Gallagher, as counsel for the Collateral Trust

Trustee, Mudge Rose Guthrie Alexander & Ferdon, as counsel for the Loan Participant, Willkie Farr & Gallagher, as counsel for the underwriters of the Bonds, the initial fees of the Collateral Trust Trustee and its out-of-pocket expenses through the Closing Date, rating agency fees and the fees and commissions of the underwriters of the Bonds; and

(vi) the fees and out-of-pocket expenses of Babcock & Brown Financial Corporation and Systems Marketing, Inc. in connection with the placement of the beneficial interest in the Trust.

Subject to the provisions of Section 14(c) below, funds for the payment of Transaction Expenses will be provided by the Owner Participant to the Owner Trustee and the Owner Trustee will promptly disburse such funds.

(b) *Post-Closing Expenses.* The Lessee will pay, as Supplemental Rent, (i) the ongoing fees, expenses, disbursements and costs (*including* legal and other professional fees and expenses) of or incurred by the Owner Trustee, the Indenture Trustee, the Paying Agent and the Collateral Trust Trustee, including in connection with the issue, sale and purchase of Notes and Bonds after the Closing Date, and (ii) all fees, expenses, disbursements and costs (including legal and other professional fees and expenses) incurred by the Loan Participant, the Owner Participant, the Owner Trustee, the Indenture Trustee, the Paying Agent and the Collateral Trust Trustee in connection with (a) any Default, Event of Default, Indenture Default or Indenture Event of Default, (b) the entering into or giving or withholding of any amendment, modification, supplement, waiver or consent with respect to any Transaction Document or Financing Document, (c) any Event of Loss or Deemed Loss Event, (d) any transfer of all or any part of the right, title and interest of the Indenture Trustee in, to and under the Transaction Documents, (e) any transfer of all or any part of the Trust Estate, (f) any transfer contemplated by Section 7(b)(4) and (g) any releveraging, refunding or reoptimization referred to in Section 2(c), 2(d) or 2(e).

(c) *Lessee's Obligation.* Notwithstanding Section 14(a), in the event the transactions contemplated by this Participation Agreement shall not be consummated, the Lessee shall pay or cause to be paid, and shall indemnify and hold harmless the Loan Participant, the Indenture Trustee, the Owner Trustee and the Owner Participant in respect of, all Transaction Expenses, unless such failure to consummate shall result solely from the Owner Participant's default in making its Investment.

SECTION 15. Owner Participant's Transfers.

(a) *Transfers.* After the Closing Date, except as contemplated by the Facility Lease, the Owner Participant shall not assign, convey or otherwise transfer all or any part of (*including, without limitation,* an undivided interest in) its right, title or interest in and to this Participation Agreement, any of the other Transaction Documents or the Trust Estate (except its right to receive Excepted Payments) to any Person (a Transferee) except on the following conditions:

(i) the Transferee shall enter into an agreement or agreements whereby such Transferee confirms that (1) it shall be bound by the terms of this Participation Agreement and each other Transaction Document, to the extent of the interest transferred, as if it had been originally named as the Owner Participant hereunder and thereunder and (2) if such Transferee is a public utility company, it shall have waived its right to claim Special Casualty Value upon the occurrence of a Deemed Loss Event of the type specified in clause (1) of the definition thereof;

(ii) the Transferee shall be a financial institution, a corporation or a partnership; and

(iii) such transfer shall not violate the Securities Act or any provision of, or create a relationship which would be in violation of, any Applicable Law or agreement to which the transferring Owner Participant or the Transferee is a party or by which its property is bound.

Upon any such transfer, the transferring Owner Participant shall be released from its obligations under this Participation Agreement and the other Transaction Documents to the extent of the interest

transferred. An agreement to transfer shall not in and of itself constitute a transfer for purposes of this Section 15.

(b) *Procedure.* If the Owner Participant transfers all or any part of its interest hereunder pursuant to this Section 15, it shall give written notice thereof to the Lessee, the Owner Trustee, the Indenture Trustee and the Loan Participant, specifying the name and address for notices to the Transferee, such other information and evidence as shall be necessary to establish compliance with this Section 15 and the extent of the interest transferred to such Transferee. If, as a result of any such transfer, the original "Owner Participant" is not to continue to receive all payments to be made by the Indenture Trustee to the "Owner Participant" under the Indenture, the original "Owner Participant" shall from time to time, by notice to the Indenture Trustee, with copies to the Lessee, the Owner Trustee and the Collateral Trust Trustee, designate the manner in which any such payments to such "Owner Participant" are to be allocated, and the Indenture Trustee and the Lessee shall be entitled to rely on such notice for all purposes. This Section 15 shall not apply to the Special Transfer. This Section 15 is for the benefit of the Lessee, the Owner Trustee and the Owner Participant and may not be enforced by any other party hereto.

SECTION 16. Brokerage and Finders' Fees and Commissions.

Except to the extent of amounts payable by the Owner Participant pursuant to Section 14, the Lessee will indemnify and hold harmless the Loan Participant, the Indenture Trustee, the Owner Trustee and the Owner Participant in respect of any commissions, fees, judgments or other expenses of any nature and kind which any of them may become liable to pay by reason of any claims by or on behalf of brokers, finders, agents, advisors or investment bankers in connection with the transactions contemplated by this Participation Agreement, any other Transaction Document or any Financing Document, or any litigation or similar proceeding arising from any such claim, *other* than those claims arising out of written undertakings of the party claiming indemnification under this Section 16 or Affiliate or shareholder (or Affiliate of such shareholder) of such Person with any such broker, finder, agent, advisor or investment banker.

SECTION 17. Survival of Representations and Warranties; Binding Effect.

(a) *Survival.* All indemnities, representations and warranties contained in this Participation Agreement, in any other Transaction Document, in any Financing Document and in any agreement, document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith, shall survive, and shall continue in effect following, the execution and delivery of this Participation Agreement, the making of the investments and the loan referred to herein, any disposition of any interest in the Undivided Interest, Unit 2 or any other property referred to in this Participation Agreement and the expiration or other termination of any of the Transaction Documents or Financing Documents and shall be and continue in effect *notwithstanding* (i) any investigation made by the Owner Participant or the Loan Participant or (ii) the fact that any of the Indenture Trustee, the Owner Trustee, the Loan Participant or the Owner Participant may waive compliance with any of the other terms, provisions or conditions of any of the Transaction Documents or Financing Documents. The obligations of the Lessee under Sections 10(b)(1)(vi), 10(b)(1)(vii), 10(b)(2), 10(b)(3)(vii), 10(b)(3)(x), 10(b)(3)(xi), 10(b)(3)(xiv), 10(b)(3)(xv), 10(b)(3)(xvi), 10(b)(3)(xvii), 13, 14, 16 and 19(f) shall survive the expiration or other termination of this Participation Agreement or any other Transaction Document or Financing Document. The modification by law of any statute of limitations or the waiver or extension of any statute of limitations by the Owner Trustee, the Indenture Trustee, the Lessee, the Owner Participant, the Loan Participant or any Indemnitee shall not affect such survival.

(b) *Binding Effect.* All agreements, representations and warranties in this Participation Agreement, the other Transaction Documents and the Financing Documents and in any agreement, document or certificate delivered concurrently with the execution of this Participation Agreement from time to time thereafter, shall bind the party making the same and its successors and permitted

assigns and shall inure to the benefit of each party for whom made and their respective successors and permitted assigns, and, to the extent provided in the next sentence, each Indemnitee and its successors and assigns. The obligations of the Lessee under Sections 10(b)(3)(xi) and 13 and under Section 20 of the Facility Lease are expressly made for the benefit of, and shall be enforceable by, any Indemnitee, separately or together, without declaring the Facility Lease to be in default and notwithstanding any assignment by the Lessor of the Facility Lease or any of its rights thereunder or any disposition of all or any part of any interest in the Undivided Interest, the Real Property Interest, Unit 2 or any other property referred to in this Participation Agreement, or in this Participation Agreement or any Transaction Document or any Financing Document. All payments required to be made pursuant to Sections 10(b)(3)(xi) and 13 shall be made directly to, or as otherwise requested by, the Indemnitee entitled thereto upon written demand by such Indemnitee. Except to the extent permitted by Sections 10(b)(3)(ii) and (iii), the Lessee shall not assign any of its rights or obligations hereunder without the prior written consent of the Owner Participant and the Owner Trustee. Except as otherwise indicated, all references herein to any party to this Participation Agreement and the other Transaction Documents shall include the permitted successors and assigns of such party.

SECTION 18. Notices.

All communications, notices and consents provided for herein shall be in writing, including telex, telecopy or other wire transmission containing a request for assurance of receipt in a manner typical with respect to communications of that type, or mailed by registered or certified mail, and shall be addressed (i) if to the Owner Participant, at Commercial Federal Tower, 2120 South 72nd Street, Omaha, Nebraska 68124, Attention: Jeff Bainbridge; (ii) if to the Loan Participant, at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, Attention: President; (iii) if to FNB or the Owner Trustee, at 100 Federal Street, Boston, Massachusetts 02110, Attention: Corporate Trust Division (TWX No. 940581);(iv) if to the Indenture Trustee, at First City Financial Center, 1301 Fannin Street, 21st Floor, Houston, Texas 77002, Attention: Corporate Trust Department; and (v) if to the Lessee, at 303 North Oregon Street, El Paso, Texas 79901, Attention: Secretary; or at such other address as any party hereto may from time to time designate by notice duly given in accordance with the provisions of this Section to the other parties hereto. All such communications, notices and consents given in the manner provided above shall be effective on the date of receipt of such communication or notice.

SECTION 19. Miscellaneous.

(a) *Execution.* This Participation Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument. Although this Participation Agreement is dated as of the date first above written for convenience, the actual dates of execution hereof by the parties hereto are respectively the dates set forth under the signatures hereto, and this Participation Agreement shall be effective on the latest of such dates.

(b) *Intention of the Owner Trustee and the Owner Participant.* Each of the Owner Trustee and the Owner Participant intends to exercise its rights and carry out its obligations hereunder and under the other Transaction Documents solely with a view to furthering its own best interests and does not have, and does not expect to have, any form of joint profit motive with any other Person. The Owner Trustee and the Owner Participant shall not be required to share any Rent to which they are entitled under the Facility Lease, or the residual value of the Undivided Interest or the Real Property Interest, with any other Person. The Owner Trustee and the Owner Participant are not under the control of nor shall they be deemed to be under the control of any other Person having any interest in Unit 2, and shall not be the agent of or have a right or power to bind any such Person (other than the Owner Participant as regards the Owner Trustee) without its express written consent. The Owner Trustee (on behalf of the Owner Participant) and the Owner Participant (on its own behalf) have and at all times shall retain

the right separately to take or dispose of the Undivided Interest and the Real Property Interest, *subject only* to the rights of the Lessee and the Loan Participant under the Transaction Documents. The Owner Trustee and the Owner Participant accordingly do not intend to create any form of partnership or joint venture with any other Person by virtue of the transactions contemplated hereby or by any of the Transaction Documents. In the event that it is determined, contrary to the intent of the Owner Trustee and the Owner Participant, that, for purposes of the Code or any other income tax law, a form of partnership or joint venture exists between the Owner Trustee or the Owner Participant and any other Person, the Owner Trustee and the Owner Participant hereby elect to the extent permitted by law (i) not to have the partnership provisions of the Code or such other income tax law apply to any of the transactions contemplated hereby or by any of the Transaction Documents and (ii) to be treated solely as owning the Undivided Interest and the Real Property Interest.

(c) *Governing Law.* This Participation Agreement has been negotiated and delivered in the State of New York and shall be governed by, and be construed in accordance with, the laws of the State of New York.

(d) *Amendments, Supplements, etc.* Neither this Participation Agreement nor any of the terms hereof may be amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the party against which enforcement of such change is sought.

(e) *Headings.* The headings of the sections and paragraphs of this Participation Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof.

(f) *Bankruptcy of Owner Participant.* If (a) the Owner Participant or the Owner Trustee becomes a debtor subject to the reorganization provisions of the Bankruptcy Code, or any successor provision, (b) pursuant to such reorganization provisions the Owner Participant or the Owner Trustee is required, by reason of the Owner Participant being held to have recourse liability directly or indirectly to the Holder of any Note or the Indenture Trustee, to make payment on account of any amount payable as principal or interest on such Note and (c) such Holder or the Indenture Trustee actually receives any Excess Amount which reflects any payment by the Owner Participant on account of clause (b) of this Section, then such Holder or the Indenture Trustee, as the case may be, shall promptly refund to the Owner Participant such Excess Amount. For purposes of this Section, "Excess Amount" means the amount by which such payment exceeds the amount which would have been received on or prior to the date of such payment by such Holder or the Indenture Trustee if the Owner Participant or the Owner Trustee had not become subject to the recourse liability referred to in clause (b) of this Section. Nothing contained in this Section shall prevent such Holder or the Indenture Trustee from enforcing any personal recourse obligation (and retaining the proceeds thereof) of the Owner Participant expressly provided for under this Participation Agreement.

(g) *Entire Agreement.* This Participation Agreement and Exhibits, the other Transaction Documents and the Financing Documents supersede all prior agreements, written or oral, between or among any of the parties hereto relating to the transactions contemplated hereby and thereby and each of the parties hereto represents and warrants to the others that this Participation Agreement and the other Transaction Documents and the Financing Documents constitute the entire agreement among the parties relating to the transactions contemplated hereby and thereby.

(h) *Publicity.* Each party hereto agrees that it will not issue or release for external publication any article or advertising or publicity matter relating to the transactions contemplated hereby or any similar transaction and mentioning or implying the identity of the Owner Participant without the prior written consent of the Owner Participant; provided, however, that the Owner Participant agrees that such written consent shall not be required if such issue or release is required by Applicable Law.

IN WITNESS WHEREOF, the parties hereto have each caused this Participation Agreement to be duly executed by their respective officers thereunto duly authorized as of the dates set forth below.

COMMERCIAL FEDERAL
INVESTMENT CORPORATION

By: _____
Assistant Vice President

Date: 12-16-86

EL PASO FUNDING CORPORATION

By: _____
Vice President

Date: _____

EL PASO ELECTRIC COMPANY

By: _____
Vice President

Date: 12-16-86

THE FIRST NATIONAL BANK OF
BOSTON, in its individual capacity
and as Owner Trustee

By: _____
Assistant Vice President

Date: 12/16/86

FIRST CITY NATIONAL BANK OF
HOUSTON, in its individual capacity
and as Indenture Trustee

By: _____
Assistant Vice President

Date: _____

Schedule 1

EL PASO ELECTRIC COMPANY

PALO VERDE NUCLEAR GENERATING
STATION UNIT 2

NOTICE OF CLOSING

Pursuant to Section 5(a) of the Participation Agreement, dated as of December 1, 1986 (the Participation Agreement), among Commercial Federal Investment Corporation, as Owner Participant, El Paso Funding Corporation, as Loan Participant, The First National Bank of Boston, as Owner Trustee, First City National Bank of Houston, as Indenture Trustee, and El Paso Electric Company (El Paso), El Paso hereby gives notice of a Closing to occur at 10:00 a.m. on December , 1986. The Closing will be held at the offices of

(i) Purchase Price is the amount specified in Schedule 2 as the "Purchase Price."

(ii) Real Estate Investment is the amount set forth in Schedule 2 as the "Real Estate Investment."

(iii) Based upon information supplied to El Paso, Estimated Transaction Expenses are an aggregate of $. Instructions with respect to payment of such Estimated Transaction Expenses are attached hereto.

(iv) Payment of the Purchase Price and the acquisition price of the Real Property Interest shall be made as provided in the Participation Agreement.

Capitalized terms used herein and not otherwise specifically defined herein shall have the meanings set forth in Appendix A to the Participation Agreement.

IN WITNESS WHEREOF, El Paso has executed this Notice of Closing this day of December, 1986.

EL PASO ELECTRIC COMPANY

By: _____
Vice President

Schedule 2

PRICING ASSUMPTIONS

Basic Rent, Casualty Value, Special Casualty Value, Termination Value and Special Termination Value, as to be set forth in the Facility Lease as it will be originally executed, will be computed on the basis of the following pricing assumptions:

Closing Date	December 18, 1986
Loan Percentage	79.9992859%
Investment Percentage	20.0007141%
Lessor Note Rate	Notes due 1992 = 8.20%; Notes due 1997 = 9.20%; and Notes due 2011 = 10.50%
Basic Lease Term (years)	26.79 years
Initial Series Note Amortization Schedule	See Schedule 2A attached hereto
Interim Rent	0.0%
Rent Structure	Semi-annual payments in advance
First Basic Rent Payment	July 2, 1987
Owner Participant's Tax Rate	46% for the year ending June 30, 1987 and 34% thereafter
Transaction Expenses (funded by the Owner Participant and expressed as a % of Purchase Price)	2.5%
Purchase Price	$87,382,030
Real Estate Investment	$45,021.22

Schedule 2A

DISPLAYED IN PERCENTAGES OF TOTAL ASSET COST

Date	Debt Service	Interest	Principal	Balance	Rate
7/2/1987	4.3413750	4.3413750	0.0000000	80.0000000	
1/2/1988	4.0280799	4.0280799	0.0000000	80.0000000	8.20000
7/2/1988	4.0545324	4.0280799	0.0264525	79.9735475	8.20000
1/2/1989	4.8178096	4.0269953	0.7908142	79.1827332	8.20000
7/2/1989	4.8178096	3.9945719	0.8232376	78.3594956	8.20000
1/2/1990	4.8178096	3.9608192	0.8569904	77.5025053	8.20000
7/2/1990	4.8178096	3.9256826	0.8921270	76.6103783	8.20000
1/2/1991	4.8178096	3.8891054	0.9287042	75.6816741	8.20000
7/2/1991	4.8178096	3.8510285	0.9667810	74.7148931	8.20000
1/2/1992	4.8178096	3.8113905	1.0064191	73.7084740	8.20000
7/2/1992	4.8178096	3.7701273	1.0476823	72.6607917	8.20000
1/2/1993	4.8178096	3.7271723	1.0906372	71.5701545	9.20000
7/2/1993	4.8178096	3.6770030	1.1408065	70.4293480	9.20000
1/2/1994	4.8178096	3.6245259	1.1932836	69.2360643	9.20000
7/2/1994	4.8178096	3.5696349	1.2481747	67.9878896	9.20000
1/2/1995	4.8178096	3.5122188	1.3055907	66.6822989	9.20000
7/2/1995	4.8178096	3.4521617	1.3656479	65.3166510	9.20000
1/2/1996	4.8178096	3.3893419	1.4284677	63.8881833	9.20000
7/2/1996	4.8178096	3.3236323	1.4941772	62.3940061	9.20000
1/2/1997	4.8178096	3.2549002	1.5629094	60.8310968	9.20000
7/2/1997	4.8178096	3.1830064	1.6348032	59.1962936	9.20000
1/2/1998	4.2048666	3.1078054	1.0970612	58.0992324	10.50000
7/2/1998	4.2863529	3.0502097	1.2381432	56.8610892	10.50000
1/2/1999	4.1328923	2.9852072	1.1476851	55.7134040	10.50000
7/2/1999	4.2495622	2.9249537	1.3246085	54.3887956	10.50000
1/2/2000	4.0830727	2.8554118	1.2276609	53.1611346	10.50000
7/2/2000	4.2082920	2.7909596	1.4173324	51.7438022	10.50000
1/2/2001	4.0298244	2.7165496	1.3132748	50.4305275	10.50000
7/2/2001	4.1641385	2.6476027	1.5165358	48.9139916	10.50000
1/2/2002	3.9728555	2.5679846	1.4048709	47.5091207	10.50000
7/2/2002	4.1168999	2.4942288	1.6226710	45.8864497	10.50000
1/2/2003	3.9119059	2.4090386	1.5028673	44.3835824	10.50000
7/2/2003	4.0663604	2.3301381	1.7362224	42.6473600	10.50000
1/2/2004	3.8466975	2.2389864	1.6077111	41.0396489	10.50000
7/2/2004	4.0122896	2.1545816	1.8577080	39.1819408	10.50000
1/2/2005	3.7769328	2.0570519	1.7198809	37.4620600	10.50000
7/2/2005	3.9544406	1.9667581	1.9876824	35.4743776	10.50000
1/2/2006	3.7022932	1.8624048	1.8398884	33.6344892	10.50000
7/2/2006	3.8925494	1.7658107	2.1267387	31.5077505	10.50000
1/2/2007	3.7004837	1.6541569	2.0463268	29.4614236	10.50000
7/2/2007	4.8178096	1.5467247	3.2710848	26.1903388	10.50000
1/2/2008	4.8178096	1.3749928	3.4428168	22.7475221	10.50000
7/2/2008	4.8178096	1.1942449	3.6235646	19.1239574	10.50000
1/2/2009	4.8178096	1.0040078	3.8138018	15.3101556	10.50000
7/2/2009	4.8178096	0.8037832	4.0140264	11.2961292	10.50000
1/2/2010	4.8178096	0.5930468	4.2247628	7.0713665	10.50000
7/2/2010	4.8178096	0.3712467	4.4465628	2.6248037	10.50000
1/2/2011	2.7626058	0.1378022	2.6248037	0.0000000	10.50000
7/2/2011	0.0000000	0.0000000	0.0000000	0.0000000	10.50000
1/2/2012	0.0000000	0.0000000	0.0000000	0.0000000	10.50000
7/2/2012	0.0000000	0.0000000	0.0000000	0.0000000	10.50000
1/2/2013	0.0000000	0.0000000	0.0000000	0.0000000	10.50000
Totals	211.9465420	131.9465420	80.0000000		

Schedule 3

RECORDATIONS AND FILINGS

Part I. Recordations in Respect of the Sale of, and the Owner Trustee's Title to, the Undivided Interest and the Real Property Interest.

A. County Recorder, Maricopa County, Arizona:

(i) Deed;

(ii) Bill of Sale;

(iii) Assignment and Assumption;

(iv) Facility Lease;

(v) Indenture;

(vi) Mortgage Releases; and

(vii) Financing Statement Change Forms UCC-2.

B. Secretary of State, Arizona:

(i) Financing Statement Change Forms UCC-2.

Part II. UCC-1 Financing Statements.

A. County Recorder, Maricopa County, Arizona:

(i) A financing statement on form UCC-1 naming El Paso, as lessee, the Owner Trustee, as lessor, and the Indenture Trustee, as assignee of the Owner Trustee, in respect of the Facility Lease;

(ii) A financing statement on form UCC-1 naming the Owner Trustee, as debtor, and the Indenture Trustee, as secured party, in respect of the Lease Indenture Estate; and

(iii) A financing statement on form UCC-1 naming the Loan Participant, as debtor, and the Collateral Trust Trustee, as secured party, in respect of the Pledged Property (as defined in the Collateral Trust Indenture).

B. Secretary of State, Arizona:

(i) Two financing statements on form UCC-1, each naming El Paso, as lessee, the Owner Trustee, as lessor, and the Indenture Trustee, as assignee of the Owner Trustee, in respect of the rents under the Facility Lease;

(ii) A financing statement on form UCC-1 naming the Owner Trustee, as debtor, and the Indenture Trustee, as secured party, in respect of the Lease Indenture Estate;

(iii) A financing statement on form UCC-1 naming the Loan Participant, as debtor, and the Collateral Trust Trustee, as secured party, in respect of the Pledged Property (as defined in the Collateral Trust Indenture); and

C. Secretary of State, Texas:

(i) A financing statement on form UCC-1 naming El Paso, as lessee, the Owner Trustee, as lessor, in respect of the Facility Lease;

(ii) A financing statement on form UCC-1 naming the Indenture Trustee, as assignee of the Owner Trustee, in respect of the Facility Lease; and

(iii) A financing statement on form UCC-1 naming the Owner Trustee, as debtor, and the Indenture Trustee, as secured party, in respect of the Lease Indenture Estate.

D. Massachusetts/state and local:

A financing statement on form UCC-1 naming the Owner Trustee, as debtor, and the Indenture Trustee, as secured party, in respect to the Lease Indenture Estate.

Part III. Utility Filings Texas Secretary of State Filing of the Facility Leases as protective filings and the Mortgage Releases.

Exhibit A
to
Participation Agreement

BILL OF SALE AND ASSIGNMENT

dated as of

from

[ ]

to

EL PASO ELECTRIC COMPANY

BILL OF SALE AND ASSIGNMENT, dated as of _____, _____ from _____, a _____ corporation (the Owner Participant), to EL PASO ELECTRIC COMPANY, a Texas corporation (El Paso).

WITNESSETH:

WHEREAS, pursuant to Section 7(b)(4) of the Participation Agreement dated as of December 1, 1986 among [a predecessor of] the Owner Participant, El Paso Funding Corporation, as Loan Participant, The First National Bank of Boston, in its individual capacity and as Owner Trustee, First City National Bank of Houston, in its individual capacity and as Indenture Trustee and El Paso, as Lessee (the Participation Agreement), the Owner Participant desires to sell and El Paso desires to buy the Assigned Property (as hereinafter defined);

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. For purposes hereof, capitalized terms used herein shall have the meanings assigned to such terms in the Participation Agreement.

ARTICLE II

ASSIGNMENT OF TRUST ESTATE

SECTION 2.01. *Assignment.* Owner Participant does hereby grant, bargain, convey, sell, assign, transfer and set over to El Paso, on an as is, where is basis, free and clear of Owner Participant's Liens but otherwise without recourse, representation or warranty, express or implied, of any nature whatsoever, all Owner Participant's right, title and interest in, to and under the Trust Estate except Owner Participant's right to receive Excepted Payments (the Assigned Property) [, subject to Owner Participant's security interest in, and general lien upon, all the right, title and interest of El Paso, as successor Owner Participant, in, to and under the Assigned Property*]. The disclaimer of representations and warranties set forth in the second sentence of Section 6(b) of the Facility Lease is hereby incorporated herein as fully as if set forth at this place. [Notwithstanding the foregoing transfer and assignment of the Assigned Property to El Paso, the obligation of El Paso to make the payments provided in Section [insert applicable section: 9(c), 9(d), 13(c) or 16] of the Facility Lease [Section 10(b)(3)(xvii) of the Participation Agreement] (together with interest thereon in accordance with Section 3(b) of the Facility Lease) (or to make other payments in a like amount) shall not be deemed to be canceled or discharged but shall continue until all such amounts are so received by Owner Participant pursuant to the provisions of Section 7(b)(4) of the Participation Agreement.*] [The Owner Participant hereby acknowledges receipt of $ representing payment in full of all amounts due to the Owner Participant under Section [insert applicable section: 9(c), 9(d), 13(c) or 16] of the Facility Lease [or Section 10(b)(3)(xvii) of the Participation Agreement.**]

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*To be inserted if on the date of the transfer the Owner Participant has not received under Section 5.2 of the Indenture the payments provided for in Section 9(c), 9(d), 13(c) or 16 of the Facility Lease or Section 10(b)(3)(xvii) of the Participation Agreement as the case may be.

**To be inserted if on the date of the transfer the Owner Participant has received the payments provided for in Section 9(c), 9(d), 13(c) or 16 of the Facility Lease or Section 10(b)(3)(xvii) of the Participation Agreement as the case may be.

ARTICLE III

Effectiveness Of Transfer

SECTION 3.01. *Effectiveness of Transfer.* The transfer of the Assigned Property shall become effective without further action upon the execution and delivery by the Owner Participant to El Paso of this Bill of Sale and Assignment and the furnishing of a counterpart of this Bill of Sale and Assignment to the Owner Trustee.

ARTICLE IV

Miscellaneous

SECTION 4.01. *Successors and Assigns.* This Bill of Sale and Assignment shall be binding upon the Owner Participant and its successors and shall inure to the benefit of El Paso and its successors and assigns.

SECTION 4.02. *Governing Law.* This Bill of Sale and Assignment shall be governed by and construed and enforced in accordance with the law of the State of New York.

IN WITNESS WHEREOF, the undersigned has caused this Bill of Sale and Assignment to be duly executed as of the day and year written above.

[ ]

By: _____

Title: _____

Exhibit B
to
Participation Agreement

AFFIDAVIT OF TRUSTEE

THE FIRST NATIONAL BANK OF BOSTON,
as Owner Trustee under that certain
Trust Agreement dated as of
December 1, 1986 with
COMMERCIAL FEDERAL INVESTMENT CORPORATION

The undersigned, being a duly authorized representative of The First National Bank of Boston, a national banking association, as Trustee under the above-captioned Trust Agreement (the Trust Agreement), does hereby affirm and acknowledge that The First National Bank of Boston, as Trustee, holds legal title to certain real (and other) property on behalf of a certain beneficiary, such property and beneficiary being more particularly described in that certain Deed recorded December , 1986, as instrument No. 86- , records of Maricopa County, Arizona; being further described in that certain Deed and Bill of Sale recorded December , 1986, as instrument No. 86- , records of Maricopa County, Arizona; being further described in that certain Assignment, Assumption and Further Agreement recorded December , 1986, as instrument No. 86- , records of Maricopa County, Arizona; and being further described in that certain Deed and Assignment of Beneficial Interest dated as of December 1, 1986, and that certain related Amended Affidavit of Trustee executed by Title USA Company of Arizona as Trustee of its Trust No. 530 and recorded December , 1986, as instrument No. 86- , records of Maricopa County, Arizona; the property descriptions and beneficiary disclosures contained in or incorporated into each of said instruments being incorporated herein by this reference as if fully set forth herein.

A certain change in ownership of the beneficial interest in the Trust Agreement has occurred since the recordation of the above-described instruments. As now reflected in the records of The First National Bank of Boston, the sole beneficiary of the Trust Agreement is:

El Paso Electric Company
303 North Oregon Street
El Paso, Texas 79901

A copy of the Trust Agreement is available for inspection at the offices of The First National Bank of Boston, 100 Federal Street, Boston, Massachusetts 02110.

DATED THIS day of ,

THE FIRST NATIONAL BANK OF BOSTON,
not in its individual capacity, but
solely as Owner Trustee under the
Trust Agreement dated as of
December 1, 1986, with

_____

By: _____

DEFINITION OF TERMS

The terms defined herein relate to the Participation Agreement (as defined below) and certain transaction documents executed, or to be executed, in connection with the Participation Agreement. Such terms include the plural as well as the singular. Any agreement defined or referred to below shall include each amendment, modification and supplement thereto and waiver thereof as may become effective from time to time, except where otherwise indicated. Any term defined below by reference to any agreement shall have such meaning whether or not such document is in effect. The terms *"hereof," "herein," "hereunder"* and comparable terms refer to the entire agreement with respect to which such terms are used and not to any particular article, section or other subdivision thereof.

If, and to the extent that, either the Participation Agreement or any other Transaction Document which incorporates this Appendix shall be amended from time to time pursuant to the respective terms thereof, this Appendix shall be, or be deemed to have been, amended concurrently with the execution and delivery of each such amendment in order to conform the definitions herein to the new or amended definitions set forth in or required by such amendment.

Additional Bonds shall mean Bonds in addition to the Initial Series Bonds.

Additional Equity Investment shall have the meaning set forth in Section 8 (f) of the Facility Lease.

Additional Notes shall have the meaning set forth in the recitals to the Indenture, which Additional Notes shall be issued, if at all, pursuant to Section 3.5 of the Indenture.

Affiliate, with respect to any Person, shall mean any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person. For purposes of this definition, the term *"control"* (including the correlative meanings of the terms *"controlled by"* and *"under common control with"*), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

After-Tax Basis shall mean, with respect to any payment received or deemed to have been received or accrued by any Person, the amount of such payment supplemented by a further payment to that Person so that the sum of the two payments shall, after deduction of all taxes and other charges (taking into account any current credits or current deductions arising therefrom and computed at the highest marginal statutory tax rates) resulting from the receipt (actual or constructive) or accrual of such two payments imposed under any Applicable Law or by any Governmental Authority, be equal to such payment received or deemed to have been received or accrued.

Agency Period shall have the meaning set forth in Section 7.01 of the Assignment and Assumption.

Aggregate Liability shall have the meaning assigned in the Price-Anderson Act, as in effect as of the Closing Date; *provided* that if the Price-Anderson Act shall be amended to expand the meaning of the term "aggregate liability," the term "Aggregate Liability" shall be similarly expanded.

ANPP Administrative Committee shall mean the committee established pursuant to Section 6.1.1 of the ANPP Participation Agreement (or any comparable successor provision).

ANPP Operating Committee shall mean the committee established pursuant to Section 6.1.2 of the ANPP Participation Agreement (or any comparable successor provision).

ANPP Participants shall have the meaning assigned to the word "Participant" under the ANPP Participation Agreement.

ANPP Participation Agreement shall mean the Arizona Nuclear Power Project Participation Agreement, dated as of August 23, 1973, among APS, Salt River, Southern California, PNM, El Paso, SCPPA and LADWP.

ANPP Project Agreements shall mean the ANPP Participation Agreement and the other Project Agreements (as such term is defined in the ANPP Participation Agreement).

ANPP Switchyard shall mean the ANPP High Voltage Switchyard located at the PVNGS Site, the ownership, construction, operation and maintenance of which are governed by the ANPP High Voltage Switchyard Participation Agreement executed as of August 20, 1981 (APS Contract No. 2252-419,00), the parties to which are APS, PNM, Salt River, El Paso, LADWP and Southern California.

Applicable Law shall mean all applicable laws, statutes, treaties, rules, codes, ordinances, regulations, permits, certificates, orders, interpretations, licenses and permits of any Governmental Authority and judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other judicial or quasi judicial tribunal (including those pertaining to health, safety, the environment or otherwise).

Applicable Unit 2 Percentage shall mean 1.998026% with respect to property in Unit 2 not constituting Common Facilities and 0.666007% with respect to Common Facilities.

Appraisal Procedure shall mean a procedure whereby two independent appraisers, one chosen by the Lessee and one by the Lessor, shall mutually agree upon the value, period, amount or determination then the subject of an appraisal. If either the Lessor or the Lessee, as the case may be, shall determine that a value, period, amount or determination to be determined under the Facility Lease or any other Transaction Document cannot be timely established by mutual agreement, such party shall appoint its appraiser and deliver a written notice thereof to the other party. Such other party shall appoint its appraiser within 15 days after receipt from the other party of the foregoing written notice. If within 20 days after appointment of the two appraisers, as described above, the two appraisers are unable to agree upon the value, period, amount or determination in question, a third independent appraiser shall be chosen within ten days thereafter by the mutual consent of such first two appraisers or, if such first two appraisers fail to agree upon the appointment of a third appraiser within such period, such appointment shall be made by the American Arbitration Association, or any organization successor thereto, from a panel of arbitrators having experience in the business of operating a nuclear electric generating plant and a familiarity with equipment used or operated in such business. The decision of the third appraiser so appointed and chosen shall be given within ten days after the selection of such third appraiser. If three appraisers shall be so appointed and the determination of one appraiser is more disparate from the middle determination by more than twice the amount by which the third determination is disparate from the middle determination, then the determination of such appraiser shall be excluded, the remaining two determinations shall be averaged and such average shall be binding and conclusive on the Lessor and the Lessee; otherwise the average of all three determinations shall be binding and conclusive on the Lessor and the Lessee. The fees and expenses of appraisers incurred in connection with any Appraisal Procedure relating to any transaction contemplated by any provision of any Transaction Document shall be divided equally between the Lessor and the Lessee *(except* pursuant to Section 13(c), 14 (a) or 16 of the Facility Lease or Section 10(b)(3)(xvii) of the Participation Agreement, which shall be paid solely by the Lessee).

APS shall mean Arizona Public Service Company, an Arizona corporation.

Arizona Public Utility Act shall mean Chapter 2, Title 40, Arizona Revised Statutes.

Assigned Payments shall have the meaning set forth in Section 2.1 (1) of the Indenture.

Assignment and Assumption shall mean the Assignment, Assumption and Further Agreement, dated as of December 1, 1986, between El Paso and the Owner Trustee.

Assignment of Beneficial Interest shall mean the Deed and Assignment of Beneficial Interest under Title USA Company of Arizona Trust No. 530, dated as of the Closing Date, from El Paso to the Owner Trustee.

Assumption Agreement shall mean the Assumption Agreement of El Paso substantially in the form of Exhibit B to the Indenture.

Assumptions shall mean the Pricing Assumptions and the Tax Assumptions.

Atomic Energy Act shall mean the Atomic Energy Act of 1954, as amended.

Authorized Officer shall mean, with respect to the Indenture Trustee, any officer of the Indenture Trustee or any other Person who shall be duly authorized by appropriate corporate action on the part of the Indenture Trustee to authenticate a Note and shall mean, with respect to the Owner Trustee, any officer of the Owner Trustee who shall be duly authorized by appropriate corporate action to execute any Transaction Document.

Bankruptcy Code shall mean the Bankruptcy Reform Act of 1978, as amended, and any law with respect to bankruptcy, insolvency or reorganization successor thereto.

Basic Lease Term shall mean the initial term of the Facility Lease, which shall begin on the Closing Date and end on October 1, 2013, unless earlier terminated as provided in the Facility Lease.

Basic Rent shall have the meaning set forth in Section 3 (a) of the Facility Lease.

Basic Rent Payment Dates shall mean and include July 2, 1987, and each January 2 and July 2 of each year thereafter, ending July 2, 2013, and, if the Lessee shall elect the Renewal Term, each October 1 and April 1 of each year during such Renewal Term, commencing October 1, 2013 and ending six months before the last day of the Renewal Term.

Bill of Sale shall mean the Deed and Bill of Sale, dated as of the Closing Date, between El Paso and the Owner Trustee.

Bonds shall mean all bonds, notes and other evidences of indebtedness from time to time issued and outstanding under the Collateral Trust Indenture, *including, without limitation,* the Initial Series Bonds, the Releveraging Bonds, the Refunding Bonds and any other Additional Bonds.

Bond Supplemental Indenture shall mean the Series 1986A Bond Supplemental Indenture dated as of December 1, 1986, among El Paso, the Loan Participant and the Collateral Trust Trustee, supplementing the Collateral Trust Indenture and providing, among other things, for the issuance of the Initial Series Bonds.

Business Day shall mean any day other than a Saturday or Sunday or other day on which banks in El Paso or Houston, Texas, New York, New York or Boston, Massachusetts, are authorized or obligated to be closed.

Capital Improvement shall mean (a) the addition, betterment or enlargement of any property constituting part of Unit 2 or the replacement of any such property with other property, irrespective of whether (i) such replacement property constitutes an enlargement or betterment of the property which it replaces, (ii) the cost of such addition, betterment, enlargement or replacement is or may be capitalized, or not charged to maintenance or repairs, in accordance with the Uniform System of Accounts or (iii) such addition, betterment or enlargement, is or is not included or reflected in the plans and specifications for Unit 2, as built, and (b) any alteration, modification, addition or improvement to Unit 2, other than original, substitute or replacement parts incorporated into Unit 2.

Cash Available for Investment shall mean (i) until December 31, 1987, the excess of cash and temporary cash investments not segregated for other purposes (including redemption of Debt) over construction requirements needed for the ensuing 12-month period and (ii) thereafter, zero.

Casualty Value, as of any date of determination thereof, shall mean (i) during the Basic Lease Term, the percentage of Facility Cost set forth opposite the date in Schedule 1 to the Facility Lease immediately succeeding such date of determination (or, if such date is specified in Schedule 1 to the Facility Lease, such date) and (ii) during the Renewal Term, the amount determined by amortizing ratably the Fair Market Sales Value of the Undivided Interest as of the day following the last day of the Basic Lease Term in monthly steps over the period from such date to the License Expiration Date. Anything contained in the Participation Agreement or the Facility Lease to the contrary notwithstanding, Casualty Value shall be, when added to all other amounts which the Lessee is required to pay under Section 9(c) of the Facility Lease, under any circumstances and in any event, in an amount at least sufficient to pay in full, as of any date of payment, the aggregate unpaid principal amount of all Notes Outstanding at the close of business on such date, together with accrued and unpaid interest on such Notes.

Change in Tax Law shall have the meaning set forth in Section 3 (d) of the Facility Lease.

Chief Financial Officer shall mean the person designated by the Board of Directors of El Paso as the chief financial officer of El Paso.

Claims shall mean liabilities, obligations, losses, damages, Taxes (other than Taxes on income), penalties, claims (including, without limitation, claims involving liability in tort, strict or otherwise), actions, suits, judgments, costs, interest, expenses and disbursements, whether or not any of the foregoing shall be founded or unfounded (*including, without limitation*, legal fees and expenses and costs of investigation) of any kind and nature whatsoever without any limitation as to amount.

Closing shall mean the proceedings which occur on the Closing Date, as contemplated by the Participation Agreement.

Closing Date shall mean December 18, 1986.

Code shall mean the Internal Revenue Code of 1986, as amended, or any successor law.

Collateral Trust Indenture shall mean the Collateral Trust Indenture, dated as of August 1, 1986, among El Paso, the Loan Participant and the Collateral Trust Trustee.

Collateral Trust Indenture Supplement shall mean a supplement to the Collateral Trust Indenture.

Collateral Trust Trustee shall mean First City National Bank of Houston, not in its individual capacity, but solely as Collateral Trust Trustee under the Collateral Trust Indenture, and each successor trustee thereunder.

Common Facilities shall mean all PVNGS common facilities, as set forth in Section B of Exhibit B to the Bill of Sale, *other than* excluded common facilities as set forth in Section B of Exhibit B to the Bill of Sale.

Consolidated Capitalization shall mean the total of capital and surplus plus the principal amount of indebtedness for borrowed money which matures more than one year after the date as of which Consolidated Capitalization is being determined, all as shown on a consolidated balance sheet of the Lessee.

Coverage Ratio shall mean the ratio of (x) consolidated net earnings before income taxes (excluding 100% (50% until July 1, 1989) of the allowance for funds used during construction (net of deferred taxes)) increased by the pro forma earnings on Cash Available for Investment (calculated at the prevailing 90-day treasury bill rate) for the twelve-month period ending on a date no later than 135 days prior to the date as of which Coverage Ratio is being determined to (y) total interest and lease payments that will be payable by the Lessee and its subsidiaries (whether consolidated or unconsolidated) during the twelve-month period following the date as of which Coverage Ratio is being determined, excluding (i) lease payments to the Rio Grande Resources Trust, (ii) lease payments under any short-term operating lease of computers, office equipment or the like, (iii) interest on De

which has been legally defeased or for the payment of which funds have been segregated in escrow and (iv) interest on Debt maturing one year or less from the date of incurrence thereof.

Cure Option shall have the meaning set forth in Section 16(e) of the Facility Lease.

Debt shall mean (a) secured or unsecured indebtedness for borrowed money or for the deferred purchase price of property or evidenced by notes, bonds or other instruments, (b) obligations as lessee under capital leases, (c) the present value of obligations as lessee under other leases the remaining term of which (including options to renew) is more than one year, in each case discounted to present value as of the respective dates on which such obligations are due at the rate per annum borne by the debt placed in conjunction with such lease or, if no such debt was placed, at the Lessee's marginal cost of debt at the time such lease was entered into, (d) obligations secured by any Lien existing on any property owned or held by a Person, whether or not such Person has assumed or become liable for the obligations secured thereby, and (e) obligations under direct or indirect guarantees of (including obligations (contingent or otherwise) to assure a creditor against loss in respect of) indebtedness or obligations of others of the kinds referred to in clauses (a), (b), (c) and (d) above. For purposes of the foregoing, there shall be excluded, except as used in Section 15 of the Facility Lease, obligations under any operating lease of computers, office equipment or the like, the original term of which (including options to renew) is less than five years, and obligations under any lease from the Rio Grande Resources Trust.

Decommissioning shall mean the decommissioning and retirement from service of Unit 2, and the related possession, maintenance and disposal of material, radioactive or otherwise, used in or produced by or relating to Unit 2, including, without limitation, (i) placement and maintenance in a state of protective storage, (ii) in-place entombment and maintenance, (iii) dismantlement, (iv) removal, decontamination and disposition of equipment and fixtures, (v) razing, (vi) removal and disposition of debris related to Unit 2 from the PVNGS Site, (vii) restoration of the PVNGS Site related to Unit 2 for unrestricted use, (viii) any other actions relating to decommissioning and retirement from service required by the NRC and (ix) all activities undertaken incident to the implementation thereof.

Decommissioning Cost shall mean the Applicable Unit 2 Percentage of costs, liabilities and expenses relating or allocable to, or incurred in connection with, Decommissioning, including compliance with the Lessee's obligations under Section 10(b)(3)(xi) of the Participation Agreement.

Decommissioning Trust Agreement shall mean the Decommissioning Trust Agreement to be entered into among the Owner Trustee, El Paso and the Decommissioning Trustee.

Decommissioning Trustee shall mean First City National Bank of El Paso, a national banking association, as trustee under the Decommissioning Trust Agreement, and each successor trustee under such Agreement.

Decommissioning Trust Fund shall mean the trust fund established and maintained under and pursuant to the Decommissioning Trust Agreement.

Deed shall mean the Deed, dated as of the Closing Date, from El Paso to the Owner Trustee.

Deemed Loss Event shall mean any of the following events (*unless and until* waived in writing by the Owner Participant):

(1) *Utility Regulation.* If at any time from and including the Closing Date and before the Lease Termination Date, the Lessor or the Owner Participant, by reason of the acquisition or ownership of the Undivided Interest or the Real Property Interest or any part thereof by the Lessor (or any beneficial interest therein by the Owner Participant) or the lease of the Undivided Interest to the Lessee or any of the other transactions contemplated by the Transaction Documents, shall be deemed by any Governmental Authority having jurisdiction to be, or shall become subject to regulation (other than Non-Burdensome Regulation) as, an electric utility, a public utility or a holding company under any Applicable Law or as a consequence of any Governmental Action, and the effect thereof on the Lessor or the Owner Participant would be, in

the sole judgment of the Owner Participant, acting on the advice of counsel, adverse, *except that* if the Lessee, at its sole cost and expense, is contesting diligently and in good faith any Governmental Action which would otherwise constitute a Deemed Loss Event under this clause (1), such Deemed Loss Event shall be deemed not to have occurred so long as in the sole judgment of the Owner Participant (i) such contest does not involve any danger of the foreclosure, sale, forfeiture or loss of, or the creation of any Lien on, the Undivided Interest, the Real Property Interest or any part thereof or any interest therein, (ii) such contest does not adversely affect the Undivided Interest or the Real Property Interest or any part thereof or any other property, assets or rights of the Lessor or the Owner Participant or the Lien of the Indenture thereon, (iii) the Lessee shall have furnished the Owner Participant with an opinion of independent counsel satisfactory to the Owner Participant to the effect that (a) there exists a reasonable basis for contesting such determination and (b) in the case of any action arising from or related to the Lessor or the Owner Participant under the Holding Company Act, it is more likely than not that the Lessee will successfully contest such determination without the need for any appeal, (iv) such determination shall be effectively stayed or withdrawn during such contest (and shall not in the sole judgment of the Owner Participant be subject to retroactive application at the conclusion of such contest) in a manner satisfactory to the Owner Participant, and the Owner Participant shall have determined in its sole judgment that such contest and the Lessor's continued ownership of the Undivided Interest and the Real Property Interest during the pendency of such contest will not adversely affect its business or the business of any of its Affiliates, and (v) the Lessee shall have indemnified the Lessor and the Owner Participant in a manner satisfactory to the Owner Participant for any liability or loss which either may incur; *it being understood, however*, that the term Owner Participant as used in this clause (1) does not include any Transferee who at the time of transfer is an entity which is subject to regulation as an electric utility, public utility or a holding company under Applicable Law or Governmental Action.

(2) *Change in Applicable Law.* Any change in, or new interpretation by a Governmental Authority having jurisdiction relating to, Applicable Law, *including, without limitation*, the Price Anderson Act, the Atomic Energy Act, the Nuclear Waste Act or the regulations of the NRC, in each case as in effect on the Closing Date, or any other significant development, as a result of which, in the opinion of independent counsel to the Owner Participant (i) the Aggregate Liability for a single Nuclear Incident of all Persons Indemnified is increased; (ii) the Aggregate Liability for a single Nuclear Incident of all Persons Indemnified exceeds the amount of Financial Protection required with respect to a single Nuclear Facility under Applicable Law and available at the time of such Nuclear Incident; (iii) (a) the amount of Primary Financial Protection required with respect to a single Nuclear Facility under Applicable Law is increased, whether or not the total amount of Financial Protection required with respect to a single Nuclear Facility is increased, (b) the amount of Financial Protection required with respect to a single Nuclear Facility under Applicable Law is increased (*including, but not limited to*, an increase in the amount of retrospective premiums payable under the Retrospective Rating Plan), or (c) the amount of retrospective premiums payable under the Retrospective Rating Plan in any one year with respect to two or more Nuclear Incidents is increased; (iv) the provisions of the penultimate sentence of Section 170b. of the Atomic Energy Act, 10 C.F.R. Section 140.22 or 10 C.F.R. Section 140.92 shall be modified or changed in any material respect; (v) the Lessor or the Owner Participant may become liable or responsible in any capacity (*including, without limitation*, through assessments imposed by a Governmental Authority) for payments owed in respect of the Nuclear Waste Fund (as such term is used in Section 302 of the Nuclear Waste Act) or in respect of the handling or disposal of nuclear waste, decontamination, storage, transportation or safekeeping of radioactive or hazardous materials or any other obligation in the nature of the foregoing; (vi) the Lessor, the Owner Participant or the Lessee may be prohibited from asserting any right, protection or defense available under Applicable Law as of the Closing Date with respect to civil or criminal actions brought in connection with a Nuclear Incident (*including, without limitation*, through an expansion of the waiver of defenses provision under subsection 170n. of the Atom

Energy Act); (vii) there shall be expressly created a new cause of action whereby any Person who pays or will pay retrospective premiums under the Retrospective Rating Plan or other assessments required under Applicable Law may recover the amount of such payments from the facility in which a Nuclear Incident occurs or from any Person associated with such facility; (viii) there shall be a third tier or additional level of potential or real liability (*including* assessments imposed by a Governmental Authority) with respect to a Nuclear Facility; (ix) there shall be any type of claim, liability or expense (*other than* the costs of investigating and settling claims and defending suits for damage) excluded from the limitation of liability established by the Price-Anderson Act (through modification of the definitions of "aggregate liability," "persons indemnified," "nuclear incident" or otherwise) or excluded (or the funding or payment thereof deferred) under insurance or other Financial Protection required under Applicable Law as in effect on the Closing Date, *except* to the extent and in the amount expressly excluded or deferred pursuant to Applicable Law as in effect on the Closing Date; or (x) the Lessor or the Owner Participant may be exposed, during the Lease Term or after the Lease Termination Date to any other increased real or potential liability (*including, without limitation*, through assessments imposed by a Governmental Authority) with respect to a Nuclear Incident or otherwise relating to the operation of PVNGS or the transactions contemplated by the Participation Agreement; *provided, however*, that no such change, interpretation or significant development shall constitute a Deemed Loss Event if and for so long as such change, interpretation or significant development meets all the conditions constituting a Safe Harbor Change. For purposes of this clause (2), the requirement or existence of insurance, retrospective premiums, indemnities (whether by the Lessee or any other Person) or other forms of Financial Protection (similar or dissimilar to the foregoing) shall not be deemed to eliminate or negate any exposure of the Lessor or the Owner Participant to real or potential increased liability.

(3) *Insurance.* The Lessee shall not be in compliance with Section 10 of the Facility Lease.

(4) *License.* Any expiration, revocation, suspension, amendment or interpretation by any Governmental Authority of the License or any other change in Applicable Law or Governmental Action, as a result of which, prior to the Lease Termination Date, either the Lessor or the Owner Participant is or might (i) be required to be or become a licensee under the Atomic Energy Act with respect to Unit 2 or (ii) be subject to the obligations or liabilities imposed as of the Closing Date (or thereafter) on licensees under the Atomic Energy Act with respect to Unit 2 or (iii) be otherwise subject to significant regulation.

(5) *Multiple Incidents.* The occurrence (i) of two or more incidents (including incidents occurring outside the United States of America), in each case at any Nuclear Facility or Facilities using a Combustion Engineering pressurized water reactor nuclear steam supply system, or another nuclear steam supply system of comparable design or comparable components, the failure of which Combustion Engineering pressurized water reactor nuclear steam supply system or other nuclear steam supply system of comparable design or comparable components results in (x) a discharge or dispersal of radioactive material off-site when, as a result of an event comprised of one or more related happenings, radioactive material is released from its intended place of confinement, in amounts off-site, or causing radiation levels off-site, which result in off-site surface radiation levels measured over a contiguous or non-contiguous area of 100 square meters of (A) alpha particles from transuranic isotopes in excess of .35 microcuries per square meter, (B) alpha particles from all other isotopes in excess of 3.5 microcuries per square meter or (C) either beta or gamma particles in excess of 4 millirads per hour as measured at a height of one centimeter (measured through not more than 7 milligrams per square centimeter of total absorber), *provided, however*, that (I) if the level of radiation constituting an Extraordinary Nuclear Occurrence is reduced by the NRC from those set forth herein, then the levels set forth herein shall be reduced equivalently or (II) if alternative criteria for determining an Extraordinary Nuclear Occurrence are adopted by the NRC, then the criteria set forth herein shall be modified to be consistent with the criteria established by the NRC, or (y) (A) the radiation level in the containment vessel as measured by the average of two high range radiation monitors in the top half of such containment

vessel (or if only one such monitor is operating at such time, such monitor) averaged over one hour equals or exceeds 1,000 rad per hour; or (B) any measure of radioactivity in the primary coolant system shall exceed by 1,000 times the limiting conditions for operation specified in the technical specifications for Unit 2 (as in effect on the Closing Date); or (z) damage to off-site property, *including, without limitation,* costs for decontamination, in amounts in excess of $15,000,000; (ii) within a five-year period of three or more incidents, of the type and severity described in subclause (i)(x), (y) or (z) above, at any Nuclear Facility or Facilities (*including* incidents occurring outside the United States of America).

(6) *Illegality; Exercise of Rights and Remedies.* Any change in Applicable Law or any Governmental Action the effect of which is or might be (i) to make any of the transactions contemplated by the Transaction Documents unauthorized, illegal or otherwise contrary to Applicable Law, (ii) to impede the exercise by the Lessor or the Owner Participant of any right or remedy under any Transaction Document relating to the assertion of claims for Rent or monetary damages, (iii) to cause the Lessor or the Owner Participant to be or become liable in any capacity in respect of Decommissioning, *including, without limitation,* all or any portion of the Termination Obligation (as defined in the ANPP Participation Agreement), or (iv) to constitute an assertion to the effect that (a) the exercise by the Lessor or the Owner Participant of any right (irrespective of the event giving rise to such right) under any Transaction Document would constitute impermissible control over Unit 2 or the licensees of Unit 2, *other than* an assertion consistent with the second sentence of Section 184 of the Atomic Energy Act and the NRC's regulations thereunder, *including, without limitation,* 10 C.F.R. Section 50.81, as now in effect or (b) the acquisition or transfer of the Undivided Interest was in violation of, or otherwise contrary to, Applicable Law.

(7) *Radiation Level.* Except as a result of controlled movement of spent fuel into or within the spent fuel storage facility for Unit 1 or 3, the radiation level in the fuel building above either such storage facility, as measured by a valid radiation measuring instrument located in such building above either such storage facility, shall be more than 1,000 times the average of the previous five readings of such measuring instruments over a period of not less than 24 hours.

Default shall mean an event or condition which, with the giving of notice or lapse of time, or both, would constitute an Event of Default.

Directive shall mean an instrument in writing executed in accordance with the terms and provisions of the Indenture by the Holders, or their duly authorized agents or attorneys-in-fact, representing a Majority in Interest of Holders of Notes, directing the Indenture Trustee to take or refrain from taking the action specified in such instrument.

Early Payment Obligation shall mean the obligation of the Lessee to pay to the Lessor the amount specified in clause (A) of the first sentence of Section 9(c) or clause (A) of the third sentence of Section 9(d) of the Facility Lease.

Economic Useful Life shall mean that period commencing on the date as of which the determination of Economic Useful Life is to be made as provided in Section 8(g) of the Facility Lease and ending on the date upon which it can reasonably be anticipated that Unit 2 will no longer be useful to, and usable by, the ANPP Participants as a facility for the generation of electric power or Unit 2 is no longer an economic and commercially practical and feasible facility for the generation of electric power capable of producing (after taking into account costs of capital) a reasonable economic return to the owner thereof, whichever is expected to occur earlier. For the purpose of determining Economic Useful Life, all relevant factors shall be taken into account (as such factors obtain on the date of determination and as such factors are reasonably anticipated to obtain in the future), including all relevant contractual and other arrangements, Governmental Actions, physical and other aspects of Unit 2, market conditions and technological developments.

El Paso shall mean El Paso Electric Company, a Texas corporation.

El Paso Net Worth shall mean the consolidated common stockholders equity of El Paso and any successor, as shown in its audited financial statement as of December 31 of the most recent year.

Equity Portion of Rent shall mean (i) in the case of any payment of Basic Rent, the amount of Basic Rent payable under the Facility Lease reduced by the principal and interest then due and payable on the Notes, (ii) in the case of any payment of Casualty Value, Special Casualty Value, Termination Value or Special Termination Value, the amount thereof reduced by the principal amount of and accrued and unpaid interest (since the Basic Rent Payment Date immediately preceding the date of payment) on the Outstanding Notes or (iii) in the case of any payment of Supplemental Rent not described in (ii) above, the amount thereof payable to the Owner Participant.

ERISA shall mean the Employee Retirement Income Security Act of 1974, as amended.

Estimated Transaction Expenses shall have the meaning set forth in Section 5(a) of the Participation Agreement.

Event of Default shall have the meaning set forth in Section 15 of the Facility Lease.

Event of Loss shall mean any of the following events: (a) a Final Shutdown, (b) a Requisition of Title or (c) a Requisition of Use for a period which exceeds five years or ends on or after the last day of the Lease Term (including any elected Renewal Term).

Excepted Payments shall mean (i) all payments of Supplemental Rent, *other than* payments by the Lessee (x) of Casualty Value paid pursuant to Section 16 of the Facility Lease or Termination Value or (y) of indemnity payments to which either the Loan Participant or any Indemnitee other than the Owner Trustee or the Owner Participant (or the respective successors, assigns, agents, officers, directors or employees of the Owner Trustee or the Owner Participant) is entitled, (ii) any amounts payable under any Transaction Document to reimburse the Lessor or the Owner Participant (*including* the reasonable expenses of the Lessor or the Owner Participant incurred in connection with any such payment) for performing or complying with any of the obligations of the Lessee under and as permitted by any Transaction Document, (iii) any amount payable to the Owner Participant by any Transferee as the purchase price of the Owner Participant's interest in the Trust Estate or by the Lessee in the case of the Special Transfer, (iv) so long as no Indenture Event of Default shall have occurred and be continuing, all payments of Basic Rent, Casualty Value, Termination Value, Special Termination Value or Special Casualty Value in excess of amounts then due and owing in respect of the principal of and premium, if any, and interest on all Notes Outstanding, (v) any insurance proceeds with respect to an Event of Loss in excess of amounts then due and owing in respect of the principal of and premium, if any, and interest on all Notes Outstanding, (vi) any insurance proceeds (or payments with respect to risks self-insured) under liability policies, (vii) any amount payable pursuant to the Letter of Credit or any reimbursement agreement or similar agreement relating to the Letter of Credit and (viii) any payments in respect of interest to the extent attributable to payments referred to in clauses (i) through (vii) above.

Excess Amount shall have the meaning set forth in Section 19(f) of the Participation Agreement.

Existing Mortgages shall mean the Indenture of Mortgage dated as of October 1, 1946, between El Paso and State Street Trust Company (now State Street Bank and Trust Company), as Trustee, and the Indenture of Mortgage dated as of June 1, 1981, between El Paso and First City National Bank of El Paso, as Trustee.

Extension Letter shall mean the Extension Letter dated December 18, 1986 and addressed to the Collateral Trust Trustee by the parties to the Participation Agreement.

Extraordinary Nuclear Occurrence shall have the meaning assigned in Section 11 of the Atomic Energy Act and the related NRC regulations (10 C.F.R. §§ 140.84 and 140.85) as in effect as of the Closing Date.

Facility Cost shall mean the Purchase Price *plus* the sum of (x) all Supplemental Financing Amounts and (y) all Additional Equity Investment amounts.

Facility Lease shall mean the Facility Lease, dated as of December 1, 1986, between El Paso, as Lessee, and the Owner Trustee, as Lessor.

Fair Market Rental Value or *Fair Market Sales Value* of any property or service shall mean the value, which shall not in any event be less than zero, of such property or service for lease or sale determined on the basis of an arm's-length transaction for cash between an informed and willing lessee or purchaser (under no compulsion to lease or purchase) and an informed and willing lessor or seller (under no compulsion to lease or sell), and shall take into account (except when used in Section 16(a) of the Facility Lease) the existence of the Decommissioning Trust Fund, the Second Fund, if any, and the Lessee's obligations under Section 10(b)(3)(xi) of the Participation Agreement and shall take into account the Lessor's rights and obligations under the Assignment and Assumption and the Assignment of Beneficial Interest and rights under the Deed and the Bill of Sale (or the ground lease referred to in Section 10(b)(3)(xiv) of the Participation Agreement, as appropriate), but shall be without regard to any rights of the Lessee (including any renewal options) under the Facility Lease. *Except* pursuant to Section 16(a) of the Facility Lease or Section 6.01 of the Assignment and Assumption, *Fair Market Rental Value* and *Fair Market Sales Value* of the Undivided Interest and the Real Property Interest shall be determined on the assumption that (i) Unit 2 has been maintained in accordance with, and the Lessee has complied with, the requirements of the Facility Lease and the other Transaction Documents and the ANPP Participation Agreement, and (ii) the Lessee or El Paso, as possessor of the Undivided Interest and the Real Property Interest, is otherwise in compliance with the requirements of all Transaction Documents. Fair Market Rental Value shall be determined on the assumption that rent will be payable in equal semi-annual installments in advance.

FCNB shall mean First City National Bank of Houston, a national banking association.

Federal Power Act shall mean the Federal Power Act, as amended.

Federal Securities shall have the meaning set forth in Section 2.3(c) of the Indenture.

FERC shall mean the Federal Energy Regulatory Commission of the United States of America or any successor agency.

FERC Order shall mean the Order issued by the FERC on July 16, 1986 (Docket No. EC86-18-000) as supplemented by the letter dated November 14, 1986 from the Chief Accountant of the FERC (Docket No. ES87-8-000).

Final Shutdown shall mean the earliest to occur of:

(1) the expiration or revocation of the License or that portion of the License that permits the operation of Unit 2 or the expiration, suspension or revocation of the License or that portion of the License that permits the possession by the Lessee of the Undivided Interest and the Real Property Interest;

(2) (x) the suspension of the License or that portion of the License which permits operation of Unit 2, which suspension remains in effect for three consecutive calendar months; (y) any order of or direction (or series of orders or directions) by the NRC or any other Governmental Authority that Unit 2 suspend operations for reasons of radiological health and safety for a Period exceeding 24 months; or (z) any cessation of operation of Unit 2 for a period of 24 months if the resumption of operations requires the concurrence of the NRC or any other Governmental Authority;

(3) the permanent or temporary cessation of operation of Unit 1, 2 or 3 as a result of a Nuclear Incident at Unit 1, 2 or 3 (or if such Unit is not in operation immediately prior to the occurrence of such Nuclear Incident, the failure to resume operation thereof as a result of such Nuclear Incident) if (A) the Period of such cessation or failure equals or exceeds twenty-four consecutive calendar months, or (B) such Nuclear Incident causes the radiation level in the containment vessel of such Unit, as measured by the average of two high range radiation monitors in such containment vessel of such Unit (or if only one such monitor is operating at such time, such monitor) over one hour to equal or exceed 200 rad per hour; *provided, however*, that this subsection (B) shall not apply in respect of a Nuclear Incident arising solely from a fuel handling accident;

(4) (i) the occurrence of a Nuclear Incident at Unit 1, 2 or 3 causing (A) substantial injury or death to any person on or off the PVNGS Site or (B) a discharge or dispersal of "source," "special nuclear material" or "byproduct material". (as defined in the Atomic Energy Act) from its intended place of confinement in amounts off the PVNGS Site or causing radiation levels off the PVNGS Site such that, in the case of (B) above, (x) the NRC declares the occurrence of an Extraordinary Nuclear Occurrence or declares any other event connoting an equivalent level of accident or (y) the surface contamination dose rate measured off the PVNGS Site by a radiation monitor at 1 meter above the surface level equals or is greater at any time than 10 millirads/hour (0.10 milligray/hour) or, in the case of noble gas plume passage, 10 rads (0.10 gray) integrated over 24 hours, or if the NRC shall at any time lower the radiation levels required for the occurrence of an Extraordinary Nuclear Occurrence, such lower levels as shall be consistent with such change by the NRC, or (ii) the occurrence at PVNGS of a discharge or dispersal of radioactive material when, as a result of an event comprised of one or more related happenings, radioactive material is released from its intended place of confinement in amounts off-site resulting in an aggregate cost of decontamination estimated to be in excess of $10,000,000;

(5) the declaration by the Operating Agent of a site area emergency set forth in the PVNGS Emergency Plan for any reason other than a drill or false alarm;

(6) except as a result of controlled movement of spent fuel into or within the spent fuel storage facility for Unit 2, the radiation level in the fuel building above such storage facility, as measured by a radiation measuring instrument located in such building above such storage facility, shall be more than 1,000 times the average of the previous five readings of such measuring instrument over a period of not less than 24 hours;

(7) destruction of Unit 2, or damage to any portion of Unit 2 and, unless the Lessee theretofore shall have exercised its purchase option under Section 13(b) of the Facility Lease, the failure of the Lessee, or of the Lessee and one or more other ANPP Participants, (A) to agree within eighteen calendar months of such damage or destruction (or prior to such earlier date as of which one or more other ANPP Participants shall agree to restore or reconstruct any damaged portion of Unit 2 in accordance with Section 16.2 of the ANPP Participation Agreement) to restore or reconstruct Unit 2 to completion prior to the day sixty calendar months after the date of such agreement and (B) thereafter to complete the restoration and reconstruction of Unit 2 within a period of sixty calendar months after the date of such agreement, but in no event later than the end of the Lease Term, *provided* that no Final Shutdown shall be deemed to have occurred pursuant to this clause (7) if and so long as Unit 2 is in operation at a rated core power level of a least 1900 megawatts thermal; or

(8) the operation of Unit 2 at a net rated capacity below 630 megawatts electric, or the non-operation of Unit 2, by reason of the fact that its net rated capacity is below 630 megawatts electric, or any combination thereof, for any reason *other than* as a result of damage to Unit 2.

For purposes of this definition, a Final Shutdown in consequence of the occurrence of an event described in clause (4) shall be deemed to have occurred immediately upon the occurrence of any of the following: (i) the water level within the primary coolant vessel shall decline to a level which is three feet above the nuclear core, (ii) the water level within the spent fuel storage facility shall decline to a level which is three feet above the top of any fuel which has been in the reactor core within the prior 12 months, (iii) the pressure within the primary coolant system shall decrease by in excess of 1000 pounds per square inch in a period of less than 5 minutes or (iv) the departure from nucleate boiling ratio shall be less than 0.9; and a Final Shutdown in consequence of the occurrence of an event described in clause (6) shall be deemed to have occurred immediately if the water level is three feet above any fuel which has been in the reactor core within the prior 12 months.

Financing Documents shall mean the Collateral Trust Indenture, the Bond Supplemental Indenture, the Extension Letter and the Underwriting Agreement.

Financial Protection shall have the meaning assigned in the Price-Anderson Act, as in effect as of the Closing Date; provided that if the Price-Anderson Act shall be amended to expand the meaning of the term "financial.protection," the term "Financial Protection" shall be similarly expanded.

FNB shall mean The First National Bank of Boston, in its individual capacity, and its successors and assigns.

Form U-7D shall mean the certificate to be filed pursuant to Rule 7(d) of the Holding Company Act for the purpose of exempting the Owner Participant and the Owner Trustee from registration under the Holding Company Act.

Generating Unit shall mean Unit 1, 2 or 3 or any of the other Generating Units (as such term is defined in the ANPP Participation Agreement) constituting PVNGS.

Generation Entitlement Share shall have the meaning assigned thereto in the ANPP Participation Agreement and (i) when used in reference to Unit 2, shall mean the Generation Entitlement Share of El Paso as the ANPP Participant with respect to its 15.8% interest in Unit 2, (ii) when used in reference to the Undivided Interest, shall mean the Generation Entitlement Share attributable to a 1.998026% undivided interest in Unit 2, and (iii) when used in Section 19 of the Facility Lease, shall refer to all Generating Units at PVNGS.

Governmental Action shall mean all authorizations, consents, approvals, waivers, exceptions, variances, orders, licenses, exemptions, publications, filings, notices to and declarations of or with any Governmental Authority (other than routine reporting requirements the failure to comply with which will not affect the validity or enforceability of any of the Transaction Documents or have a material adverse effect on the transactions contemplated by any Transaction Document or any Financing Document) or any other action in respect of any Governmental Authority and shall include, without limitation, all siting, environmental and operating permits and licenses which are required for the use and operation of Unit 2, including the Undivided Interest and the Real Property Interest.

Governmental Authority shall mean any Federal, state, county, municipal, foreign, international, regional or other governmental authority, agency, board, body, instrumentality or court.

Holders shall mean the holders of the Notes or the Bonds, as the context may require.

Holding Company Act shall mean the Public Utility Holding Company Act of 1935, as amended.

Indemnitee shall mean the Owner Participant, the Owner Trustee, FNB, the Loan Participant, First City National Bank of Houston, the Indenture Trustee, the Paying Agent, the Banks, each Holder of a Note from time to time Outstanding, the Collateral Trust Trustee, the Trust, the Trust Estate, the Lease Indenture Estate, the indenture estate under the Collateral Trust Indenture, any Affiliate of any of the foregoing and the respective successors, assigns, agents, officers, directors or employees of the foregoing, excluding, however, any ANPP Participant other than the Owner Trustee or the Owner Participant.

Indenture shall mean the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents, dated as of December 1, 1986, between the Owner Trustee and First City National Bank of Houston.

Indenture Default shall mean an event which, after giving of notice or lapse of time, or both, would become an Indenture Event of Default.

Indenture Event of Default shall mean any of the events specified in Section 6.2 of the Indenture.

Indenture Trustee shall mean First City National Bank of Houston, a national banking association, not in its individual capacity, but solely as Indenture Trustee under the Indenture and each successor trustee and co-trustee thereunder.

Indenture Trustee's Liens shall mean Liens against the Lease Indenture Estate which result from acts of, or any failure to act by, or as a result of claims against, the Indenture Trustee, in its individu

capacity, unrelated to the transactions contemplated by the Transaction Documents or the Financing Documents.

Indenture Trustee's Office shall mean the office of the Indenture Trustee located at First City Financial Center, 1301 Fannin Street, 2lst Floor, Houston, Texas 77002, or such other office as may be designated by the Indenture Trustee to the Owner Trustee and each Holder of a Note Outstanding under the Indenture.

Inflation Index shall mean such annual percentage adjustment in the aggregate amount payable with respect to all Nuclear Facilities under the Retrospective Rating Plan based upon a percentage change in the consumer price index or such other measure as may be provided from time to time in the Price-Anderson Act, as amended from time to time.

Initial Series Bonds shall mean the Lease Obligation Bonds, Series 1986A of the Loan Participant, issued, authenticated and delivered under the Collateral Trust Indenture, as heretofore supplemented and amended and as supplemented by the Bond Supplemental Indenture.

Initial Series Notes shall mean the nonrecourse promissory note, substantially in the form of Exhibits A-1, A-2 and A-3 to the Indenture, to be issued by the Owner Trustee and authenticated by the Indenture Trustee on the Closing Date to finance a portion of the Purchase Price.

Investment shall have the meaning set forth in Section 3(a) of the Participation Agreement.

Investment Company Act shall mean the Investment Company Act of 1940, as amended.

Investment Percentage shall mean the percentage identified as such in Schedule 2 to the Participation Agreement.

IRS shall mean the Internal Revenue Service of the United States Department of the Treasury or any successor agency.

Issuing Bank means the commercial bank, trust company or United States branch or agency of a foreign bank, which issues the Letter of Credit (or any replacement Letter of Credit).

LADWP shall mean the Department of Water and Power of The City of Los Angeles, a department organized and existing under the charter of the City of Los Angeles, a municipal corporation of the State of California.

Lease Indenture Estate shall have the meaning set forth in Section 2.1 of the Indenture.

Lease Term shall mean the aggregate of the Basic Lease Term and the Renewal Term, if any.

Lease Termination Date shall mean the last day of the Lease Term (whether occurring by reason of a termination or expiration of the Lease Term).

Lessee shall mean El Paso Electric Company, a Texas corporation, and its successors and assigns, as Lessee under the Facility Lease and as party to the other Transaction Documents and Financing Documents to which it is a signatory.

Lessee Request shall mean a request of the Lessee delivered pursuant to Section 6.03 of the Collateral Trust Indenture.

Lessor shall mean the Owner Trustee, as lessor under the Facility Lease, and its successors and assigns.

Lessor's Interest shall have the meaning set forth in Section 8(c)(3) of the Participation Agreement.

Lessor's Liens or *Owner Trustee's Liens* shall mean Liens against the Trust Estate or the Lease Indenture Estate (*other than* Permitted Liens, *except* "Lessor's Liens" and "Owner Participant's Liens" referred to in clause (vi) of the definition thereof) for which the Lessee is not responsible and which

result from acts of, or any failure to act by, or as a result of claims against, FNB or the Lessor, unrelated to the ownership of the Undivided Interest or the Real Property Interest, the administration of the Trust Estate or the transactions contemplated by the Transaction Documents or the Financing Documents.

Letter of Credit shall have the meaning set forth in Section 10(b)(3)(xvii) of the Participation Agreement.

License shall mean NRC Facility Operating License No. NPF-51, issued April 24, 1986 (superseding NRC Facility Operating License No. NPF-46, issued on December 9, 1985), as the same may be amended, modified, extended, renewed or superseded from time to time.

License Amendment shall mean the Amendment, dated on or about December 10, 1986 amending the License and approving the transactions contemplated by the Participation Agreement and the Facility Lease.

License Expiration Date shall mean December 9, 2025, or such later or earlier date as the License shall expire or be terminated.

Lien shall mean any mortgage, pledge, security interest, encumbrance, lien, easement, servitude or charge of any kind, including, without limitation, any conditional sale or other title retention agreement, any lease in the nature thereof or the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction.

Loan shall have the meaning set forth in Section 2(a) of the Participation Agreement.

Loan Participant shall mean El Paso Funding Corporation, a Delaware corporation.

Loan Percentage shall mean the percentage identified as such in Schedule 2 to the Participation Agreement.

Majority in Interest of Holders of Notes shall mean Holders of a majority in principal amount of all Notes Outstanding under the Indenture at the time of any such determination.

Material Project Agreements shall mean (i) Arizona Nuclear Power Project (ANPP) Participation Agreement among APS, Salt River Project Agricultural Improvement and Power District, Public Service Company of New Mexico, El Paso Electric Company, Southern California Edison Company, Southern California Public Power Authority, and Los Angles Department of Water and Power, dated August 23, 1973, as amended, (ii) Nuclear Fuel Contract between ANPP and Combustion Engineering, Inc. (CE), dated as of August 20, 1973, (iii) Nuclear Steam Supply Contract between APS and CE, dated as of August 20, 1973, (iv) Turbine Generator Contract between APS and General Electric Company, dated as of March 21, 1974, as amended, (v) Uranium Enrichment Services Contract between the United States of America (USA) and APS, dated November 15, 1984, as amended, and the Associated Supplemental Agreement of Settlement between USA and APS, dated November 15, 1984, (vi) Contract between APS and Westinghouse Electric Corporation for fuel fabrication services for reload of batches of nuclear fuel, dated August 7, 1974, as amended, (vii) Agreement for the Sale and Purchase of Waste Water Effluent between the City of Tolleson, APS, and Salt River, dated June 12, 1981, as amended, (viii) Agreement for Construction of ANPP between Bechtel Power Corporation (Bechtel) and APS dated January 15, 1973, (ix) Agreement for Engineering and Procurement Services between APS and Bechtel, dated January 15, 1973, (x) Option and Purchase of Effluent among the Cities of Phoenix, Glendale, Mesa, Tempe, and Scottsdale, the Town of Youngtown, APS, and Salt River, dated April 23, 1973, (xi) Agreement for Conversion Services between Allied Chemical Corporation and APS, dated November 17, 1975, as amended, (xii) Uranium Concentrate Sales Agreement between Energy Fuels Exploration Company and APS, dated as of December 1, 1983, (xiii) Uranium Concentrate Sales Agreement between Energy Fuels Exploration Company and APS, dated

as of October 23, 1981, as amended, (xiv) Agreement for Sale of Uranium Concentrates between Pathfinder Mines Corporation and APS, dated December 1, 1983, and (xv) Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste between USA and APS, dated July 21, 1984.

Maximum Aggregate Loss shall be computed and applied in respect of Unit 2, including all interests therein, and with respect to each calendar year shall mean the sum of retrospective premiums, if any, payable during such year under the Retrospective Rating Plan with respect to any Nuclear Incident which shall have occurred prior to the date of such calculation.

Maximum Option Period shall mean the period, in no event ending after the earlier to occur of the License Expiration Date and October 1, 2026, (i) at the end of which the residual value of the Undivided Interest (without regard to inflation or deflation from the Closing Date and taking into account the existence and effect of the Assignment and Assumption, the ANPP Project Agreements and the License) shall be at least equal to 20% of Facility Cost, (ii) which, when added to the Basic Lease Term, does not exceed 80% of the economic useful life of the Undivided Interest from the Closing Date and (iii) at the end of which, taking into account the existence and effect of the Assignment and Assumption, the ANPP Project Agreements and the License, the use of the Undivided Interest by any User (in a transaction pursuant to which the Owner Participant could realize the amount referred to in clause (i) above) is feasible from an engineering and economic point of view and is commercially reasonable. Unless the period, as computed in accordance with the preceding sentence, shall end on an April 1 or October 1 of any year, the final date of the Maximum Option Period shall be the final April 1 or October 1 in the period, as so computed.

Mortgage Releases shall mean the releases of liens dated December 15, 1986, under and with respect to the Existing Mortgages.

Net Economic Return shall mean (i) the after-tax book yield, (ii) the total after-tax book earnings over the Lease Term, (iii) ninety percent of the after-tax book earnings for each of the first eight years of the Lease Term and (iv) the total after-tax book earnings over the first eight years of the Lease Term, in each case originally expected by the Owner Participant with respect to the Undivided Interest, utilizing the assumptions, including without limitation the Pricing Assumptions and Tax Assumptions, originally used by the Owner Participant in the initial computation of Basic Rent, Casualty Value, Special Casualty Value, Special Termination Value and Termination Value, it being understood that when there is an adjustment to preserve Net Economic Return each of the elements described in the foregoing clauses (i) through (iv) must be preserved at a level at least as great as that originally anticipated.

Net Worth shall mean the total of common stock, nonredeemable preferred stock and capital surplus and retained earnings, as shown on a consolidated balance sheet of the Lessee or pro forma consolidated balance sheet of the Surviving Lessee, as the case may be, prepared on the basis of generally accepted accounting principles consistently applied.

New Mexico Order shall mean the order issued by the NMPSC on July 16, 1986, in Case No. 2032, as amended by the Amended Order issued on November 14, 1986 in Case No. 2032.

New Mexico Public Utility Act shall mean the New Mexico Public Utility Act, as amended.

NMPSC shall mean the New Mexico Public Service Commission, established pursuant to Section 62-5-1 of New Mexico Statutes Annotated, 1978.

Non-Burdensome Regulation shall mean (i) regulation to which the Owner Participant or the Owner Trustee is otherwise subject by reason of its lease financing or other activities unrelated to the transactions contemplated by the Transaction Documents, (ii) ministerial regulatory requirements which do not impose limitations or regulatory requirements on the business or activities of the Owner Participant and which are deemed, in the reasonable discretion of the Owner Participant, not to be burdensome, (iii) regulation resulting from any possession of the Undivided Interest or the Real Property Interest on or after the Lease Termination Date or (iv) regulation of the Owner Trustee

which would be terminated by the appointment of a successor Owner Trustee or a co-Owner Trustee pursuant to the terms of the Trust Agreement.

Nonseverable, when used with respect to any Capital Improvement, shall mean any Capital Improvement which is not a Severable Capital Improvement.

Noteholder shall mean any Holder from time to time of a Note Outstanding under the Indenture.

Notes shall mean the Initial Series Notes and each Releveraging Note, any Refunding Notes and any other Additional Notes.

Notice of Closing shall have the meaning set forth in Section 5(a) of the Participation Agreement.

NRC shall mean the Nuclear Regulatory Commission of the United States of America or any successor agency.

Nuclear Aggregate Liability shall mean the amount of Aggregate Liability for a single Nuclear Incident of all Persons Indemnified, as determined in accordance with the Price-Anderson Act, as amended from time to time.

Nuclear Facility shall mean a facility designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more.

Nuclear Incident shall have the meaning assigned in the Price-Anderson Act, as in effect as of the Closing Date; provided that if the Price-Anderson Act shall be amended to expand the definition of "nuclear incident," the term "Nuclear Incident" shall be similarly expanded.

Nuclear Waste Act shall mean the Nuclear Waste Policy Act of 1982, as amended, or any comparable successor law.

Officers' Certificate shall mean a certificate signed by the President or any Vice President and by the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Person with respect to which such term is used.

Operating Agent shall have the meaning assigned thereto in the ANPP Participation Agreement.

Outstanding, when used with respect to the Notes, shall mean, as of the date of determination, all such Notes theretofore issued, authenticated and delivered under the Indenture, except (a) Notes theretofore cancelled by the Indenture Trustee or delivered to the Indenture Trustee for cancellation, (b) Notes or portions thereof for the payment of which the Indenture Trustee holds (and has notified the holders thereof that it holds) in trust for that purpose an amount sufficient to make full payment thereof when due, (c) Notes or portions thereof which have been pledged as collateral for any obligations of the obligor thereof to the extent that an amount sufficient to make full payment of such obligations when due has been deposited with the pledgee of such Notes for the purpose of holding such amount in trust for the payment of such obligations in accordance with the indenture or agreement under which such obligations are secured and (d) Notes in exchange for, or in lieu of, which other Notes have been issued, authenticated and delivered pursuant to the Indenture; *provided, however,* that any Note owned by the Lessee or any Affiliate thereof shall be disregarded and deemed not to be Outstanding for the purpose of any Directive.

Overdue Interest Rate shall mean the weighted average rate per annum of interest payable with respect to overdue payments of principal on the Notes Outstanding, computed as set forth in such Notes.

Owner Participant shall mean Commercial Federal Investment Corporation, and its successors and assigns in accordance with the Trust Agreement and the Participation Agreement.

Owner Participant's Liens shall mean Liens against the Trust Estate or the Lease Indenture Estate (other than Permitted Liens, except "Lessor's Liens" and "Owner Participant's Liens" referred to in clause (vi) of the definition thereof) for which the Lessee is not responsible and which result fr

acts of, or any failure to act by, or as a result of claims against, the Owner Participant unrelated to the transactions contemplated by the Transaction Documents or the Financing Documents.

Owner Trustee shall mean The First National Bank of Boston, a national banking association, not in individual capacity, but solely as Owner Trustee under the Trust Agreement, and each successor as trustee, separate trustee and co-trustee thereunder.

Participation Agreement shall mean the Participation Agreement, dated as of December 1, 1986, among the Owner Trustee, the Indenture Trustee, the Loan Participant, the Owner Participant and El Paso.

Paying Agent shall mean Mellon Trust Company, and any successor Paying Agent under the Indenture.

Paying Agent's Office shall mean the address in New York, N.Y. of any Paying Agent under the Indenture, or the address in New York, N.Y., of any successor Paying Agent under the Indenture.

Penalty Rate shall mean 2% per annum in excess of the Prime Rate.

Period shall mean the length of time for which an action or event is stated or otherwise known at its inception to be in existence (determined by the terms of such action or event or the surrounding circumstances), or is expected at its inception to be in existence as determined by an independent nuclear engineering consultant or firm having expertise in the area of nuclear electric generating plants designated by Lessor and Lessee within 10 days after either shall request such designation (which Lessor or Lessee may do at any time after such action or event occurs) or, if Lessor and Lessee are unable to agree on such consultant or firm within such 10-day period, designated by the American Arbitration Association, or any organization successor thereto, within 7 days after either Lessor or Lessee shall request such organization so to do (which Lessor or Lessee may do at any time after the expiration of such 10-day period). Such consultant or firm shall render its determination within 14 days after its designation, which determination shall be final, binding and conclusive on Lessor and Lessee. The fees and expenses of such consultant or firm shall be shared equally by Lessor and Lessee.

Permitted Liens shall mean (i) the respective rights and interests of the Lessee, the Owner Participant, the Lessor, the Loan Participant and the Indenture Trustee, as provided in the Transaction Documents; (ii) the rights of any sublessee or assignee under a sublease or an assignment permitted by the terms of the Facility Lease; (iii) the lien of the Existing Mortgages on the leasehold estate under the Facility Lease; (iv) Liens for taxes on the Undivided Interest or the PVNGS Site either not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, so long as such proceedings shall not (x) involve any danger of the sale, forfeiture or loss of the Undivided Interest, any part thereof or interest therein, (y) interfere with the use, possession or disposition of the Undivided Interest, or any part thereof or interest therein, or (z) impair payment of Rent; (v) inchoate materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's, or other like Liens arising in the ordinary course of business for PVNGS, and not delinquent; (vi) Lessor's Liens, Owner Participant's Liens and Indenture Trustee's Liens; (vii) choate Liens that have been bonded for the full amount in dispute or as to which other security arrangements satisfactory to the Lessor shall have been made and which are being contested diligently by the appropriate party in good faith and by appropriate proceedings so long as such proceedings shall not violate clause (x), (y) or (z) of clause (iv) above; (viii) choate Liens of any of the types described in clause (v) above that have been bonded for the full amount in dispute or as to which other security arrangements satisfactory to the Lessor shall have been made and which arise out of judgments or awards and with respect to which (A) an appeal or proceeding for review is being prosecuted in good faith and for the payment of which adequate reserves shall have been provided as required by good accounting practice and (B) there shall have been secured a stay of execution pending such appeal or proceeding for review, so long as such appeal or proceeding shall not violate clause (x), (y) or (z) of clause (iv) above; (ix) the rights and interests of the Lessee under the Assignment and Assumption; (x) the rights of the NRC under the License; (xi) the rights of the ANPP Participants (other than (i)

the Lessee and (ii) any Person who shall become an ANPP Participant in respect of the Undivided Interest) under the ANPP Participation Agreement or any other ANPP Project Agreement and (xii) Liens on the undivided ownership interests in Unit 2 owned by the ANPP Participants and other Persons (other than the Lessee).

Person shall mean any individual, partnership, corporation, trust, unincorporated association or joint venture, government or any department or agency thereof, or any other entity.

Persons Indemnified shall have the meaning assigned in the Price-Anderson Act, as in effect as of the Closing Date, provided that if the Price-Anderson Act shall be amended to expand the meaning of the term "persons indemnified," the term "Persons Indemnified" shall be similarly expanded.

PNM shall mean Public Service Company of New Mexico, a New Mexico corporation.

Price-Anderson Act shall mean the Price-Anderson Act, Pub. L. No. 85-256, 71 Stat. 576 (1957), as amended to the Closing Date (except as expressly otherwise provided).

Price-Anderson Change shall mean any change in, or new interpretation by a Governmental Authority relating to, Applicable Law, including, without limitation, the Price-Anderson Act or the Atomic Energy Act, the Nuclear Waste Act or the regulations of the NRC, in each case as in effect on the Closing Date.

Pricing Assumptions shall mean the pricing assumptions set forth in Schedule 2 to the Participation Agreement.

Primary Financial Protection shall mean Financial Protection required to be maintained by each Nuclear Facility under Applicable Law, except for such amounts required to be maintained under a Retrospective Rating Plan.

Prime Rate shall mean the rate of interest publicly announced from time to time by Chemical Bank, a New York banking corporation, at its principal office in New York City as its prime or base lending rate. Any change in the Prime Rate shall be effective on the date such change in the Prime Rate is announced.

Project Manager shall have the meaning assigned thereto in the ANPP Participation Agreement.

Prudent Utility Practice shall mean, at a particular time, those practices, methods and acts as are in accordance with standards of prudence applicable to the electric utility industry which would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition.

Purchase Documents shall mean the Bill of Sale, the Deed, the Assignment of Beneficial Interest and such other documents as the Owner Participant, the Owner Trustee, the Indenture Trustee, the Loan Participant or their respective counsel shall deem desirable to convey good and marketable title to the Undivided Interest and the Real Property Interest to the Trust.

Purchase Price shall have the meaning set forth in Section 4(a) of the Participation Agreement.

PVNGS shall mean the Arizona Nuclear Power Project, as that term is defined in the ANPP Participation Agreement.

PVNGS Site shall mean the interest in Title USA Trust No. 530 and the real property described in Exhibit A to the Bill of Sale.

Real Estate Investment shall have the meaning set forth in Section 3(a) of the Participation Agreement.

Real Property Interest shall mean the interest of the Lessor in the PVNGS Site created by the Assignment of Beneficial Interest and the Deed or, if applicable, created by the ground lease referred to in Section 10(b)(3)(xiv) of the Participation Agreement.

Reasonable Basis for a position shall exist if tax counsel may properly advise reporting such position on a tax return in accordance with Formal Opinion 85-352 issued by the Standing Committee on Ethics and Professional Responsibility of the American Bar Association.

Refunding Bonds shall mean the Loan Participant's lease obligation bonds to be issued, authenticated and delivered under the Collateral Trust Indenture, as supplemented by the Refunding Supplemental Indenture, as referred to in Section 2(d) of the Participation Agreement.

Refunding Date shall mean the date of issuance of the Refunding Bonds.

Refunding Loan shall have the meaning set forth in Section 2(d) of the Participation Agreement.

Refunding Notes shall mean the nonrecourse promissory notes, if any, to be issued by the Owner Trustee and authenticated by the Indenture Trustee on the Refunding Date to refund the Initial Series Notes and each Releveraging Note theretofore issued.

Refunding Registration Statement shall mean the registration statement on Form S-3, including all exhibits and all documents incorporated in the Refunding Registration Statement by reference, to be filed with the SEC under the Securities Act in connection with the offer, issue and sale of the Refunding Bonds.

Refunding Supplemental Indenture shall mean the Refunding Bond Supplemental Indenture, among El Paso, the Loan Participant and the Collateral Trust Trustee, supplementing the Collateral Trust Indenture and providing, among other things, for the issuance of the Refunding Bonds.

Registration Statement shall mean the registration statement on Form S-3, including all exhibits and all documents incorporated in the Registration Statement by reference, filed with the SEC (Registration No. 33-10317) under the Securities Act in connection with the offer, issue and sale of the Initial Series Bonds.

Releveraging Amount shall mean (i) the initial principal amount of each series of Releveraging Bonds, or (ii) the initial principal amount of the Refunding Bonds to the extent such amount is in excess of the Initial Series Bonds being refunded, but only in an amount equal to the amount that the related Refunding Note exceeds the aggregate amount of the Initial Series Notes and any Releveraging Notes theretofore issued.

Releveraging Bonds shall mean a series of securities issued, authenticated and delivered under the Collateral Trust Indenture, part of the proceeds of which is used to refund to the Owner Participant a portion of its Investment.

Releveraging Date shall mean the date of issuance of Releveraging Bonds.

Releveraging Loan shall have the meaning set forth in Section 2(c) of the Participation Agreement.

Releveraging Note shall mean a non-recourse promissory note or notes, substantially in the form of the Initial Series Notes or, if the Refunding Date shall have occurred, the Refunding Note or Notes, to be issued by the Owner Trustee and authenticated by the Indenture Trustee on the Releveraging Date to refund to the Owner Participant a portion of the Investment.

Renewal Term shall have the meaning set forth in Section 12 of the Facility Lease.

Rent Increase shall have the meaning set forth in Section 3(g) of the Facility Lease.

Rent shall mean Basic Rent and Supplemental Rent.

Requisition of Title shall mean any circumstance or event in consequence of which Unit 2 or the Undivided Interest (or all or any portion of the Real Property Interest the loss of which would significantly interfere with the use of Unit 2 or the Undivided Interest) shall be condemned or seized or title thereto shall be requisitioned or taken by any Governmental Authority under power of eminent domain or otherwise and all administrative or judicial appeals opposing such condemnation, seizure or taking shall have been exhausted or the period for such appeal shall have expired, so long as such appeals are undertaken in good faith and are being diligently pursued.

Requisition of Use shall mean any circumstance or event (other than a Requisition of Title) in consequence of which the use of Unit 2 or the Undivided Interest (or all or any portion of the Real Property Interest the loss of which would significantly interfere with the use of Unit 2 or the Undivided Interest) shall be requisitioned or taken by any Governmental Authority under power of eminent domain or otherwise.

Responsible Officer shall mean, with respect to the subject matter of any covenant, agreement or obligation of any party contained in any Transaction Document, the President, or any Vice President, Assistant Vice President, Treasurer, Assistant Treasurer or other officer who in the normal performance of his operational responsibility would have knowledge of such matter and the requirements with respect thereto.

Retained Assets shall mean (i) the Lessee's interest in PVNGS other than the Undivided Interest and the Real Property Interest, (ii) Severable Capital Improvements title to an undivided interest in which is retained by the Lessee in accordance with Section 8(e) of the Facility Lease, and (iii) any additional interest in and to PVNGS (other than the Undivided Interest and the Real Property Interest) to which the Lessee becomes entitled in consequence of Section 16.2 or 23.5 of the ANPP Participation Agreement (*except* as otherwise provided in Section 5(a) or 19 of the Facility Lease).

Retrospective Rating Plan shall mean the industry retrospective rating plan established pursuant to the Price-Anderson Act, or any successor or similar plan established under Applicable Law.

Safe Harbor Change shall mean the first Substantial Amendment enacted after the Closing Date, if, upon the effective date of such Substantial Amendment and at all times thereafter (as shall be determined from time to time), as a result of such Substantial Amendment, in the opinion of independent counsel to the Owner Participant, (i) Nuclear Aggregate Liability shall not exceed either (a) the amount of Financial Protection required to be maintained by each Nuclear Facility with respect to a single Nuclear Incident or (b) (x) on the date of enactment $7 billion, regardless of the number of Nuclear Facilities then in service, and (y) at all times thereafter $7 billion as adjusted for the number of Nuclear Facilities then in service multiplied by the Inflation Index, if any; (ii) commencing as of December 31 of any year in which Nuclear Aggregate Liability is equal to or exceeds $7 billion, El Paso Net Worth shall be equal to or greater than .075 times Nuclear Aggregate Liability; *provided, however,* that if El Paso Net Worth shall be less than .075 times Nuclear Aggregate Liability, then the Substantial Amendment shall no longer constitute a Safe Harbor Change only if, in the year following the year for which the computation was made, El Paso Net Worth shall not equal or exceed .075 times Nuclear Aggregate Liability computed for such following year; (iii) the amount of Primary Financial Protection available from commercial insurance underwriters on terms substantially equivalent (in the reasonable opinion of the Owner Participant) to the terms in effect on the Closing Date under Applicable Law and required to be maintained by licensees with respect to any single Nuclear Facility shall be at least equal to the amount required under Applicable Law (which amount shall not exceed $500 million); (iv) Maximum Aggregate Loss per year shall not exceed (x) $25 million or (y) commencing as of December 31 of any year in which Nuclear Aggregate Liability is equal to or greater than $7 billion, $25 million multiplied by the Inflation Index, if any; (v) the provisions of the penultimate sentence of Section 170b, of the Atomic Energy Act, 10 C.F.R.§ 140.22, and 10 C.F.R. § 140.92 (as such regulation and form of indemnity agreement relate to the guarantee of the NRC of defaults by licensees under the Retrospective Rating Plan) as in effect on the Closing Date, shall not have been amended or modified in any material respect; (vi) the NRC shall be required to fulfill payment obligations when due from a licensee liable for damage arising out of or related to a Nuclear Incident in the event that the payment obligations of such licensee in any calendar year exceed the amount payable by such licensee in respect of such Nuclear Facility in such year under the Retrospective Rating Plan; *provided, however,* that the NRC shall be entitled to reimbursement through the Retrospective Rating Plan as such payments are made over time; (vii) neither the Lessee nor any other Persons Indemnified will be required to waive the defense of the statute of limitations (existing under any Applicable Law) with respect to a Nuclear Incident *(except* an Extraordinary Nuclear Occurrence); with respect to an Extraordinary Nuclear Occurrence such defense shall b

waived only as to suits instituted within 30 years after the date the Extraordinary Nuclear Occurrence which is the subject of the suit takes place or within a prescribed number of years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof; (viii) neither the Lessor nor the Owner Participant shall be exposed to any increased real or potential liability (*including* assessments imposed by a Governmental Authority) with respect to activities authorized by the Nuclear Waste Act; (ix) none of the results contemplated in subclauses (vii) and (ix) of clause (2) in the definition of Deemed Loss Event shall have occurred; and (x) (a) neither the Lessor nor the Owner Participant shall, in the opinion of independent counsel to the Owner Participant delivered within six months of such Substantial Amendment, be exposed to any other material increase in its real or potential liability with respect to a Nuclear Incident, either before, on or after the Lease Termination Date, *except* for liability arising with respect to a Nuclear Incident which takes place after the Lessor or the Owner Participant, as the case may be, becomes a licensee of the NRC, and (b) neither the Lessor, the Owner Participant nor the Lessee shall be prohibited from asserting any other right, protection or defense available under Applicable Law as in effect on the Closing Date other than those rights, protections and defenses which are waived pursuant to this definition of Safe Harbor Change; provided, however, that an expansion of the waiver of defenses provision of subsection 170n.(1) of the Atomic Energy Act so that such waivers are applicable with respect to an Extraordinary Nuclear Occurrence arising out of or resulting from or occurring in the course of (a) transportation of source material, byproduct material, or special nuclear material to or from any facility licensed under Section 53, 63 or 81 of the Atomic Energy Act, (b) activities undertaken by the Secretary, *including, but not limited to,* activities related to the storage or disposal of high-level radioactive waste or (c) the construction, possession or operation of any facility licensed under Section 53, 63 or 81 of the Atomic Energy Act, shall not be deemed to expose the Lessor, the Owner Participant or the Lessee to any increased real or potential liability.

Sale Proceeds shall mean, with respect to any sale of the Undivided Interest and the Real Property Interest by the Lessor to any Person other than the Lessee, the gross proceeds of such sale payable in cash, less all costs and expenses whatsoever incurred by the Lessor and the Owner Participant in connection therewith.

Salt River shall mean Salt River Project Agricultural Improvement and Power District, an Arizona agricultural improvement district.

SCPPA shall mean Southern California Public Power Authority, a California joint powers agency (doing business in Arizona as Southern California Public Power Authority Association).

SEC shall mean the Securities and Exchange Commission of the United States of America, or any successor agency.

Second Fund shall have the meaning set forth in Section 10(b)(3)(xi) of the Participation Agreement.

Secretary shall mean the Secretary of Energy.

Section 6(c) Application shall mean the Loan Participant's Application for an Order under Section 6(c) of the Investment Company Act of 1940 Exempting El Paso Funding Corporation from All Provisions of such Act, as filed with the SEC on April 11, 1986, and as amended by Amendment No. 1 thereto dated July 11, 1986.

Securities Act shall mean the Securities Act of 1933, as amended.

Securities Exchange Act shall mean the Securities Exchange Act of 1934, as amended.

Severable, when used with respect to any Capital Improvement, shall mean any Capital Improvement which can be readily removed from Unit 2 without materially damaging Unit 2 or materially diminishing or impairing the value, utility or condition of Unit 2.

Southern California shall mean Southern California Edison Company, a California corporation.

Special Casualty Value, as of any date of determination thereof, shall mean (i) during the Basic Lease Term, the percentage of Facility Cost set forth opposite the date in Schedule 2 to the Facility Lease immediately succeeding such date of determination (or, if such date of determination is specified in Schedule 2 to the Facility Lease, such date), and (ii) during the Renewal Term, t amount determined by amortizing ratably the Fair Market Sales Value of the Undivided Interest as the day following the last day of the Basic Lease Term in monthly steps over the period from such date to the License Expiration Date. Anything contained in the Participation Agreement or the Facility Lease to the contrary notwithstanding, Special Casualty Value shall be, when added to all other amounts which the Lessee is required to pay under Section 9(d) of the Facility Lease, under any circumstances and in any event, in an amount at least sufficient to pay in full, as of any date of payment, the aggregate unpaid principal amount of all Notes Outstanding at the close of business on such date, together with accrued and unpaid interest on such Notes.

Special Termination Value, as of any date, shall mean the percentage of Facility Cost set forth opposite such date in Schedule 4 to the Facility Lease. Anything contained in the Participation Agreement or the Facility Lease to the contrary notwithstanding, Special Termination Value shall be, when added to all other amounts which the Lessee is required to pay under Section 13(c) of the Facility Lease, under any circumstances and in any event, in an amount at least sufficient to pay in full, as of any date specified on Schedule 4 to the Facility Lease, the aggregate unpaid principal amount of all Notes Outstanding at the close of business on such date, together with accrued and unpaid interest on such Notes.

Special Transfer shall have the meaning set forth in Section 7(b)(4) of the Participation Agreement.

Substantial Amendment shall mean any amendment to the Price-Anderson Act or the Atomic Energy Act which would constitute a Deemed Loss Event under clause (2) of the definition of Deemed Loss Event.

Supplemental Financing shall mean a financing of the Supplemental Financing Amount of Capi Improvements made pursuant to Section 8(f) of the Facility Lease.

Supplemental Financing Amount shall mean the Applicable Unit 2 Percentage of the cost of a Capital Improvement which equals (i) the amount of the increase, if any, in the Owner Participant's basis in the Undivided Interest for purposes of section 1012 or 1016 of the Code as a result of such Capital Improvement less (ii) the amount of the related Additional Equity Investment of the Lessor, if any.

Supplemental Rent shall have the meaning set forth in Section 3(b) of the Facility Lease.

Surviving Lessee shall have the meaning set forth in Section 10(b)(3)(ii) of the Participation Agreement.

Taxes shall mean any and all fees (including, without limitation, documentation, recording, license and registration fees), taxes (including, without limitation, net income, franchise, value added, ad valorem, excise, gross income, gross receipts, sales, use, property, personal and real, tangible and intangible, and stamp taxes), levies, imposts, duties, charges, assessments, or withholdings of any nature whatsoever, general or specific, ordinary or extraordinary, together with any and all penalties, fines, additions to tax and interest thereon.

Tax Assumptions shall mean the assumptions set forth in Section 13(c) of the Participation Agreement with respect to the Federal income tax consequences of the transactions contemplated by the Participation Agreement.

Tax Reform Act of 1986 shall mean Pub.L.No. 99-514, the Tax Reform Act of 1986.

Termination Date shall have the meaning set forth in Section 14(a) of the Facility Lease.

Termination Event shall mean any early termination of the Facility Lease in accordance with Section 14 thereof.

Termination Notice shall have the meaning set forth in Section 14(a) of the Facility Lease.

Termination Obligation shall have the meaning set forth in Section 15.10.2 of the ANPP Participation Agreement (or any comparable successor provision).

Termination Value, as of any Basic Rent Payment Date, shall mean the percentage of Facility Cost set forth opposite such date in Schedule 3 to the Facility Lease. Anything contained in the Participation Agreement or the Facility Lease to the contrary notwithstanding, Termination Value shall be, when added to all other amounts which the Lessee is required to pay under Section 14 of the Facility Lease, under any circumstances and in any event, in an amount at least sufficient to pay in full, as of any Basic Rent Payment Date, the aggregate unpaid principal amount of all Notes Outstanding at the close of business on such date, together with accrued and unpaid interest on such Notes.

Texas Public Utility Regulatory Act shall mean the Texas Public Utility Regulatory Act of 1975, as amended, or any comparable successor law.

Transaction Documents shall mean the Participation Agreement, the Facility Lease, the Trust Agreement, the Indenture, the Extension Letter, the Decommissioning Trust Agreement, the Mortgage Releases, the Assignment and Assumption, the Purchase Documents, the Letter of Credit, any reimbursement or similar agreement relating to the Letter of Credit and the Notes.

Transaction Expenses shall have the meaning set forth in Section 14(a) of the Participation Agreement.

Transfer shall mean the transfer, by bill of sale or otherwise, by the Lessor of all the Lessor's right, title and interest in and to the Undivided Interest, the Real Property Interest, and the Assignment and Assumption on an *"as is, where is"* basis, free and clear of all Lessor's Liens and Owner Participant's Liens, but otherwise without recourse, representation or warranty (*including* an express disclaimer of representations and warranties in a manner comparable to that set forth in the second sentence of Section 6(b) of the Facility Lease), together with the due assumption by the transferee of, and the due release of the Lessor from, all of the Lessor's obligations under the Assignment and Assumption and the Deed (or the ground lease referred to in Section 10(b)(3)(xiv) of the Participation Agreement, as the case may be) by an instrument or instruments satisfactory in form and substance to the Lessor and the Owner Participant.

Transferee shall have the meaning assigned thereto in Section 15 of the Participation Agreement.

Trust shall mean the trust created by the Trust Agreement.

Trust Agreement shall mean the Trust Agreement, dated as of December 1, 1986, between Commercial Federal Investment Corporation and FNB.

Trust Estate shall have the meaning set forth in Section 2.03 of the Trust Agreement.

Trust Indenture Act shall mean the Trust Indenture Act of 1939, as amended.

Trustee's Expenses shall mean any and all liabilities, obligations, costs, compensation, fees, expenses and disbursements (including, without limitation, legal fees and expenses) of any kind and nature whatsoever (*other than* such amounts as are included in Transaction Expenses) which may be imposed on, incurred by or asserted against the Indenture Trustee or any of its agents, servants or representatives, in any way relating to or arising out of the Indenture, the Lease Indenture Estate, the Participation Agreement or the Facility Lease, or any document contemplated thereby, or the performance or enforcement of any of the terms thereof, or in any way relating to or arising out of the administration of the Lease Indenture Estate or the action or inaction of the Indenture Trustee under the Indenture; *provided, however,* that such amounts shall not include any Taxes or any amount expressly excluded from the Lessee's indemnity obligations pursuant to Section 13(a) or 13(b) of the Participation Agreement.

UCC or Uniform Commercial Code shall mean the Uniform Commercial Code as in effect in any applicable jurisdiction.

Underwriting Agreement shall mean the agreement executed by the Loan Participant, El Paso, Smith Barney, Harris Upham & Co. Incorporated and PaineWebber Incorporated (acting either as underwriters or representatives of the underwriters named therein) relating to the purchase, sale and delivery of the Initial Series Bonds.

Undivided Interest shall mean a 1.998026% undivided interest in Unit 2 (other than the Retained Assets described in clauses (ii) and (iii) of the definition of such term and other than the portion of Unit 2 described as excluded from the transfer pursuant to the Bill of Sale in Section A of Exhibit B thereto), including, except where expressly stated to the contrary, the related Generation Entitlement Share attributable to a 1.998026% undivided interest in Unit 2.

Undivided Interest Indenture Supplement shall mean the supplement to the Indenture, substantially in the form of Exhibit C thereto.

Uniform System of Accounts shall mean the Uniform System of Accounts prescribed for Public Utilities and Licensees subject to the provisions of the Federal Power Act (Class A and Class B), 18 C.F.R. 101, as in effect on the date of execution of the Participation Agreement, as amended or modified from time to time after such date.

Unit 1 shall mean the 1,270 megawatt unit, commonly known as Unit 1, and one-third of the Common Facilities at the Palo Verde Nuclear Generating Station.

Unit 2 shall mean the 1,270 megawatt unit, commonly known as Unit 2, and one-third of the Common Facilities at the Palo Verde Nuclear Generating Station, all as more fully described in Exhibit B to the Bill of Sale, together with all Capital Improvements thereto.

Unit 3 shall mean the 1,270 megawatt unit, commonly known as Unit 3, and one-third of the Common Facilities at the Palo Verde Nuclear Generating Station.

Unit 2 Retained Assets shall mean (i) all resident fuel assemblies, equipment and personal property constituting part of the Generating Unit (as defined in the ANPP Participation Agreement) designated as Palo Verde Nuclear Generating Station (other than common facilities) owned by the Lessee but excluded from Unit 2 as set forth in Section A of Exhibit B to the Bill of Sale and (ii) a one-third interest in all equipment and personal and real property constituting PVNGS common facilities under the ANPP Participation Agreement owned by the Lessee but excluded from the Common Facilities as set forth in Section B of Exhibit B to the Bill of Sale.

User shall mean a Person unrelated to El Paso (within the meaning of section 318 of the Code) possessing the Undivided Interest after the Lease Termination Date.

TRUST AGREEMENT

dated as of December 1, 1986

between

COMMERCIAL FEDERAL INVESTMENT CORPORATION,

as Owner Participant

and

THE FIRST NATIONAL BANK OF BOSTON,

as Owner Trustee

Sale and Leaseback of an Undivided Interest in
Palo Verde Nuclear Generating Station Unit 2
and Certain Common Facilities

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TRUST AGREEMENT

TRUST AGREEMENT, dated as of December 1, 1986, between COMMERCIAL FEDERAL INVESTMENT CORPORATION (the "Owner Participant") and THE FIRST NATIONAL BANK OF BOSTON, a national banking association (the "Owner Trustee").

WITNESSETH:

WHEREAS, the Owner Participant desires to acquire the Undivided Interest and the Real Property Interest through the Trust created hereby; and

WHEREAS, The First National Bank of Boston is willing to act as Owner Trustee and to accept the Trust created hereby;

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. *Definitions.* All capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in Appendix A to the Participation Agreement dated as of December 1, 1986, among the parties hereto and others. References in this Agreement to articles, sections, paragraphs and clauses are to articles, sections, paragraphs and clauses of this Agreement unless otherwise indicated.

ARTICLE II

AUTHORITY TO EXECUTE AND PERFORM VARIOUS DOCUMENTS; RATIFICATION AND CONFIRMATION; DECLARATION OF TRUST BY THE OWNER TRUSTEE

SECTION 2.01. *Authority to Execute and Perform Various Documents.* The Owner Participant hereby authorizes and directs the Owner Trustee (i) to execute and deliver each Transaction Document to which the Owner Trustee is to be a party and to execute and issue and request the Indenture Trustee to authenticate and deliver the Initial Series Note (each such Transaction Document, including the Initial Series Note, to be in the form approved by the Owner Participant), (ii) to execute and deliver all other agreements, instruments and certificates contemplated by the documents referred to in clause (i), (iii) to take whatever action shall be required to be taken by the Owner Trustee by the terms of, and exercise its rights and perform its duties under, each of the documents, agreements, instruments and certificates referred to in clauses (i) and (ii) above as set forth in such documents, agreements, instruments and certificates and (iv) subject to the terms of this Agreement, to take such other action in connection with the foregoing as the Owner Participant may from time to time direct.

SECTION 2.02. *Ratification and Confirmation.* By certificate dated December 2, 1986 (the "Section 15.6.1 Certificate"), the Owner Trustee confirmed the matters required to be confirmed on the part of a lessor in a sale and leaseback transaction under Section 15.6.1 of the ANPP Participation Agreement, a copy of which certificate is attached hereto as Schedule I. The Owner Participant, by its execution and delivery of this Agreement, ratifies and confirms the execution and delivery by the Owner Trustee of the Section 15.6.1 Certificate.

SECTION 2.03. *Declaration of Trust by the Owner Trustee.* The Owner Trustee hereby declares that it will hold all estate, right, title and interest of the Owner Trustee in and to the Undivided Interest, the Real Property Interest, the Transaction Documents and any other property contributed

by the Owner Participant, including without limitation all amounts of Rent, insurance proceeds and requisition, indemnity or other payments of any kind, but specifically excluding any Excepted Payments (collectively, the "Trust Estate"), upon the trusts set forth herein and for the use and benefit of the Owner Participant.

ARTICLE III

PAYMENTS

SECTION 3.01. *Payments from Trust Estate Only.* All payments to be made by the Owner Trustee under this Agreement shall be made only from the income and proceeds from the Trust Estate and only to the extent that the Owner Trustee shall have received income or proceeds from the Trust Estate to make such payments in accordance with the terms hereof, except as specifically provided in Section 6.01. The Owner Participant agrees that it will look solely to the income and proceeds from the Trust Estate to the extent available for payment as herein provided and that, except as specifically provided herein, the Owner Trustee shall not be liable to the Owner Participant for any amounts payable under this Agreement and shall not be subject to any liability under this Agreement.

SECTION 3.02. *Method of Payment.* All amounts payable to the Owner Participant pursuant to this Agreement shall be paid or caused to be paid by the Owner Trustee to the Owner Participant, or its nominee, by crediting the amount to be distributed to the Owner Participant to an account maintained by the Owner Participant with the Owner Trustee in immediately available funds or by transferring such amount in immediately available funds to a banking institution with bank wire transfer facilities for the account of the Owner Participant, as instructed from time to time by the Owner Participant.

ARTICLE IV

DISTRIBUTIONS

SECTION 4.01. *Distributions.* Subject to the terms and requirements of the Transaction Documents, all payments and amounts received by or on behalf of the Owner Trustee shall be distributed forthwith upon receipt in the following order of priority: first, so much of such payment or amount as shall be required to pay or reimburse the Owner Trustee for any fees or expenses (including reasonable attorney's fees and expenses) not otherwise paid or reimbursed to the Owner Trustee as to which the Owner Trustee is entitled to be paid or reimbursed hereunder shall be retained by the Owner Trustee; and, second, the balance, if any, of such payment or amount remaining thereafter shall be distributed to the Owner Participant.

ARTICLE V

DUTIES OF THE OWNER TRUSTEE

SECTION 5.01. *Notice of Certain Events.* In the event the Owner Trustee shall have knowledge of any Default, Event of Default, Indenture Default, Indenture Event of Default, Event of Loss or Deemed Loss Event, the Owner Trustee shall give prompt written notice thereof to the Owner Participant, the Lessee, the Loan Participant and the Indenture Trustee unless such Default, Event of Default, Indenture Default, Indenture Event of Default, Event of Loss or Deemed Loss Event no longer exists before the giving of such notice. Subject to the provisions of Section 5.03, the Owner Trustee shall take or refrain from taking such action, not inconsistent with the provisions of the Transaction Documents, with respect thereto as the Owner Participant shall direct by written instruction to the Owner Trustee. If the Owner Trustee shall have given the Owner Participant written notice of any event and shall not have received written instructions as above provided within 30 days after mailing notice of such event to the Owner Participant, the Owner Trustee may, subject to the provisions of the Transaction Documents, take or refrain from taking such action, but shall be un-

no duty to, and shall have no liability for its failure or refusal to, take or refrain from taking any action with respect thereto as the Owner Trustee shall deem advisable and in the best interests of the Owner Participant. For all purposes of this Agreement, in the absence of actual knowledge of an officer in the corporate trust division of the Owner Trustee, the Owner Trustee shall not be deemed to have knowledge of any Default, Event of Default, Indenture Default, Indenture Event of Default, Event of Loss or Deemed Loss Event unless the Owner Trustee receives written notice thereof given by or on behalf of the Owner Participant, the Lessee, the Loan Participant, the Indenture Trustee or any Holder of a Note.

SECTION 5.02. *Action upon Instructions.* Subject to the terms of Sections 5.01 and 5.03, upon the written instructions of the Owner Participant, the Owner Trustee will take or refrain from taking such action or actions, not inconsistent with the provisions of the Transaction Documents, as may be specified in such instructions.

SECTION 5.03. *Indemnification.* The Owner Trustee shall not be required to take or refrain from taking any action under this Agreement or any other Transaction Document (other than the actions specified in the first sentence of Section 5.01) unless the Owner Trustee shall have been indemnified by the Lessee or, if the Owner Trustee reasonably believes such indemnity to be inadequate, by the Owner Participant, in manner and form reasonably satisfactory to the Owner Trustee, against any liability, fee, cost or expense (including reasonable attorneys' fees and expenses) which may be incurred or charged in connection therewith, other than such as may result from the willful misconduct or gross negligence of the Owner Trustee; and, if the Owner Participant shall have directed the Owner Trustee to take or refrain from taking any action under any Transaction Document, the Owner Participant agrees to furnish such indemnity by a written undertaking of indemnification and, in addition, to pay the reasonable compensation of the Owner Trustee for the services performed or to be performed by it pursuant to such direction. The Owner Trustee shall not be required to take any action under any Transaction Document if the Owner Trustee shall reasonably determine, or shall have been advised by counsel, that such action is likely to result in personal liability for which the Owner Trustee has not been and will not be adequately indemnified or is contrary to the terms hereof or of any document contemplated hereby to which the Owner Trustee is a party or is otherwise contrary to law.

SECTION 5.04. *No Duties Except as Specified in Trust Agreement or Instructions.* The Owner Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with the Undivided Interest, the Real Property Interest or any other part of the Trust Estate, or to otherwise take or refrain from taking any action under or in connection with any document contemplated hereby to which the Owner Trustee is a party, except as expressly provided by the terms of this Agreement or in written instructions from the Owner Participant received pursuant to Section 5.01 or 5.02; and no implied duties or obligations shall be read into this Agreement against the Owner Trustee. The Owner Trustee nevertheless agrees that it will, in its individual capacity and at its own cost and expense, promptly take all action as may be necessary to discharge any Lessor's Liens arising by, through or under it on any part of the Trust Estate.

SECTION 5.05. *No Action Except Under Specified Documents or Instructions.* The Owner Trustee agrees that it will not manage, control, use, sell, dispose of or otherwise deal with the Undivided Interest, the Real Property Interest or any other part of the Trust Estate except (i) as required by the terms of the Transaction Documents, (ii) in accordance with the powers granted to, or the authority conferred upon, the Owner Trustee pursuant to this Agreement or (iii) in accordance with the express terms hereof or with written instructions from the Owner Participant pursuant to Section 5.01 or 5.02.

SECTION 5.06. *Absence of Duties.* Except in accordance with written instructions furnished pursuant to Sections 5.01 and 5.02, and without limitation of the generality of Section 5.04, the Owner Trustee shall not have any duty to (i) file, record or deposit any Transaction Document or any other document, or to maintain any such filing, recording or deposit or to refile, rerecord or redeposit any

such document, (ii) obtain insurance on the Undivided Interest or the Real Property Interest or effect or maintain any such insurance, other than to receive and forward to the Owner Participant all notices, policies, certificates or binders furnished to the Owner Trustee pursuant to the Facility Lease, (iii) maintain Unit 2, the Undivided Interest or the Real Property Interest, (iv) pay or discharge any Tax or any Lien owing with respect to or assessed or levied against any part of the Trust Estate, except as provided in the last sentence of Section 5.04, other than to receive and forward notice of such Tax or Lien to the Owner Participant, (v) confirm, verify, investigate or inquire into the failure to receive any reports or financial statements of the Lessee, (vi) inspect Unit 2 at any time or ascertain or inquire as to the performance or observance of any of the covenants of the Lessee or any other Person under any Transaction Document with respect to the Undivided Interest, the Real Property Interest or Unit 2 or (vii) manage, control, use, sell, dispose of or otherwise deal with the Undivided Interest, the Real Property Interest or Unit 2 or any part thereof or any other part of the Trust Estate, except as provided in Section 5.05.

ARTICLE VI

The Owner Trustee

Section 6.01. *Acceptance of Trust and Duties.* The Owner Trustee accepts the trusts hereby created and agrees to perform the same, but only upon the terms of this Agreement. The Owner Trustee also agrees to disburse all moneys actually received by it constituting part of the Trust Estate upon the terms of this Agreement. The Owner Trustee shall not be answerable or accountable under any circumstances, except for (i) its own willful misconduct or gross negligence; (ii) the inaccuracy of any of its representations or warranties contained in Section 6.03 or under Section 8(a) of the Participation Agreement given expressly in its individual capacity, (iii) its failure to perform obligations expressly undertaken by it in the last sentence of Section 5.04 of this Agreement or in Section 8(b) of the Participation Agreement or (iv) Taxes based on or measured by any fees, commissions or compensation received by it for acting as trustee in connection with any of the transactions contemplated by the Transaction Documents.

Section 6.02. *Furnishing of Documents.* The Owner Trustee will furnish to the Owner Participant, promptly upon receipt thereof, duplicates or copies of all reports, notices, requests, demands, opinions, certificates, financial statements and any other writings furnished to the Owner Trustee hereunder or under the Transaction Documents, unless by the express terms of any Transaction Document a copy of the same is required to be furnished by some other Person directly to the Owner Participant, or the Owner Trustee shall have determined that the same has already been furnished to the Owner Participant.

Section 6.03. *No Representations or Warranties as to the Undivided Interest, the Real Property Interest, Unit 2 or Documents.* The Owner Trustee makes (i) NO REPRESENTATION OR WARRANTY AS TO THE TITLE, VALUE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR USE OF THE UNDIVIDED INTEREST, THE REAL PROPERTY INTEREST, UNIT 2 OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE UNDIVIDED INTEREST, THE REAL PROPERTY INTEREST OR UNIT 2 WHATSOEVER, except that the Owner Trustee hereby represents, warrants and covenants to the Owner Participant that it will comply with the last sentence of Section 5.04, and (ii) no representation or warranty as to the validity or enforceability of any Transaction Document or as to the correctness of any statement made by any Person other than the Owner Trustee, contained in any thereof, and except that the Owner Trustee represents, warrants and covenants to the Owner Participant that this Agreement has been, and each of such other documents which contemplates execution thereof by the Owner Trustee has been or will be, executed and delivered by its officers who are, or will be, duly authorized to execute and deliver such documents on its behalf.

Section 6.04. *No Segregation of Moneys; No Interest.* Except as otherwise provided herein or in any of the Transaction Documents, moneys received by the Owner Trustee hereunder need not be

segregated in any manner, except to the extent required by law, and may be deposited under such general conditions as may be prescribed by law, and the Owner Trustee shall not be liable for any interest thereon, except as may be agreed to by the Owner Trustee.

SECTION 6.05. *Reliance; Advice of Counsel.* The Owner Trustee shall not incur any liability to any Person in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it in good faith to be signed by the proper party or parties. The Owner Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, the Owner Trustee may for all purposes hereof rely on an Officers' Certificate of the relevant party as to such fact or matter, and such certificate shall constitute full protection to the Owner Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon. In the administration of the trusts hereunder, the Owner Trustee may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys and may consult with counsel, accountants and other skilled Persons to be selected and employed by it, and the Owner Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion within the scope of such Person's competence of any such counsel, accountants or other skilled Persons and not contrary to this Agreement.

SECTION 6.06. *Not Acting in Individual Capacity.* Except as provided in this Article VI, in accepting the trusts hereby created the Owner Trustee acts solely as trustee hereunder and not in its individual capacity; and all Persons having any claim against the Owner Trustee by reason of the transactions contemplated by the Transaction Documents shall look only to the Trust Estate (or a part thereof, as the case may be) for payment or satisfaction thereof, except as specifically provided in this Article VI and except to the extent the Owner Trustee shall otherwise agree in any Transaction Document to which it is a party.

ARTICLE VII

INDEMNIFICATION OF THE OWNER TRUSTEE BY THE OWNER PARTICIPANT

SECTION 7.01. *The Owner Participant to Indemnify the Owner Trustee.* The Owner Participant agrees to assume liability for, and to indemnify and hold harmless the Owner Trustee and FNB, in its individual capacity, against and from, any and all Claims which may be imposed on, incurred by or asserted at any time against the Owner Trustee (and not indemnified by the Lessee within a reasonable time after demand therefor) in any way relating to or arising out of the Trust Estate, any of the properties included therein, the administration of the Trust Estate or any action or inaction of the Owner Trustee hereunder or under the Transaction Documents, *except* only that the Owner Participant shall not be required to indemnify the Owner Trustee for Claims arising or resulting from any of the matters described in the last sentences of Sections 5.04 and 6.01. The indemnities contained in this Section 7.01 shall survive the termination of this Agreement.

SECTION 7.02. *Compensation and Expenses.* The Owner Trustee shall receive as compensation for its services hereunder such ordinary fees as are fair, reasonable and customary for the performance of such services and as may heretofore and from time to time hereafter be agreed upon between the Owner Participant and the Owner Trustee. The Owner Trustee shall be entitled to be reimbursed for its reasonable expenses hereunder and to be compensated reasonably for any extraordinary services rendered hereunder.

ARTICLE VIII

TERMINATION OF TRUST AGREEMENT

SECTION 8.01. *Termination of Trust Agreement.* This Agreement and the trusts created hereby shall terminate and the Trust Estate shall, subject to the Participation Agreement, the Indenture and Article IV of this Agreement, be distributed to the Owner Participant, and this Agreement shall be of no further force or effect, upon the earlier of (i) the sale or other final disposition by the Owner Trustee of all property constituting part of the Trust Estate and the final distribution by the Owner Trustee of all moneys or other property or proceeds constituting part of the Trust Estate in accordance with the terms of Article IV and (ii) 21 years less one day after the death of the last survivor of all of the descendants living on the date of this Agreement of Joseph P. Kennedy, father of President John F. Kennedy, but if any such rights, privileges or options shall be or become valid under Applicable Law for a period subsequent to the 21st anniversary of the death of such last survivor (or, without limiting the generality of the foregoing, if legislation shall become effective providing for the validity or permitting the effective grant of such rights, privileges and options for a period in gross exceeding the period for which such rights, privileges and options are hereinabove stated to extend and be valid), then such rights, privileges or options shall not terminate as aforesaid but shall extend to and continue in effect, but only if such nontermination and extension shall then be valid under Applicable Law, until such time as the same shall, under Applicable Law, cease to be valid.

SECTION 8.02. *Termination at Option of the Owner Participant.* Notwithstanding Section 8.01, this Agreement and the trusts created hereby shall terminate and the Trust Estate shall be distributed to the Owner Participant, and this Agreement shall be of no further force and effect, upon the election of the Owner Participant by notice to the Owner Trustee, if such notice shall be accompanied by the written agreement of the Owner Participant assuming all the obligations of the Owner Trustee under or contemplated by the Transaction Documents and all other obligations of the Owner Trustee incurred by it as trustee hereunder; *provided, however*, that no such election shall be effective until (i) the lien of the Indenture on the Lease Indenture Estate has been released, (ii) full payment of principal of and premium, if any, and interest on the Notes has been made and (iii) any lien on the Trust Estate heretofore created pursuant to Section 7(b)(4) of the Participation Agreement has terminated. Such written agreement shall be reasonably satisfactory in form and substance to the Owner Trustee and shall release the Owner Trustee from all further obligations of the Owner Trustee hereunder and under the agreements and other instruments mentioned in the preceding sentence.

ARTICLE IX

SUCCESSOR OWNER TRUSTEES, CO-OWNER TRUSTEES AND SEPARATE OWNER TRUSTEES

SECTION 9.01. *Resignation of the Owner Trustee; Appointment of Successor.* (a) The Owner Trustee may resign at any time without cause by giving at least 30 days' prior written notice to the Owner Participant, the Indenture Trustee and the Lessee, such resignation to be effective on the acceptance of appointment by a successor owner trustee under Section 9.01(b). In addition, the Owner Participant may at any time remove the Owner Trustee with or without cause by an instrument in writing delivered to the Owner Trustee, such removal to be effective upon the acceptance of appointment by a successor owner trustee under Section 9.01(b). In case of the resignation or removal of the Owner Trustee, the Owner Participant may appoint a successor owner trustee by an instrument signed by the Owner Participant. If a successor owner trustee shall not have been appointed within 30 days after the giving of written notice of such resignation or the delivery of the written instrument with respect to such removal, the Owner Trustee or the Owner Participant may apply to any court of competent jurisdiction to appoint a successor owner trustee to act until such time, if any, as a successor shall have been appointed and shall have accepted its appointment as above provided. A successor owner trustee so appointed by such court shall immediately and without further ac

superseded by any successor owner trustee appointed as above provided within one year from the date of the appointment by such court.

(b) Any successor owner trustee, however appointed, shall execute and deliver to the predecessor Owner Trustee an instrument accepting such appointment, and thereupon such successor owner trustee, without further act, shall become vested with all the estates, properties, rights, powers, duties and trusts of the predecessor Owner Trustee in the trusts hereunder with like effect as if originally named an Owner Trustee herein; but nevertheless, upon the written request of such successor owner trustee, such predecessor Owner Trustee shall execute and deliver an instrument transferring to such successor owner trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, duties and trusts of such predecessor Owner Trustee, and such predecessor Owner Trustee shall duly assign, transfer, deliver and pay over to such successor owner trustee all moneys or other property then held by such predecessor Owner Trustee upon the trusts herein expressed.

(c) Any successor owner trustee, however appointed, shall be a bank or trust company incorporated and doing business within the United States of America and having a combined capital and surplus of at least $50,000,000, if there be such an institution willing, able and legally qualified to perform the duties of Owner Trustee hereunder upon reasonable or customary terms.

(d) Any corporation into which the Owner Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Owner Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Owner Trustee may be transferred, shall, subject to the terms of Section 9.01(c), be the Owner Trustee under this Agreement without further act.

SECTION 9.02. *Co-Trustees and Separate Trustees.* Whenever the Owner Trustee or the Owner Participant shall deem it necessary or prudent in order either to conform to any law of any jurisdiction in which all or any part of the Trust Estate shall be situated or to make any claim or bring any suit with respect to the Trust Estate, the Notes or any Transaction Document, or the Owner Trustee or the Owner Participant shall be advised by counsel satisfactory to it that it is so necessary or prudent, the Owner Trustee and the Owner Participant shall execute and deliver an agreement supplemental hereto and all other instruments and agreements, and shall take all other action necessary or proper to constitute one or more Persons (and the Owner Trustee may appoint one or more of its officers) either as co-trustee or co-trustees jointly with the Owner Trustee of all or any part of the Trust Estate, or as separate trustee or separate trustees of all or any part of the Trust Estate, and to vest in such Persons, in such capacity, such title to the Trust Estate or any part thereof and such rights or duties as may be necessary or desirable, all for such period and under such terms and conditions as are satisfactory to the Owner Trustee and the Owner Participant. In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the title to the Trust Estate and all rights and duties of such co-trustee or separate trustee shall, so far as permitted by law, vest in and be exercised by the Owner Trustee, without the appointment of a successor to such co-trustee or separate trustee.

ARTICLE X

SUPPLEMENTS AND AMENDMENTS

SECTION 10.01. *Supplements and Amendments.* At the written request of the Owner Participant, this Agreement shall be amended by a written instrument signed by the Owner Trustee and the Owner Participant, but if in the opinion of the Owner Trustee any instrument required to be so executed adversely affects any right, duty or liability of, or immunity, or indemnity in favor of, it under this Agreement or any of the documents contemplated hereby to which it is a party, or would cause or result in any conflict with or breach of any terms, conditions or provisions of, or default under, its charter documents or by-laws or any document contemplated hereby to which it is a party, the Owner Trustee may in its sole discretion decline to execute such instrument, unless it shall have been provided an indemnity satisfactory to the Owner Trustee by the Owner Participant.

SECTION 10.02. *Limitation on Amendments.* Notwithstanding Section 10.01, the Owner Trustee shall not execute any amendment which might result in the trusts created hereunder being terminated (i) without the consent of the Indenture Trustee, prior to the release of the lien of the Indenture on the Lease Indenture Estate or prior to the payment in full of the principal of and premium, if any, and interest on the Notes or (ii) without the consent of the holder thereof, prior to the termination of any lien created pursuant to Section 7(b)(4) of the Participation Agreement.

ARTICLE XI

MISCELLANEOUS

SECTION 11.01. *No Legal Title to Trust Estate in the Owner Participant.* The Owner Participant shall not have legal title to any part of the Trust Estate. No transfer, by operation of law or otherwise, of any right, title or interest of the Owner Participant in and to the Trust Estate or hereunder shall operate to terminate this Agreement or the trusts hereunder or entitle any successor or transferee to an accounting or to the transfer to it of legal title to any part of the Trust Estate.

SECTION 11.02. *Sale of Undivided Interest and/or Real Property Interest by the Owner Trustee is Binding.* Any sale or other conveyance of the Undivided Interest, or Real Property Interest or any part thereof or any assignment of rights under the Assignment and Assumption by the Owner Trustee made pursuant to the terms of this Agreement or any other Transaction Document shall bind the Owner Participant and shall be effective to transfer and convey all right, title and interest of the Owner Trustee and the Owner Participant in and to the Undivided Interest, the Real Property Interest or any part thereof, or such rights under the Assignment and Assumption, as the case may be. No purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such sale or conveyance or as to the application of any sale or other proceeds with respect thereto by the Owner Trustee.

SECTION 11.03. *Limitations on Rights of Others.* Nothing in this Agreement, whether express or implied, shall be construed to give to any Person other than the Owner Trustee and the Owner Participant any legal or equitable right, remedy or claim under or in respect of this Agreement, any covenants, conditions or provisions contained herein or the Trust Estate, all of which are and shall be construed to be for the sole and exclusive benefit of the Owner Trustee and the Owner Participant.

SECTION 11.04. *Notices.* Unless otherwise expressly specified or permitted by the terms hereof, all notices hereunder shall be given as provided in the Participation Agreement.

SECTION 11.05. *Severability.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 11.06. *Limitation on the Owner Participant's Liability.* The Owner Participant shall not have any liability for the performance of this Agreement except as expressly set forth herein.

SECTION 11.07. *Separate Counterparts.* This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

SECTION 11.08. *Successors and Assigns.* All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Owner Trustee and its successors and assigns and the Owner Participant and its successors and assigns, all as herein provided. Any request, notice, direction, consent, waiver or other instrument or action by the Owner Participant shall bind the successors and assigns of the Owner Participant.

SECTION 11.09. *Transfer of Interests.* Subject to the provisions of Section 15 of the Participation Agreement, the Owner Participant may assign, convey or otherwise transfer all or any part of its right, title and interest in and to this Agreement and the Trust Estate. In case of any such assignment, conveyance or transfer of less than all of the interest of the Owner Participant, (i) the transferor and transferee or transferees shall be severally obligated with respect to the indemnification obligations imposed under Section 7.01 in accordance with the interest held by each of them and (ii) appropriate amendments shall be made to this Agreement to provide for the situation in which there is more than one Owner Participant as may be agreed to by the transferor and transferee or transferees and consented to by the Owner Trustee. No such assignment, conveyance or transfer shall violate any provision of Applicable Law or create a relationship which would be in violation thereof. The Owner Trustee shall not be on notice of or otherwise be bound by any such assignment, conveyance or transfer until it shall have received an executed counterpart of the instrument of such assignment, conveyance or transfer.

SECTION 11.10. *Headings.* The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

SECTION 11.11. *Governing Law.* This Agreement shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance, except to the extent that, pursuant to the laws of the State of Arizona, the laws of such State are mandatorily applicable hereto.

SECTION 11.12. *Administration of Trust.* The principal place of administration of the Trust shall be in Boston, Massachusetts.

SECTION 11.13. *Performance by the Owner Participant.* Any obligation of the Owner Trustee hereunder or under any Transaction Document or other document contemplated herein may be performed by the Owner Participant and any such performance shall not be construed as a revocation of the trusts created hereby.

SECTION 11.14. *Conflict with Transaction Documents.* If this Agreement (or any instructions given by the Owner Participant pursuant hereto) shall require that any action be taken with respect to any matter and any other Transaction Document (or any instructions duly given in accordance with the terms thereof) shall require that a different action be taken with respect to such matter, and such actions shall be mutually exclusive, the provisions of such other Transaction Document, in respect thereof, shall control.

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

COMMERCIAL FEDERAL
INVESTMENT CORPORATION

By: _____
Assistant Vice President

THE FIRST NATIONAL BANK OF BOSTON

By: _____
Assistant Vice President

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

COMMERCIAL FEDERAL
INVESTMENT CORPORATION

By: _____
Assistant Vice President

THE FIRST NATIONAL BANK OF BOSTON

By: _____
Assistant Vice President

SECTION 15.6.1
LESSOR'S CERTIFICATE
EL PASO UNIT 2/1986-6

The undersigned, being a duly elected, qualified and acting Assistant Vice President of THE FIRST NATIONAL BANK OF BOSTON, a national banking association ("FNB"), hereby certifies, for and on behalf of FNB, as follows:

1. Reference is made to (i) the Arizona Nuclear Power Project Participation Agreement, dated as of August 23, 1973, as amended (the "ANPP Participation Agreement"), and (ii) the sale and leaseback transaction proposed to be entered into by El Paso Electric Company ("El Paso") on or before December 31, 1986, with respect to Palo Verde Nuclear Generating Station ("PVNGS") Unit 2 and El Paso's interest therein and in certain PVNGS common facilities relating thereto (the "Proposed El Paso Sale and Leaseback Transaction");

2. In connection with the Proposed El Paso Sale and Leaseback Transaction, FNB will enter into a Trust Agreement (the "Trust Agreement") with Commercial Federal Investment Corporation, constituting FNB the trustee (in such capacity, "Owner Trustee") of a grantor trust (the "Grantor Trust"); thereafter, the Grantor Trust will acquire from El Paso an undivided ownership interest of up to approximately % in certain assets constituting part of PVNGS Unit 2, up to approximately % in certain PVNGS common facilities and up to approximately % in the PVNGS site and lease back such interests to El Paso pursuant to a Facility Lease having a primary term of at least 25 years; and

3. Upon the execution and delivery of the Trust Agreement and upon consummation of the Proposed El Paso Sale and Leaseback Transaction, FNB, solely in its capacity as Owner Trustee and not otherwise, confirms that, except as provided in Sections 15.2.2., 15.6.4. and 15.10 of the ANPP Participation Agreement, El Paso shall be and remain the sole "Participant" for all purposes of the ANPP Participation Agreement and the sole representative (with power to bind the Grantor Trust and any mortgagee, trustee and secured party of the Grantor Trust of the type described in Section 15.1.2 of the ANPP Participation Agreement) in all dealings with the other ANPP Participants in relation to the property, rights, titles and interest of El Paso transferred to the Grantor Trust pursuant to the Proposed El Paso Sale and Leaseback Transaction.

WITNESS the signature of the undersigned this day of December, 1986, for and on behalf of FNB.

Martin P. Henry
Assistant Vice President

CERTAIN RIGHTS OF THE LESSOR UNDER THIS FACILITY LEASE HAVE BEEN ASSIGNED TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF, FIRST CITY NATIONAL BANK OF HOUSTON, AS INDENTURE TRUSTEE UNDER A TRUST INDENTURE, MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS DATED AS OF DECEMBER 1, 1986. THIS FACILITY LEASE HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS. SEE SECTION 22(e) OF THIS FACILITY LEASE FOR INFORMATION CONCERNING THE RIGHTS OF HOLDERS OF VARIOUS COUNTERPARTS HEREOF. THIS COUNTERPART IS NOT THE ORIGINAL COUNTERPART.

THIS INSTRUMENT GRANTS A SECURITY INTEREST BY A UTILITY, but only if, contrary to the intention of the parties, it should be so construed. This instrument is filed as a utility security interest as a precautionary matter.

Facility Lease

Dated as of December 1, 1986

between

THE FIRST NATIONAL BANK OF BOSTON,
not in its individual capacity,
but solely as *Owner Trustee*
under a Trust Agreement, dated as of December 1, 1986,
with
COMMERCIAL FEDERAL INVESTMENT CORPORATION

Lessor

and

EL PASO ELECTRIC COMPANY

Lessee

Sale and Leaseback of an Undivided Interest
in Palo Verde Nuclear Generating Station Unit 2
and Certain Common Facilities

THIS INSTRUMENT CONTAINS AFTER ACQUIRED
PROPERTY PROVISIONS

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FACILITY LEASE

FACILITY LEASE, dated as of December 1, 1986 between THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as Owner Trustee under a Trust Agreement, dated as of December 1, 1986, with Commercial Federal Investment Corporation, as Lessor, and EL PASO ELECTRIC COMPANY, a Texas corporation, as Lessee.

WITNESSETH:

WHEREAS, the Lessor owns the Undivided Interest and the Real Property Interest, the Lessee desires to lease the Undivided Interest and the Real Property Interest from the Lessor, and the Lessor is willing to lease the Undivided Interest and the Real Property Interest to the Lessee all on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. *Definitions.*

For purposes hereof, capitalized terms used herein, and not defined herein, shall have the meanings assigned to such terms in Appendix A, as amended from time to time in conjunction with the amendment of this Facility Lease. References in this Facility Lease to sections, paragraphs and clauses are to sections, paragraphs and clauses in this Facility Lease unless otherwise indicated.

SECTION 2. *Lease of Undivided Interest and Real Property Interest; Term; Personal Property.*

(a) *Lease of Undivided Interest and Real Property Interest.* Upon the terms and subject to the conditions of this Facility Lease, the Lessor hereby leases to the Lessee, and the Lessee hereby leases from the Lessor, the Undivided Interest and the Real Property Interest.

(b) *Term.* The term of this Facility Lease shall begin on December 18, 1986 and shall end on the [redacted] day of the Lease Term.

(c) *Personal Property.* It is the express intention of the Lessor and the Lessee that title to the Undivided Interest and every portion thereof is severed, and shall be and remain severed, from title to the real estate constituting the PVNGS Site. The Lessor and the Lessee intend that the Undivided Interest shall constitute personal property to the maximum extent permitted by Applicable Law.

(d) *Description.* The Real Property Interest is described on Schedule 5 hereto. The Undivided Interest is described on Schedule 6 hereto.

SECTION 3. *Rent; Adjustments to Rent.*

(a) *Basic Rent.* The Lessee shall pay to the Lessor, as basic rent (herein referred to as *Basic Rent*) for the Undivided Interest, the following amounts:

(i) on July 2, 1987 and on each Basic Rent Payment Date thereafter to and including January 2, 2013, an amount equal to 4.7851475% of Facility Cost;

(ii) on July 2, 2013, an amount equal to 2.3925737% of Facility Cost;

(iii) if the Lessee shall elect the Renewal Term, on October 1, 2013, and on each Basic Rent Payment Date thereafter during the Renewal Term, an amount equal to one-half of the average of the last two payments of Basic Rent payable under clause (i) of this Section 3(a).

(b) *Supplemental Rent.* The Lessee shall pay the following amounts (herein referred to as *Supplemental Rent*):

(i) when due or, where no due date is specified, on demand, any amount (*other than* Basic Rent, Casualty Value, Termination Value, Special Termination Value and Special Casualty Value) which the Lessee assumes the obligation to pay or agrees to pay to the Lessor, the Owner

Participant, the Indenture Trustee, the Collateral Trust Trustee or any Indemnitee under this Facility Lease, any other Transaction Document or the Collateral Trust Indenture and any amount which the Lessor is obligated to pay under Sections 6.9, 7.6 or 8.7 of the Indenture;

(ii) when due any amount payable hereunder as Casualty Value, Termination Value, Special Termination Value or Special Casualty Value, and an amount equal to any premium or prepayment penalty with respect to the Notes;

(iii) on demand and in any event on the Basic Rent Payment Date next succeeding the date such amounts shall be due and payable hereunder, *to the extent* permitted by Applicable Law, interest (computed on the same basis as interest on the Notes is computed) at a rate per annum equal to (A) the Overdue Interest Rate, on that portion of the payment of Basic Rent or Supplemental Rent distributable pursuant to clause *"first"* of Section 5.1 or clause *"second"* of Section 5.3 of the Indenture (determined prior to the computation of interest on overdue payments referred to in such clauses), and (B) the Penalty Rate, on the balance of any such payment of Basic Rent or Supplemental Rent (*including*, to the extent permitted by Applicable Law, interest payable pursuant to this clause (iii) not paid when due (without regard to any period of grace)) for any period for which the same shall be overdue.

The Lessor shall have all rights, powers and remedies provided for in this Facility Lease, at law, in equity or otherwise, in the case of non-payment of Basic Rent or Supplemental Rent. Drawings under the Letter of Credit, if any, shall be deemed to be in satisfaction of the Lessee's obligation to pay the Equity Portion of Rent hereunder to the extent of such drawing.

(c) *Form of Payment.* Subject to Section 11(b), each payment of Rent under this Facility Lease shall be made in immediately available funds no later than 12:00 noon, local time at the place of receipt, on the date each such payment shall be due and payable hereunder and shall be paid either (A) in the case of payments other than Excepted Payments, to the Lessor at its address determined in accordance with Section 17, or at such other address as the Lessor may direct by notice in writing to the Lessee, or (B) in the case of Excepted Payments, to such Person as shall be entitled to receive such payment at such address as such Person may direct by notice in writing to the Lessee. If the date on which any payment of Rent is due hereunder shall not be a Business Day, the payment otherwise due thereon shall be due and payable on the preceding Business Day, with the same force and effect as if paid on the nominal date provided in this Facility Lease.

(d) *Adjustments to Rent for Change in Tax Law.* Basic Rent and the schedules of Casualty Values, Special Casualty Values, Special Termination Values and Termination Values attached hereto shall be adjusted (upward or downward) to preserve Net Economic Return if there is any change in the Internal Revenue Code of 1954, as amended, as in effect immediately prior to the enactment of the Tax Reform Act of 1986 or successor legislation enacted by the Ninety-ninth or One Hundredth Congresses (*including* proposed, temporary or final regulations resulting therefrom) *other than* a change in respect of an "alternative minimum tax" or an "add-on minimum tax" having the same effect as an "alternative minimum tax" (herein referred to as a *Change in Tax Law*; *provided, however*, that, to prevent double counting, to the extent the change in corporate tax rates contained in Section 601 of the Tax Reform Act of 1986 has been taken into account in determining Basic Rent and the values referred to in Section 3(b)(ii), such change will not be considered a Change in Tax Law). Any adjustment under this Section 3(d) shall be made no more frequently than annually.

The provisions of this Section 3(d) to the contrary notwithstanding, if any Change in Tax Law is, or becomes, applicable to the transaction contemplated by this Facility Lease in consequence of the transfer of the Owner Participant's beneficial interest in the Trust (*whether or not* permitted by Section 15 of the Participation Agreement) or if such Change in Tax Law would not have been applicable to such transaction had no such transfer occurred, then no upward or downward adjustment shall be, or be required to be, made pursuant to this Section 3(d), *provided, however*, that this paragraph shall not apply to a transfer to an Affiliate of the Owner Participant.

(e) *Adjustments to Rent for Changes in Pricing Assumptions.* Basic Rent and the schedules of Casualty Values, Special Casualty Values, Termination Values and Special Termination Values attached hereto shall be adjusted (upward or downward) to preserve Net Economic Return if there is any change in the Pricing Assumptions, other than the Pricing Assumptions relating to taxes, *including, without limitation,* in respect of (1) the issuance of a Releveraging Note or a Refunding Note or (2) the payment of Transaction Expenses.

(f) *Computation of Adjustments.* As soon as practicable after the occurrence of an event requiring an adjustment to Basic Rent, and the schedules of Casualty Values, Special Termination Values, Special Casualty Values and Termination Values attached hereto, pursuant to Section 3(d) or (e) or Section 13 of the Participation Agreement, the Owner Participant shall make the necessary computations and furnish to the Lessee, the Loan Participant, the Lessor and the Indenture Trustee the revised amounts and percentages, which amounts and percentages shall be implemented upon delivery thereof and effective as of the date of occurrence of the event requiring such adjustment (taking into account any payment of Basic Rent already made) and shall remain effective until changed in consequence of any verification procedure set forth below. Such revised amounts and percentages shall be subject to verification (at the Lessee's request) by the Owner Participant's nationally recognized independent public accountants, in which case such accountants shall either (i) confirm to the Lessee in writing that such revised amounts were computed on a basis consistent with the original calculations, or (ii) compute and provide to the Lessee, the Lessor, the Owner Participant, the Loan Participant and the Indenture Trustee revised amounts and percentages which are on such a basis. The revised amounts and percentages, as so confirmed or computed if applicable, shall be conclusive and binding upon the Lessee, the Lessor and the Owner Participant. The cost of any such verification shall be borne by the Lessee, *unless* such accountants shall require an upward or downward adjustment to the revised amounts and percentages originally provided by the Owner Participant which is greater than 10% of the amount of the adjustment to Basic Rent so provided, in which case such cost shall be shared equally by the Owner Participant and the Lessee. Each adjustment pursuant to Section 3(d) or (e) or Section 13 of the Participation Agreement may, but need not, be evidenced by the execution and delivery of a supplement to this Facility Lease in form and substance satisfactory to the Lessee and the Owner Participant, but shall be effective as provided herein without regard to the date on which such supplement to this Facility Lease is so executed and delivered. Any adjustment referred to in this Section 3 and any related modifications of the Transaction Documents shall satisfy the provisions of applicable accounting requirements and of Revenue Procedure 75-21, Revenue Procedure 75-28 and any other applicable statute, regulation, revenue procedure, revenue ruling or technical information release relating to the subject matter of Revenue Procedure 75-21 or Revenue Procedure 75-28, but, in the case of any upward adjustment, such upward adjustment shall be no less than the adjustment otherwise required pursuant to this Section 3.

(g) *Rent Increase.* If the Letter of Credit is not delivered to the Owner Participant on or prior to the 75th day following the Closing Date or if the Lessee fails to comply with any of the terms of Section 10(b)(3)(xvii) of the Participation Agreement, each payment of Basic Rent payable on or before January 2, 1992 shall be increased (the *Rent Increase*) to 106.015% of the percentage of Facility Cost specified in Section 3(a)(i); *provided, however,* that the Rent Increase shall not apply to any Basic Rent Payment Date occurring more than four months after the Lessee delivers to the Owner Participant a Letter of Credit complying with Section 10(b)(3)(xvii) of the Participation Agreement if the Lessee is otherwise in compliance with the terms of Section 10(b)(3)(xvii) of the Participation Agreement on such Basic Rent Payment Date.

(h) *Sufficiency of Basic Rent and Supplemental Rent.* Notwithstanding any other provision of this Facility Lease or any other Transaction Document, (i) the amount of Basic Rent payable on each Basic Rent Payment Date shall be at least equal to the aggregate amount of principal, premium, if any, and

accrued interest then due and payable on all Notes and (ii) each payment of Casualty Value, Special Casualty Value, Special Termination Value and Termination Value shall in no event be less (when added to all other amounts required to be paid by the Lessee under this Facility Lease in respect of any Event of Loss or Deemed Loss Event or termination of this Facility Lease) than an amount sufficient, as of the date of payment, to pay in full the principal of, and premium, if any, and interest on all Notes Outstanding on and as of such date of payment (taking into account any assumption of the Notes by the Lessee).

SECTION 4. *Net Lease.*

This Facility Lease (as originally executed and as modified, supplemented and amended from time to time) is a net lease and the Lessee hereby acknowledges and agrees that the Lessee's obligation to pay all Rent hereunder, and the rights of the Lessor in and to such Rent, shall be absolute, unconditional and irrevocable and shall not be affected by any circumstances of any character, *including, without limitation,* (i) any set-off, abatement, counterclaim, suspension, recoupment, reduction, defense or other right or claim which the Lessee may have against the Lessor, the Owner Participant, the Indenture Trustee, the Collateral Trust Trustee, the Loan Participant, the Operating Agent, any ANPP Participant, any vendor or manufacturer of any equipment or assets included in the Undivided Interest, Unit 2, any Capital Improvement, the Real Property Interest, the PVNGS Site, PVNGS, or any part of any thereof, or any other Person for any reason whatsoever, (ii) any defect in or failure of the title, merchantability, condition, design, compliance with specifications, operation or fitness for use of all or any part of the Undivided Interest, Unit 2, any Capital Improvement, the Real Property Interest, the PVNGS Site or PVNGS, (iii) any destruction of, damage to, or removal, abandonment, shutdown, salvage, scrapping, requisition, taking, loss, theft or destruction of all or any part of the Undivided Interest, Unit 2, any Capital Improvement, the Real Property Interest, the PVNGS Site or PVNGS, or any interference, interruption or cessation in the use or possession thereof or of the Undivided Interest by the Lessee or by any other Person (*including, without limitation,* the Operating Agent or any other ANPP Participant) for any reason whatsoever or of whatever duration, (iv) any restriction, prevention or curtailment of or interference with any use of all or any part of the Undivided Interest, Unit 2, any Capital Improvement, the Real Property Interest, the PVNGS Site or PVNGS, (v) any insolvency, bankruptcy, reorganization or similar proceeding by or against the Lessee, the Lessor, the Owner Participant, the Indenture Trustee, the Collateral Trust Trustee, the Loan Participant, the Operating Agent, any other ANPP Participant or any other Person, (vi) the invalidity, illegality or unenforceability of this Facility Lease, any other Transaction Document, any Financing Document, the ANPP Participation Agreement or any other instrument referred to herein or therein or any other infirmity herein or therein or any lack of right, power or authority of the Lessor, the Lessee, the Owner Participant, the Indenture Trustee, the Collateral Trust Trustee, the Loan Participant or any other Person to enter into this Facility Lease, any other Transaction Document or any Financing Document, or any doctrine of *force majeure,* impossibility, frustration, failure of consideration, or any similar legal or equitable doctrine that the Lessee's obligation to pay Rent is excused because the Lessee has not received or will not receive the benefit for which the Lessee bargained, *it being the intent* of the Lessee to assume all risks from all causes whatsoever that the Lessee does not receive such benefit, (vii) the breach or failure of any warranty or representation made in this Facility Lease or any other Transaction Document or any Financing Document by the Lessor, the Owner Participant, the Indenture Trustee, the Collateral Trust Trustee, the Loan Participant or any other Person, (viii) any amendment or other change of, or any assignment of rights under, this Facility Lease, any other Transaction Document, any Financing Document or any ANPP Project Agreement, or any waiver, action or inaction under or in respect of this Facility Lease, any other Transaction Document, any Financing Document or any ANPP Project Agreement, or any exercise or non-exercise of any right or remedy under this Facility Lease, any other Transaction Document, any Financing Document or any ANPP Project Agreement, *including, without limitation,* the exercise of any foreclosure or other remedy under the Indenture, the Collateral Trust Indenture or this Facility Lease, or the sale of Unit 2, any Capital Improvement, the Real Property Interest, the Undivided Interest, the PVNGS Site or PVNGS, or any part thereof or any interest therein, or (ix) a

other circumstance or happening whatsoever whether or not similar to any of the foregoing. The Lessee acknowledges that, by conveying the leasehold estate created by this Facility Lease to the Lessee and by putting the Lessee in possession of the Undivided Interest and the Real Property Interest, the Lessor has performed all of the Lessor's obligations under and in respect of this Facility Lease, *except* the covenant contained in Section 6(a). The Lessee hereby waives, to the extent permitted by Applicable Law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Facility Lease or to effect or claim any diminution or reduction of Rent payable by the Lessee hereunder, *including, without limitation*, the provisions of Arizona Revised Statutes Section 33-343. If for any reason whatsoever this Facility Lease shall be terminated in whole or in part by operation of law or otherwise, *except* as specifically provided herein, the Lessee nonetheless agrees to pay to the Lessor or other Person entitled thereto an amount equal to each installment of Basic Rent and all Supplemental Rent at the time such payment would have become due and payable in accordance with the terms hereof had this Facility Lease not been terminated in whole or in part. Each payment of Rent made by the Lessee hereunder shall be final and the Lessee shall not seek or have any right to recover all or any part of such payment from the Lessor or any other Person for any reason whatsoever. All covenants, agreements and undertakings of the Lessee herein shall be performed at its cost, expense and risk unless expressly otherwise stated. Nothing in this Section 4 or elsewhere shall be construed as a guaranty by the Lessee of any residual value in the Undivided Interest or the Real Property Interest or as a guaranty of the Notes or the Bonds. Any provision of Section 7(b)(2) or 8(c) of the Participation Agreement to the contrary notwithstanding, if the Lessee shall fail to make any payment of Rent to any Person when and as due (taking into account applicable grace periods), such Person shall have the right at all times, to the exclusion of the ANPP Participants, to demand, collect, sue for, enforce obligations relating to and otherwise obtain all amounts due in respect of such Rent.

SECTION 5. *Return of the Undivided Interest; Disposition Services.*

(a) *Return of the Undivided Interest.* On the Lease Termination Date, the Lessee will surrender possession of the Undivided Interest and the Real Property Interest to the Lessor or its designee. At the time of such return, (i) the Lessee shall pay or have paid all amounts due and payable, or to become due and payable, by it as an ANPP Participant under each and every ANPP Project Agreement allocable or chargeable (whether or not payable during or after the Lease Term) to the Undivided Interest or the Real Property Interest in respect of any period or periods ending on or prior to the Lease Termination Date *(including, without limitation*, all amounts payable with respect to any and all Capital Improvements to which the Owner Participant has consented pursuant to the second sentence of Section 8(c), whether or not implementation thereof has been completed on or prior to the Lease Termination Date), and (ii) the Undivided Interest and the Real Property Interest shall be free and clear of all Liens (other than Permitted Liens described in clauses (i), (vi), (ix), (x) and (xi) of the definition of such term and other than Permitted Liens described in clauses (iv), (v), (vii) and (viii) of the definition of such term if and to the extent such Permitted Liens are insured by a title insurance company or bonded or other arrangements, in each case reasonably satisfactory to the Lessor, have been made with respect thereto) and in the condition and state of repair required by Section 5. The Lessor shall not abandon the Undivided Interest. In the event that on or prior to the Lease Termination Date there shall have occurred a default by any ANPP Participant *(other than* El Paso) under the ANPP Participation Agreement and such default shall not have been cured by the defaulting ANPP Participant, then (i) the Lessee agrees to indemnify and hold the Lessor (and each successor, assign and transferee thereof) harmless against any and all obligations under the ANPP Participation Agreement with respect to contributions or payments required to be made thereby as a result of such default and (ii) the Lessor (and each successor, assign and transferee thereof) agrees to reimburse the Lessee for all amounts paid by the Lessee pursuant to the foregoing clause (i) to the extent, but only to the extent, that the Lessor (or such successor, assign or transferee) shall have actually received net proceeds from the sale of power and energy of the defaulting ANPP Participant as a result of the payment made by the Lessee pursuant to the foregoing clause (i), and, to the extent the Lessor (or such successor, assign or transferee) shall have received such proceeds, the amount to be reimbursed

to the Lessee pursuant to this clause (ii) shall include interest at the Prime Rate from the date of any payment by the Lessee pursuant to the foregoing clause (i) through the date of reimbursement of such amount pursuant to this clause (ii).

(b) *Disposition Services.* The Lessee agrees that if it does not exercise its option to renew or purchase as provided in Sections 12 and 13, respectively, then during the last thirty-six months of the Lease Term, the Lessee will fully cooperate with the Lessor in connection with the Lessor's efforts to lease or dispose of the Undivided Interest and the Real Property Interest, including using the Lessee's reasonable efforts to lease or dispose of the Undivided Interest and the Real Property Interest. The Lessor agrees to reimburse the Lessee for reasonable out-of-pocket costs and expenses of the Lessee incurred at the request of the Lessor or the Owner Participant in connection with such cooperation and such efforts.

SECTION 6. *Warranty of the Lessor.*

(a) *Quiet Enjoyment.* The Lessor warrants that until the Lease Termination Date, if the Lessee is in compliance with each and every material term and provision of this Facility Lease and each other Transaction Document to be complied with by the Lessee, the Lessee's use and possession of Unit 2, including the Undivided Interest, shall not be interrupted by the Lessor or any Person claiming by, through or under the Lessor, and their respective successors and assigns.

(b) *Disclaimer of Other Warranties.* The warranty set forth in Section 6(a) is in lieu of all other warranties of the Lessor or the Owner Participant, whether written, oral or implied, with respect to this Facility Lease, Unit 2, any Capital Improvement, the Real Property Interest, PVNGS or the PVNGS Site. As among the Owner Participant, the Loan Participant, the Indenture Trustee, the Collateral Trust Trustee, the Lessor and the Lessee, execution by the Lessee of this Facility Lease shall be conclusive proof of the compliance of Unit 2 (including any Capital Improvement), the Undivided Interest and the Real Property Interest with all requirements of this Facility Lease, and the Lessee acknowledges and agrees that (i) NEITHER THE LESSOR NOR THE OWNER PARTICIPANT IS A MANUFACTURER OR A DEALER IN PROPERTY OF SUCH KIND AND (ii) THE LESSOR LEASES AND THE LESSEE TAKES THE UNDIVIDED INTEREST AND THE REAL PROPERTY INTEREST, AND SHALL TAKE EACH CAPITAL IMPROVEMENT, AND ANY PART THEREOF, *AS IS AND WHERE IS*, and neither the Lessor nor the Owner Participant shall be deemed to have made, and THE LESSOR AND THE OWNER PARTICIPANT EACH HEREBY DISCLAIMS, ANY OTHER REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN OR CONDITION OF UNIT 2, ANY CAPITAL IMPROVEMENT, THE UNDIVIDED INTEREST, THE REAL PROPERTY INTEREST, THE PVNGS SITE OR PVNGS, OR ANY PART THEREOF, *THE MERCHANTABILITY THEREOF OR THE FITNESS THEREOF FOR ANY PARTICULAR PURPOSE*, TITLE TO UNIT 2, ANY CAPITAL IMPROVEMENT, THE UNDIVIDED INTEREST, THE REAL PROPERTY INTEREST, THE PVNGS SITE OR PVNGS, OR ANY PART THEREOF, THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREOF OR CONFORMITY THEREOF TO SPECIFICATIONS, FREEDOM FROM PATENT OR TRADEMARK INFRINGEMENT OR THE ABSENCE OF ANY LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, NOR SHALL THE LESSOR OR THE OWNER PARTICIPANT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LIABILITY IN TORT, STRICT OR OTHERWISE), *it being agreed* that all such risks, as among the Owner Participant, the Loan Participant, the Collateral Trust Trustee, the Indenture Trustee, the Lessor and the Lessee, are to be borne by the Lessee. The provisions of this Section 6(b) have been negotiated, and, *except* to the extent otherwise expressly provided in Section 6(a), the foregoing provisions are intended to be a complete exclusion and negation of any representations or warranties by the Lessor, the Owner Participant, the Loan Participant, the Collateral Trust Trustee or the Indenture Trustee, express or implied, with respect to Unit 2 (*including* any Capital Improvement), the Undivided Interest, the Real Property Interest, PVNGS or the PVNGS Site that may arise pursuant to any law now or hereafter in effect, or otherwise.

(c) *Enforcement of Certain Warranties.* The Lessor authorizes the Lessee (directly or through agents, including the Operating Agent), at the Lessee's expense, to assert for the Lessor's account, during the Lease Term, all of Lessor's rights (if any) under any applicable warranty and any other claims (under this Facility Lease or any Purchase Document) that the Lessee or the Lessor may have against any vendor or manufacturer with respect to Unit 2 *(including* any Capital Improvement) or the Undivided Interest, and the Lessor agrees to cooperate, at the Lessee's expense, with the Lessee and the Operating Agent in asserting such rights. Any amount receivable (without regard to any right of setoff or other similar right of any Person against the Lessee) by the Lessee as payment under any such warranty or other claim against any vendor or manufacturer (or, if such warranty or claim relates to the Undivided Interest and the Retained Assets, the portion of such received amount appropriately allocable to the Undivided Interest) shall be applied in accordance with Sections 9(g), (h) and (i).

SECTION 7. *Liens*

The Lessee will not directly or indirectly create, incur, assume or permit to exist any Lien except Permitted Liens on or with respect to the Undivided Interest, the Real Property Interest, the Lessor's title thereto or any interest of the Lessor or Lessee therein (and the Lessee will promptly, at its own expense, take such action as may be necessary duly to discharge any Lien except Permitted Liens).

SECTION 8. *Operation and Maintenance; Capital Improvements.*

(a) *Operation and Maintenance.* The Lessee agrees that it will or will cause the Operating Agent to (A) maintain Unit 2 in such condition that Unit 2 will have the capacity and functional ability to perform, on a continuing basis, ordinary wear and tear excepted, in normal commercial operation, the functions for which it was designed, (B) operate, service, maintain and repair Unit 2 and replace all necessary or useful parts and components thereof so that the condition and operating efficiency will be maintained and preserved, ordinary wear and tear excepted, in all material respects in accordance with (1) Prudent Utility Practice for items of similar size and nature, (2) such operating standards as shall be required to take advantage of and enforce all available warranties and (3) the terms and conditions of all insurance policies maintained in effect at any time with respect thereto, (C) use, possess, operate and maintain Unit 2 in compliance with all material applicable Governmental Actions (including the License) affecting PVNGS or Unit 2 or the use, possession, operation and maintenance thereof and (D) otherwise act in accordance with the standards set forth in the ANPP Participation Agreement. The Lessee will comply with all its obligations under Applicable Law affecting Unit 2, the Undivided Interest, PVNGS, the Real Property Interest and the PVNGS Site, and the use, operation and maintenance thereof. The Lessee agrees to (i) exercise its rights under the ANPP Participation Agreement so that there will always be an Operating Agent under the ANPP Participation Agreement and (ii) maintain in full force and effect a license from the NRC adequate to possess the Undivided Interest and the Real Property Interest under the circumstances contemplated by the ANPP Participation Agreement. The Lessee will keep and maintain proper books and records (i) relating to all Operating Funds (as defined in the ANPP Participation Agreement) provided by it to the Operating Agent under the ANPP Participation Agreement and (ii) relating to the application of such Operating Funds to the operation and maintenance of Unit 2 and the acquisition, construction and installation of Capital Improvements, in each such case upon receipt of the requisite information from the Operating Agent, all in accordance with the Uniform System of Accounts. The Lessor shall not be obliged in any way to maintain, alter, repair, rebuild or replace Unit 2, any Capital Improvement, the Real Property Interest or the Undivided Interest, or any part thereof, or, *except* as provided in Section 8(f), to pay the cost of alteration, rebuilding, replacement, repair or maintenance of Unit 2, any Capital Improvement, the Undivided Interest or the Real Property Interest, or any part thereof, and the Lessee expressly waives the right to perform any such action at the expense of the Lessor pursuant to any law at any time in effect.

(b) *Inspection.* The Lessor, the Owner Participant, the Indenture Trustee and the Collateral Trust Trustee shall have the right to inspect PVNGS (*subject*, in each event, to the ANPP Participation Agreement, Applicable Law and applicable confidentiality undertakings and procedures established by

the Operating Agent) at their expense. The Lessor and the Owner Participant shall have the right to inspect, at their expense, the books and records of the Lessee relating to PVNGS, and make copies of and extracts therefrom (*subject* as aforesaid) and may, at their expense, discuss the Lessee's affairs finances and accounts with its executive officers, all at such times and as often as may be reasonably requested. None of the Lessor, the Owner Participant, the Indenture Trustee and the Collateral Trust Trustee shall have any duty whatsoever to make any inspection or inquiry referred to in this Section 8(b) and shall not incur any liability or obligation by reason of not making any such inspection or inquiry.

(c) *Capital Improvements.* To the extent that Applicable Law or Prudent Utility Practice requires that a Capital Improvement be made to Unit 2, the Lessee shall cause such Capital Improvement to be made in accordance with the ANPP Participation Agreement; *provided, however*, that nothing in this sentence shall be deemed to increase the Lessee's obligations under the ANPP Participation Agreement. If and to the extent required by the ANPP Participation Agreement, the Lessee shall, at its sole expense, promptly participate in the making of any Capital Improvement to Unit 2. Without the written consent of the Lessor, the Lessee will not permit any Capital Improvement to be made during the last three years of the Lease Term unless (i) such Capital Improvement is reasonably expected to be completed prior to the end of the Lease Term, as determined by an independent engineer reasonably acceptable to the Lessee and the Lessor, (ii) arrangements for the payment thereof satisfactory to the Owner Participant have been made and (iii) the Lessee is committed to pay the cost thereof (whether or not completed prior to the end of the Lease Term) in a manner satisfactory to the Owner Participant. Of the net proceeds of (i) any sale or other disposition of property removed from Unit 2 receivable (without regard to any right of setoff or other similar right of any Person against the Lessee) by, or credited to the account of, the Lessee in accordance with the ANPP Participation Agreement and (ii) any insurance proceeds receivable (without regard to any right of setoff or other similar right of any Person against the Lessee) for the account of the Lessor or the Lessee in respect of the loss or destruction of, or damage or casualty to, any such property, the Applicable Unit 2 Percentage of such amount shall be applied as provided in Section 9(g), (h) or (i), as the case may be. An Applicable Unit 2 Percentage of property at any time removed from Unit 2 shall remain the property of the Lessor, no matter where located, until such time as a Capital Improvement constituting a replacement of such property shall have been installed in Unit 2 or such removed property has been disposed of by the Operating Agent in accordance with the ANPP Participation Agreement. Simultaneously with such disposition by the Operating Agent, title to an undivided interest equal to the Applicable Unit 2 Percentage in the removed property shall vest in the Person designated by the Operating Agent, free and clear of any and all claims or rights of the Lessor. *Unless* paragraph (3) of Section 8(e) shall be applicable, upon the incorporation of a Capital Improvement in Unit 2, without further act, (i) title to an undivided interest equal to the Applicable Unit 2 Percentage in such Capital Improvement shall vest in the Lessor and (ii) such undivided interest in such Capital Improvement shall become subject to this Facility Lease and be deemed to be part of the Undivided Interest for all purposes hereof to the same extent that the Lessor had a like undivided interest in the property originally incorporated or installed in Unit 2. The Lessee warrants and agrees that the Lessor's interest in all Capital Improvements shall be free and clear of all Liens, *except* Permitted Liens described in clauses (ii), (iii) and (xii) of the definition thereof.

(d) *Reports.* To the extent permissible, the Lessee shall prepare and file in timely fashion, or, where the Lessor shall be required to file, the Lessee shall prepare and deliver to the Lessor within a reasonable time prior to the date for filing, any reports with respect to Unit 2, the Undivided Interest or the condition or operation thereof that shall be required to be filed with any Governmental Authority. On or before March 1 of each year (commencing March 1, 1987) and on the Lease Termination Date, the Lessee shall furnish the Lessor and the Owner Participant with a report stating the total cost of all Capital Improvements and describing separately and in reasonable detail each Capital Improvement (or related group of Capital Improvements) made during the period from the date hereof to December 31, 1986 , in the case of the first such report, or during the period from and the end of the period covered by the last previous report to the December 31 prior to such report.

the case of subsequent reports. On or before March 1 in each year (commencing March 1, 1987) and at such other times as the Lessor or the Owner Participant shall reasonably request in writing, the Lessee will report in writing to the Lessor with respect to (i) the most recent annual capital expenditure budget submitted by the Operating Agent to the Lessee in accordance with the ANPP Participation Agreement and (ii) the current plans (if any) which the Lessee may have for the financing of the same under Section 8(f).

(e) *Title to Capital Improvements.* Title to an undivided interest equal to the Applicable Unit 2 Percentage in each Capital Improvement to Unit 2 shall vest as follows:

(1) in the case of each Nonseverable Capital Improvement, whether or not the Lessor shall have financed or provided financing (in whole or in part) for such undivided interest in such Capital Improvement by an Additional Equity Investment or a Supplemental Financing, or both, effective on the date such Capital Improvement shall have been incorporated or installed in Unit 2, the Lessor shall, without further act, acquire title to such undivided interest in such Capital Improvement;

(2) in the case of each Severable Capital Improvement, if the Lessor shall have financed (by an Additional Equity Investment or a Supplemental Financing, or both) an Applicable Unit 2 Percentage of the cost of such Capital Improvement, the Lessor shall, without further act, acquire title to such undivided interest in such Capital Improvement; and

(3) in the case of each Severable Capital Improvement, if the Lessor shall not have financed (by either an Additional Equity Investment or a Supplemental Financing, or both) the Applicable Unit 2 Percentage of the cost of such Capital Improvement, the Lessee shall retain title to such undivided interest equal to the Applicable Unit 2 Percentage in such Capital Improvement.

Immediately upon title to such an undivided interest equal to the Applicable Unit 2 Percentage in any Capital Improvement vesting in the Lessor pursuant to paragraph (1) or paragraph (2) of this Section 8(e), such undivided interest in such Capital Improvement shall, without further act, become subject to this Facility Lease and be deemed part of the Undivided Interest and Unit 2 for all purposes hereof.

(f) *Funding of the Cost of Capital Improvements.* Before placing in service any Capital Improvement to Unit 2 the cost of which exceeds $50,000,000 in respect of the interests of all ANPP Participants, the Lessee shall give the Lessor and the Owner Participant reasonable advance notice thereof. The Owner Participant shall have the option, in its sole discretion, of financing, or arranging the financing of, an Applicable Unit 2 Percentage of the cost of any such Capital Improvement, or any other Capital Improvement presented to the Owner Participant for financing, including or not including the making of an investment by the Owner Participant (an *Additional Equity Investment*) and the issuance of Additional Notes, all on terms acceptable to the Lessee and the Owner Participant. If the Owner Participant does not finance, or arrange the financing of, an Applicable Unit 2 Percentage of the cost of such Capital Improvement, the Lessee may cause the Lessor to issue, if and to the extent permitted by the Indenture, to one or more Persons (*other than* any Person affiliated with the Lessee within the meaning of Section 318 of the Code) Additional Notes (such issuance of Notes being hereinafter referred to as a *Supplemental Financing*) and to use the proceeds thereof to pay such percentage of the cost of such Capital Improvement, *subject, however,* to the satisfaction of the following conditions:

(i) there shall be no more than one Supplemental Financing in any calendar year;

(ii) the sum of the Supplemental Financing Amounts, if any, in any calendar year shall equal or exceed 12.645734% of $10,000,000;

(iii) the Lessee may include in any request for a Supplemental Financing only Capital Improvements not previously financed in any Supplemental Financing and which have been

installed or affixed no earlier than three calendar years before the beginning of the calendar year in which such Supplemental Financing occurs;

(iv) the total amount of all Supplemental Financings during the Basic Lease Term shall n[redacted] exceed 12.645734% of $200,000,000;

(v) unless waived by the Owner Participant, the Bonds shall, at the time of such Supplemental Financing, be rated at least "investment grade," as determined by Standard & Poor's Corporation or Moody's Investors Service, Inc. or, if neither of such rating organizations shall rate the Bonds at the time, by any nationally recognized rating organization in the United States of America;

(vi) the sum of the Supplemental Financing Amount and any Additional Equity Investment shall not exceed that portion of the cost of Capital Improvements which, when financed, will constitute an addition to the Owner Participant's basis under Section 1012 or 1016 of the Code;

(vii) in the opinion of independent tax counsel to the Owner Participant, such Supplemental Financing shall not result in any adverse tax effect upon the Owner Participant, and the Owner Participant and the Lessee shall have agreed upon the amount and manner of payment of any indemnity payable by the Lessee as a consequence of such Supplemental Financing;

(viii) in the opinion of the Owner Participant, such Supplemental Financing shall not result in any material adverse effect on the Owner Participant's financial or accounting position;

(ix) the Additional Notes shall have a final maturity date no later than July 2, 2013;

(x) the Lessee shall have made such representations and warranties and covenants regarding the tax characteristics of the Lessor's undivided interest in each Capital Improvement financed in a Supplemental Financing as the Owner Participant shall have reasonably requested and Section 13(c) of the Participation Agreement shall have been appropriately modified;

(xi) appropriate adjustments to Basic Rent and the schedules of Casualty Values, Spec[redacted] Casualty Values, Termination Values and Special Termination Values shall have been agreed to by the Owner Participant to support the amortization of the Additional Notes issued in respect of such Supplemental Financing and to preserve Net Economic Return;

(xii) the Lessee shall have paid to the Lessor an amount equal to all out-of-pocket costs and expenses reasonably incurred by the Lessor or the Owner Participant and not financed as a part of such Supplemental Financing or reflected in adjustments to Basic Rent;

(xiii) no Default or Event of Default shall have occurred and be continuing and no Event of Loss shall have occurred or Deemed Loss Event shall have been declared; and

(xiv) the Lessee shall have entered into such agreements and shall have provided such tax indemnities, representations, warranties, covenants, opinions, certificates and other documents as the Owner Participant shall reasonably request.

(g) *Useful Life.* If the Lessee shall not theretofore have exercised its purchase option under Section 13(b), *then*, (i) if the Lessee shall not theretofore have exercised its renewal option pursuant to Section 12, on April 1, 2012, the Lessee shall initiate the Appraisal Procedure to determine the remaining Economic Useful Life of Unit 2 as of April 1, 2013, and (ii) if the Lessee shall have exercised its renewal option pursuant to Section 12, on the Basic Rent Payment Date occurring one year prior to the end of the Renewal Term, the Lessee shall initiate the Appraisal Procedure to determine the remaining Economic Useful Life of Unit 2 as of the date six months prior to the end of the Renewal Term. The Lessee and the Lessor agree to use their best efforts to ensure that either such determination of remaining Economic Useful Life is made no later than six months prior to the end of the Lease Term.

SECTION 9. *Event of Loss; Deemed Loss Event; Special Transfer for Failure to Maintain or Replace Letter of Credit.*

(a) *Damage or Loss.* In the event that Section 16.2 of the ANPP Participation Agreement (as in effect on the date hereof) shall become applicable, or an Event of Loss or Requisition of Use shall occur, or Unit 2 or any substantial part thereof shall suffer destruction, damage, loss, condemnation, confiscation, theft or seizure for any reason whatsoever, such fact shall promptly, and in any case within five Business Days following any such event, be reported by the Lessee to the Lessor and the Owner Participant.

(b) *Repair.* The Lessee shall promptly make any and all payments required of the Lessee under the provisions of the ANPP Participation Agreement relating to damage or destruction or the like to Unit 2 or any portion thereof; *provided, however,* that the Lessee shall in no event be obligated to make or join in any agreement under Section 16.2 of the ANPP Participation Agreement (as in effect on the date hereof) concerning repairs to or reconstruction of Unit 2.

(c) *Payment of Casualty Value.* (A) If the Letter of Credit is in effect, on the date following the occurrence of an Event of Loss on which the Owner Participant delivers to the Lessee written notice specifying such Event of Loss (it being understood that the Owner Participant is obligated under Section 7(b)(5) of the Participation Agreement to attempt to draw on the Letter of Credit to the extent provided therein), or (B) if the Letter of Credit is not in effect, on the Basic Rent Payment Date next following the occurrence of an Event of Loss (the last day of the Lease Term being deemed a Basic Rent Payment Date for this purpose), the Lessee shall pay to the Lessor an amount equal to *the excess* of (x) Casualty Value, determined as of the date such payment is due, *over* (y) the unpaid principal amount of, and accrued interest since the last preceding Basic Rent Payment Date on, the Notes outstanding on such date, after giving effect to the payment, if any, of the principal installment due and payable and paid in respect of the Notes on such date. If the Lessee shall have made such payment and shall have assumed all obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Lessor shall, so long as no Default or Event of Default shall have occurred and be continuing (and at any time after the occurrence of an Event of Loss the Lessor may):

(i) if Section 16.2 of the ANPP Participation Agreement (as in effect on the date hereof) shall be applicable and the Lessee shall have declined, but one or more of the other ANPP Participants shall have elected, to reconstruct or restore Unit 2, as permitted by the ANPP Participation Agreement, Transfer the Undivided Interest and the Real Property Interest to such electing ANPP Participants, as required by, and in the proportions set forth in, the ANPP Participation Agreement, in which case the Lessee shall be entitled to receive an Applicable Unit 2 Percentage of the "salvage value" purchase price receivable (without regard to any right of setoff, or other similar right of any Person against the Lessee) by the Lessee; or

(ii) in all other cases, Transfer the Undivided Interest and the Real Property Interest to the Lessee.

If the Lessee shall have made such payment but shall not have assumed all obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Owner Participant shall effect the Special Transfer, *in which case, without further act on the part of the Lessor or the Lessee,* (i) the obligation of the Lessee to pay further Basic Rent shall be reduced to an amount, payable on each Basic Rent Payment Date thereafter, equal to the aggregate amount of principal, premium, if any, and accrued interest then payable on all Notes then Outstanding, and (ii) this Facility Lease shall become a security agreement for all purposes of Applicable Law.

(d) *Payment of Special Casualty Value.* If events giving rise to a Deemed Loss Event (without regard to any declaration thereof) shall occur, the party hereto having knowledge thereof shall promptly notify the other party of the occurrence thereof. A Deemed Loss Event shall not occur unless and until the Owner Participant delivers to the Lessee a written notice identifying the

applicable event and declaring that such event constitutes a Deemed Loss Event hereunder, which the Owner Participant shall do, to the extent practicable, within 90 days after it shall have actual knowledge of the relevant event. (A) If the Letter of Credit is in effect, on the date such notice is delivered (it being understood that the Owner Participant is obligated under Section 7(b)(5) of the Participation Agreement to attempt to draw on the Letter of Credit to the extent provided therein), or (B) if the Letter of Credit is not in effect, on the next date specified in Schedule 2 hereto following the date such notice is delivered (or if such notice shall be given less than 10 days prior to the next such date, on the second succeeding date specified in Schedule 2 hereto following such notice), the Lessee shall pay to the Lessor an amount equal to the excess of (x) Special Casualty Value, determined as of the date such payment is due, over (y) the unpaid principal amount of, and accrued interest since the last preceding Basic Rent Payment Date on, the Notes outstanding on such date, after giving effect to the payment, if any, of the principal installment due and payable and paid in respect of the Notes on such date. If the Lessee shall have made such payment and shall have assumed all obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Lessor shall, so long as no Default or Event of Default shall have occurred and be continuing (and at any time after the occurrence of a Deemed Loss Event the Lessor may), Transfer the Undivided Interest and the Real Property Interest to the Lessee. If the Lessee shall have made such payment but shall not have assumed all obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Owner Participant shall effect the Special Transfer, *in which case, without further act on the part of the Lessor or the Lessee*, (i) the obligation of the Lessee to pay further Basic Rent shall be reduced to an amount, payable on each Basic Rent Payment Date thereafter, equal to the aggregate amount of principal, premium, if any, and accrued interest then payable on all Notes Outstanding, and (ii) this Facility Lease shall become a security agreement for all purposes of Applicable Law.

(e) *Requisition of Use.* In the case of a Requisition of Use not constituting an Event of Loss, this Facility Lease shall continue, and each and every obligation of the Lessee hereunder and under each Transaction Document shall remain, in full force and effect. So long as no Default or Event of Default shall have occurred and be continuing, the Lessee shall be entitled to all sums received by reason of any such Requisition of Use for the period ending on the Lease Termination Date, and the Lessor shall be entitled to all sums received by reason of any such Requisition of Use for the period after the Lease Termination Date.

(f) *Termination of Lease Term.* Upon (but only upon) a Transfer by the Lessor pursuant to Section 9(c) or 9(d) of this Facility Lease or Section 10(b)(3)(xvii) of the Participation Agreement to the Lessee and payment by the Lessee of the amounts specified therein; the Lease Term shall end and the Lessee's obligation to pay Basic Rent after such Transfer shall cease; *provided, however*, that the Lessee shall continue to be required to make all payments of Supplemental Rent as and when due. In all other cases, the Lease Term shall continue and this Facility Lease shall remain in full force and effect.

(g) *Application of Payments on an Event of Loss.* Any payments receivable (without regard to any right of setoff or other similar right of any Person against the Lessee) at any time by the Lessor or the Lessee (*other than* insurance placed by the Owner Trustee or the Owner Participant pursuant to Section 10(b)) from any Governmental Authority, insurer or other Person (except the Lessee) as a result of the occurrence of an Event of Loss shall be applied as follows:

(i) all such payments shall be promptly paid to the Lessor for application pursuant to the following provisions of this Section 9(g), *except* that the Lessee may retain any amounts that would at the time be payable to the Lessee as reimbursement under the provisions of clause (ii) below;

(ii) so much of such payments as shall not exceed the amount required to be paid by the Lessee pursuant to Section 9(c) (ignoring, for this purpose, clause (y) of the first sentence thereof) shall be applied in reduction of the Lessee's obligation to pay such amount if not alrea

paid by the Lessee or, if already paid by the Lessee, shall be applied to reimburse the Lessee for its payment of such amount; and

(iii) the balance, if any, of such payments (including any "salvage value" referred to in clause (i) of Section 9(c)) shall, in the case of payments from insurance carried by or on behalf of the Lessee, be paid to the Lessee or, in the case of any other payment, be divided between the Lessor and the Lessee as their interests may appear.

(h) *Application of Payments Not Relating to an Event of Loss.* Payments receivable (without regard to any right of setoff or similar right of any Person against the Lessee) at any time by the Lessor or the Lessee (*other than* insurance placed by the Owner Trustee or the Owner Participant pursuant to Section 10(b)) from any Governmental Authority, insurer or other Person with respect to any event giving rise to an amount referred to in the second sentence of Section 6(c) or the fourth sentence of Section 8(c), destruction, damage, loss, condemnation, confiscation, theft or seizure of or requisition of title to Unit 2 or the Undivided Interest or the Real Property Interest or any requisition of use of Unit 2 or the Undivided Interest or the Real Property Interest or any part of any thereof, in each case not constituting an Event of Loss, shall be applied *first* to reimburse the Lessee for all amounts expended by it pursuant to Section 9(b) and *second* the balance, if any, of such payments shall, in the case of payments from insurance carried by or on behalf of the Lessee, be paid to the Lessee or, in the case of any other payments, be divided between the Lessor and the Lessee as their interests may appear.

(i) *Dispositions at Time of Default or Event of Default.* Notwithstanding the foregoing provisions of this Section 9, if a Default or an Event of Default shall have occurred and be continuing, any amount that would otherwise be payable to or for the account of, or that would otherwise be retained by, the Lessee pursuant to Section 10 or this Section 9 shall be paid to the Lessor as security for the obligations of the Lessee under this Facility Lease and, at such time thereafter as the Lessee shall have cured any such Default or Event of Default, such amount shall be paid promptly to the Lessee unless this Facility Lease shall have theretofore been declared to be in default, in which event such amount shall be disposed of in accordance with the provisions hereof and of the Indenture.

(j) *Assumption of Notes; Creation of Lien on Undivided Interest.* In connection with an Event of Loss, a Deemed Loss Event, the exercise of the Cure Option or the exercise of the Lessee's purchase option pursuant to Section 13(c) of this Facility Lease or Section 10(b)(3)(xvii) of the Participation Agreement, (i) the Lessee agrees to use its best efforts to comply with the conditions set forth in Section 3.9(b) of the Indenture and, failing such compliance, agrees to accept the Special Transfer, and (ii) the Lessor agrees that, if the Lessee fails to assume all the obligations and liabilities of the Owner Trustee under the Indenture and the Outstanding Notes in accordance with Section 3.9(b) of the Indenture, not later than two Business Days prior to the date on which the Owner Participant effects the Special Transfer, the Lessor will execute and deliver the Undivided Interest Indenture Supplement.

(k) *Special Transfer for Failure to Maintain or Replace Letter of Credit.* If the Lessee shall have made all payments required pursuant to its option to purchase under Section 10(b)(3)(xvii) of the Participation Agreement but shall not have assumed all obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Owner Participant shall effect the Special Transfer, *in which case, without further act on the part of the Lessor or the Lessee,* (i) the obligation of the Lessee to pay further Basic Rent shall be reduced to an amount, payable on each Basic Rent Payment Date thereafter, equal to the aggregate amount of principal, premium, if any, and accrued interest then payable on all Notes then Outstanding, and (ii) this Facility Lease shall become a security agreement for all purposes of Applicable Law.

SECTION 10. *Insurance.*

(a) *Required Insurance.* The Lessee will cause the Operating Agent to carry and maintain at least following insurance coverage with respect to the Undivided Interest and the Real Property

Interest, in each case with insurers of recognized responsibility, in such form as shall be satisfactory to the Owner Participant.

(1) *Non-Nuclear Insurance.*

(i) The Lessee shall maintain "all risk" property insurance covering physical loss with respect to Unit 2 in such amounts and with such other terms as are required by or are in accordance with Prudent Utility Practice, but in no event shall such amounts be less than the estimated maximum probable loss in respect of such property. Any insurance carried in accordance with this Section 10(a)(1)(i) shall be endorsed to provide that:

(A) losses shall be adjusted and paid as provided in Section 10(a)(4);

(B) (i) the Lessor and the Owner Participant (the *Additional Insureds)* are included as additional insureds, as their interests may appear, and (ii) any obligation imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligation of the Lessee and not that of any Additional Insured;

(C) the respective interests of the Additional Insureds shall not be invalidated by any breach of any warranties by the ANPP Participants contained in such policies;

(D) the insurer thereunder waives all rights of subrogation against the Additional Insureds with respect to their respective interests in Unit 2;

(E) such insurance shall be primary without right of contribution of any other insurance carried by or on behalf of any Additional Insured with respect to its interest in Unit 2; and

(F) if such insurance is cancelled for any reason whatsoever including non-payment of premium or any substantial change is made in the coverage which affects the interest of the Additional Insureds, (1) such cancellation or change shall not be effective as to the Additional Insureds for 30 days after receipt by The First National Bank of Boston, as Owner Trustee and agent, of written notice from such insurer of such cancellation or change, and (2) the Lessee will use its best efforts to cause such insurer to deliver a certificate with respect to such cancellation or change to the Owner Participant and the Indenture Trustee.

(ii) The Lessee shall maintain bodily injury and property damage liability insurance (including product liability, completed operations and personal injury insurance) covering claims arising out of the ownership, operation, maintenance, condition or use of Unit 2 or the PVNGS Site. The amount and other terms of such insurance shall be in accordance with the higher of Prudent Utility Practice and the ANPP Participation Agreement, but such limits shall in no event be less than $25,000,000 per occurrence combined bodily injury and property damage. Such insurance may include deductible amounts not to exceed $2,000,000. Any insurance carried in accordance with this Section 10(a)(1)(ii) shall be endorsed as provided in paragraphs (B), (C), (D), (E) and (F) of Section 10(a)(1)(i), *except that* the term "*Additional Insureds*" wherever it appears shall include the Lessor, the Owner Participant and all Indemnitees.

(2) *Nuclear Insurance.*

(i) The Lessee shall maintain nuclear property insurance in amounts and with such other terms as are required by or are in accordance with the highest of (a) Applicable Law, (b) the ANPP Participation Agreement and (c) Prudent Utility Practice; *provided, however,* that such insurance shall at all times be maintained in amounts at least equal to the maximum nuclear property insurance available on commercially reasonable terms. The coverage afforded by such nuclear property insurance in respect of any loss at PVNGS and available for any loss at Unit 2, either (A) shall at all times be at least equal to $750 million regardless

any suspension, termination, amendment, supplement or reduction of such insurance for any reason (*including* by reason of a Nuclear Incident) or (B) so long as (1) Unit 2 is in, or is in a procedure which will result in, a state of cold shutdown in accordance with Prudent Utility Practice and (2) the first mortgage bonds of the Lessee shall have an investment grade rating (x) by two nationally accepted rating agencies if such first mortgage bonds are rated by two nationally accepted rating agencies or (y) by one nationally accepted rating agency if such first mortgage bonds are only rated by one nationally accepted rating agency, will be reinstated to be equal to at least $750 million within 180 days of any suspension, termination, amendment, supplement or reduction of such insurance for any reason (including by reason of a Nuclear Incident). Such insurance may include deductible amounts not to exceed $2,000,000. Any insurance carried in accordance with this Section 10(a)(2)(i) shall be endorsed by the insurer as provided in paragraphs (A), (B), (D), (E) and (F) of Section 10(a)(1)(i).

(ii) The Lessee shall maintain the maximum nuclear liability insurance in amounts and such other terms as required by or in accordance with the highest of (a) Applicable Law, (b) the ANPP Participation Agreement, (c) Prudent Utility Practice and (d) the maximum nuclear liability insurance available on commercially reasonable terms, *but in any event* in such amounts and containing such other terms as to cover the "aggregate liability" for a single "nuclear incident" of all "persons indemnified" (as such terms are used in the Atomic Energy Act) and in connection with the ownership, maintenance, condition or use of Unit 2 and the PVNGS Site. The Lessee shall also maintain supplier's and transporter's insurance in amounts consistent with Prudent Utility Practice. The Lessee shall maintain nuclear liability insurance pursuant to this Section 10(a)(2)(ii), whether or not the Lease Termination Date shall have occurred, until notified by the Owner Participant that neither the Lessor nor the Owner Participant has any further real or potential liability in connection with the ownership, operation, maintenance, condition or use of Unit 2 or the PVNGS Site; provided that after Decommissioning has been completed the Lessee shall not be required to maintain nuclear liability insurance for more than 30 years. Any insurance carried in accordance with this Section 10(a)(2)(ii) shall be endorsed as provided in paragraphs (B), (D), (E) and (F) of Section 10(a)(1)(i).

(iii) The Lessee shall, or shall cause the Operating Agent to, use its best efforts at all times to obtain the endorsement referred to in paragraph (C) of Section 10(a)(1)(i) on all insurance referred to in this Section 10(a)(2), and shall cause such endorsement to be obtained if and to the extent it is available to any other owner or operator of a nuclear generating unit.

(3) *Annual Reports and Certificates.* The Lessee shall, on or before March 1 of each year, commencing March 1, 1987, furnish to the Lessor and the Owner Participant (A) a report signed by the broker or brokers for the PVNGS insurance (or if insurance is placed directly by the Operating Agent, a report signed by the Operating Agent which will include a copy of the certificate of insurance signed by the carrier, which certificate shall indicate that all endorsements required by this Section 10 are applicable) (i) describing in detail the insurance then maintained by the ANPP Participants with respect to PVNGS, (ii) stating that no premiums are then delinquent, and (iii) stating that insurance maintained is in accordance with (1) the ANPP Participation Agreement and (2) this Section 10; (B) a report signed by the broker or brokers for the Lessee's insurance (or if insurance is placed directly by the Lessee, a report signed by the Lessee which will include a copy of the certificate of insurance signed by the carrier, which certificate shall indicate that all endorsements required by this Section 10 are applicable) showing the separate insurance, if any, then maintained by the Lessee with respect to its interest in PVNGS and stating that no premiums under such insurance are delinquent; (C) a certificate signed by the Lessee stating that the insurance maintained by the ANPP Participants and by the Lessee, identified on the reports to be delivered pursuant to clauses (A) and (B), is in accordance with

Prudent Utility Practice within the nuclear industry, the ANPP Participation Agreement and this Section 10; and (D) upon the request of the Lessor or the Owner Participant, copies (to the extent permitted by the issuers of such policies) of policies so maintained. Any report by an insurance broker with respect to clause (A)(iii)(1) of this paragraph 3 may be made in reliance upon a schedule provided by the Lessee (a copy of which shall be attached) identifying the insurance (by coverage, limits, insureds and other pertinent details) required to be maintained under the ANPP Participation Agreement. Any report with respect to clause (A)(iii)(2) may be made in reliance upon a similar schedule provided by the Lessee (a copy of which shall be attached) identifying the insurance required to be maintained under this Section 10.

(4) *Proceeds.* All insurance proceeds paid in respect of or pursuant to paragraphs (1) and (2) above shall (i) be applied as provided in Section 9(g), (h) or (i), as the case may be, and (ii) be adjusted with the insurance companies or otherwise collected, including the filing of appropriate proceedings, by the Operating Agent in accordance with the ANPP Participation Agreement, *subject, however,* to any priority allocations of such proceeds to decontamination and debris removal set forth in the insurance policies or required under Applicable Law. If the Operating Agent, as trustee, shall become the loss payee under any policy of insurance constituting "*Project Insurance*," as such term is defined in the ANPP Participation Agreement, then the Lessor and the Owner Participant shall be made beneficiaries of the trust arrangement under which the Operating Agent acts as trustee.

(b) *Permitted Insurance.* Nothing in this Section 10 shall prohibit the Lessee from placing at its expense insurance on or with respect to the cost of purchasing replacement power, naming the Lessee as insured and/or loss payee, *unless* such insurance would conflict with or otherwise limit the availability of insurance to be provided or maintained in accordance with Section 10(a). Nothing in this Section 10 shall prohibit the Lessor or the Owner Participant from placing at its expense other insurance on or with respect to Unit 2, the Undivided Interest or the Real Property Interest or the operation of Unit 2, naming the Lessor or the Owner Participant as insured and/or loss payee, *unless* such insurance would conflict with or otherwise limit the insurance to be provided or maintained in accordance with Section 10(a).

SECTION 11. *Rights to Assign or Sublease.*

(a) *Assignment or Sublease by the Lessee.* Without the prior written consent of the Lessor, the Lessee shall not encumber (*except* for Permitted Liens), or assign, sublease or transfer (*except* as permitted by Section 10(b)(3)(ii) of the Participation Agreement), its leasehold interest under this Facility Lease in the Undivided Interest or the Real Property Interest, *except* that the Lessee may assign its leasehold interest under this Facility Lease in the Undivided Interest and the Real Property Interest to a wholly owned subsidiary of the Lessee or of the Lessee's parent if such subsidiary's obligations under this Facility Lease and the other Transaction Documents and Financing Documents shall be guaranteed by El Paso pursuant to a valid and enforceable guarantee containing appropriate covenants of El Paso and otherwise satisfactory in form and substance to the Owner Participant in its absolute discretion. The Lessee shall not, without the prior written consent of the Lessor and the Owner Participant, part with the possession of, or suffer or allow to pass out of its possession, the Undivided Interest or the Real Property Interest or any interest therein, *except* to the extent required pursuant to the ANPP Participation Agreement (as in effect on the date hereof) or as expressly permitted by the provisions of this Facility Lease (*including, without limitation,* the first sentence of this Section 11(a)) or any other Transaction Document.

(b) *Assignment by Lessor as Security for Lessor's Obligations.* To secure the indebtedness evidenced by the Notes, the Lessor will assign to the Indenture Trustee (x) its right, title and interest to receive certain payments of Rent (*not including,* in any event, Excepted Payments) to the extent provided in the Indenture and (y) if and when required by Section 9(j), its right, title and interest in the Undivided Interest and the Real Property Interest. The Lessee hereby (a) consents to such assignment and to the terms of the Indenture, (b) agrees to pay directly to the Indenture Trustee

such office in New York, N.Y. of Mellon Trust Company or of such other bank or trust company in New York, N.Y., all as the Indenture Trustee shall specify in writing to the Lessee (*so long as* the lien of the Indenture has not been satisfied and discharged and the Lessor is obligated thereunder), all amounts of Rent (*other than* Excepted Payments) due or to become due to the Lessor that shall be required to be paid to the Indenture Trustee pursuant to the Indenture, (c) agrees that the right of the Indenture Trustee to any such payments shall be absolute and unconditional and shall not be affected by any circumstances whatsoever, *including, without limitation,* those circumstances set forth in Section 4, and (d) agrees that, to the extent provided in the Indenture and until the Indenture is discharged in accordance with its terms, the Indenture Trustee shall have all the rights of the Lessor hereunder with respect to Assigned Payments as if the Indenture Trustee had originally been named herein as the Lessor.

SECTION 12. *Limited Lease Renewal.*

Subject to the notice requirements set forth in Section 13(a), at the end of the Basic Lease Term, *provided* that no Default or Event of Default shall have occurred and be continuing, no Event of Loss shall have occurred and no Deemed Loss Event shall have been declared, all Notes shall have been paid in full and the Lessee shall be concurrently renewing the term of all other leases of interests in Unit 2 then leased by it as lessee (other than leases that are not leases for federal tax purposes), the Lessee shall have the right to renew the term of this Facility Lease for a period (the "Renewal Term") commencing October 1, 2013, and ending, at the option of the Lessee (which option shall be exercised at the time of, and set forth in, the notice pursuant to Section 13(a)), on either October 1, 2017 or the final day of the Maximum Option Period, during which Basic Rent shall be payable as provided in Section 3(a)(iii) and Section 21.

SECTION 13. *Notices for Renewal or Purchase; Purchase Options.*

(a) *Notices.* In order to exercise the renewal option permitted by Section 12 or the purchase option permitted by Section 13(b), the Lessee shall give to the Lessor written notice of such election not later than three years nor earlier than five years prior to the expiration of the Basic Lease Term or, in the case of such purchase option, the Basic Lease Term or, if elected, the Renewal Term. Any such election shall be irrevocable as to the Lessee, but shall not be binding on the Lessor if, on the date of such notice, a Default or an Event of Default shall have occurred and be continuing or an Event of Loss shall have occurred or Deemed Loss Event shall have been declared. Promptly after receipt by the Lessor of any such notice, (i) in case the renewal option has been elected, the Maximum Option Period shall be determined by the Appraisal Procedure or (ii) in case either the renewal option or the purchase option has been elected, the Lessee and the Owner Participant shall agree upon the Fair Market Sales Value of the Undivided Interest and the Real Property Interest, or if within three months after the date of the Lessee's notice, the Lessee and the Owner Participant shall be unable so to agree, such Fair Market Sales Value shall be determined by the Appraisal Procedure.

(b) *Limited Purchase Option at Expiration of the Lease Term.* (i) Subject to the notice requirements set forth in Section 13(a), *unless* an Event of Default shall have occurred and be continuing or an Event of Loss shall have occurred or a Deemed Loss Event shall have been declared, if all Notes shall have been paid in full and the Lessee shall be concurrently purchasing all interests in Unit 2 then leased by it as lessee (other than leases that are not leases for federal tax purposes), the Lessee shall have the right to purchase the Undivided Interest and the Real Property Interest on the date of the expiration of the Basic Lease Term or the Renewal Term (if elected) for a purchase price equal to the Fair Market Sales Value thereof.

(ii) If the Lessee shall have elected to purchase the Undivided Interest and the Real Property Interest pursuant to Section 13(b)(i), payment by the Lessee of the purchase price therefor shall be made in immediately available funds, whereupon the Lessor shall Transfer the Undivided Interest and the Real Property Interest to the Lessee.

(c) *Purchase Option for Change in Tax Law.* (i) If the Owner Participant shall notify the Lessee pursuant to Section 3(f) that, as the result of the adjustments to Basic Rent required pursuant to Section 3(d), the aggregate Basic Rent payable pursuant to Sections 3(a)(i) and (ii) (without regard to any adjustment required by Section 3(e)) is greater than 110 percent of the amount of aggregate Basic Rent that would be payable absent such adjustments, then, upon written irrevocable notice given by the Lessee to the Owner Participant (the *Exercise Notice*) not later than 60 days after such Owner Participant's notice pursuant to Section 3(f), but in no event after September 30, 1989, the Lessee may purchase the Undivided Interest and the Real Property Interest. Such purchase shall occur on the next succeeding date specified in Schedule 4 hereto occurring not earlier than 90 days after the date of the Exercise Notice, for an amount equal to the sum of (A) the greater of the Fair Market Sales Value of the Undivided Interest and the Real Property Interest (determined as of the date on which such purchase by the Lessee occurs by agreement of the Owner Participant and the Lessee, or, if they shall fail to agree within 15 days after the giving of the Exercise Notice, by the Appraisal Procedure) and the Special Termination Value (as adjusted pursuant to Section 3(d) and/or 3(e)) specified for such date in Schedule 4 hereto *minus* the unpaid principal amount of, and (if such Special Termination Value is equal to or greater than such Fair Market Sales Value) accrued interest since the last preceding Basic Rent Payment Date on, the Notes Outstanding on such date, and (B) Basic Rent (after adjustment pursuant to Section 3(d)) accrued and unpaid with respect to the period prior to the date of such purchase (the *Exercise Price*).

(ii) If the Lessee shall have elected to purchase the Undivided Interest and the Real Property Interest pursuant to this Section 13(c), the Lessee shall pay the Exercise Price in immediately available funds. If the Lessee shall fail to pay the full amount of the Exercise Price on the date specified in this Section 13(c), the Lessee shall no longer have any purchase right pursuant to this Section 13(c) and this Facility Lease shall remain in effect, taking into account the adjustments provided for under Section 3(d).

(iii) If the Lessee shall have elected to purchase the Undivided Interest and the Real Property Interest pursuant to this Section 13(c), shall have made the payment required by the Section 13(c) and shall have assumed all obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Lessor shall, so long as no Default or Event of Default shall have occurred and be continuing, no Event of Loss shall have occurred and no Deemed Loss Event shall have been declared, Transfer the Undivided Interest and the Real Property Interest to the Lessee. If the Lessee shall have made such payment but shall not have assumed all obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Owner Participant shall effect the Special Transfer, in which case, without further act on the part of the Lessor or the Lessee, (A) the obligation of the Lessee to pay further Basic Rent shall be reduced to an amount, payable on each Basic Rent Payment Date thereafter, equal to the aggregate amount of principal, premium, if any, and accrued interest then payable on all Notes Outstanding, and (B) this Facility Lease shall become a security agreement for all purposes of Applicable Law.

(iv) The amount of Basic Rent has been calculated on the assumption that the estimated tax payments to be made by the Owner Participant on the estimated tax payment dates after the Closing Date will reflect the benefit of the occurrence of the Undivided Interest being placed in service by the Lessor in December 1986. If the Lessee shall exercise the purchase option under this Section 13(c), then, upon demand by the Owner Participant, the Lessee shall pay to the Owner Participant, in addition to the Exercise Price, an amount which, on an AfterTax Basis, shall be equal to the interest, penalties and additions to tax, if any, payable by the Owner Participant or any Affiliate thereof resulting from any underpayment of estimated taxes, if any, that was caused by assuming that the Undivided Interest would be placed in service by the Lessor in December 1986, and that such purchase would not occur. The computation of the amount of such interest, penalties and additions to tax shall be subject to the verification procedure set forth in Section 3(f).

(v) The Lessee shall have no right to purchase under this Section 13(c) if the Lessor or the Owner Participant has provided notice to the Lessee on or prior to 15 days after the date of the Exercise Notice that it has waived the increase of the amount of aggregate Basic Rent payable pursuant to Sections 3(a)(i) and (ii) as a result of an adjustment required pursuant to Section 3(d) to the extent such adjustment would require the aggregate Basic Rent payable to exceed 110% of the amount that would have been payable absent such adjustment.

SECTION 14. *Termination for Obsolescence.*

(a) *Termination Notice.* Unless a Default or an Event of Default shall have occurred and be continuing or an Event of Loss shall have occurred or a Deemed Loss Event shall have been declared, the Lessee shall have the option (*provided that* the Lessee shall have delivered to the Lessor an Officers' Certificate to the effect that the Lessee's Board of Directors has adopted and there is in effect a resolution determining that Unit 2 is surplus to the Lessee or economically obsolete, which determination shall be concurred in by an independent engineer selected jointly by the Lessee and the Owner Participant (or selected by the Appraisal Procedure if the Lessee and the Owner Participant shall be unable to agree upon such an engineer within 30 days following the delivery of such Officers' Certificate) and provided that the Lessee shall be simultaneously disposing of all other interests in Unit 2 leased by it pursuant to leases (other than finance leases for accounting purposes)), on at least one year's and not more than 2 years' prior written notice (a *Termination Notice*) to the Lessor, the Owner Participant and the Indenture Trustee (which notice shall be irrevocable), to terminate this Facility Lease on any Basic Rent Payment Date (the *Termination Date*) after January 2, 1997, and prior to January 2, 2011. If the Lessee shall give the Lessor a Termination Notice, the Lessee shall, as agent for the Lessor, use its best efforts to obtain cash bids for the purchase of the Undivided Interest and the Real Property Interest. The Lessor shall also have the right to obtain such cash bids, either directly or through agents other than the Lessee. The Lessee shall certify to the Lessor within ten days after the Lessee's receipt of each bid (and, in any event, prior to the Termination Date) the amount and terms thereof and the name and address of the Person (which shall not be the Lessee or an Affiliate of the Lessee, or any agent of either thereof) submitting such bid.

(b) *Right of Lessor to Retain Undivided Interest upon Termination.* The Lessor may elect to retain, rather than sell, the Undivided Interest and the Real Property Interest by giving notice to the Lessee and the Indenture Trustee prior to the Termination Date. It shall be a condition precedent to the Lessor's right to retain the Undivided Interest and the Real Property Interest that on or prior to the Termination Date the Lessor shall have paid (or made provision for payment) to the Indenture Trustee the unpaid principal amount of all Notes Outstanding on such date and all premium, if any, and interest accrued and unpaid on the date of payment. If the Lessor elects to retain the Undivided Interest and the Real Property Interest pursuant to this Section 14(b), the Lessee shall pay to the Lessor on the Termination Date the Basic Rent and any other Rent due or accrued, as the case may be, to and including the Termination Date, together with an amount equal to *the excess, if any,* of the Termination Value as of the Termination Date *over* the highest bona fide offer received pursuant to Section 14(a).

(c) *Events on the Termination Date.* If the Lessor has not elected to retain the Undivided Interest and the Real Property Interest as provided in Section 14(b), on the Termination Date the Lessor shall (but only upon receipt of the sale price and all additional payments specified in the next sentence) Transfer the Undivided Interest and the Real Property Interest for cash to the bidder (which shall not be the Lessee or an Affiliate of the Lessee, or any agent of either thereof) that shall have submitted the highest bid on or before the Termination Date. The total sale price realized at such sale shall be retained by the Lessor (*subject, however,* to the terms of the Indenture and the requirement that there shall have been paid, or provision for payment made, to the Indenture Trustee the unpaid principal amount of all Notes Outstanding on the Termination Date and all premium, if any, and interest accrued and unpaid on the date of payment) and, in addition, on the Termination Date the Lessee shall pay to the Lessor the *excess, if any,* of the Termination Value as of the Termination Date *over* the sale price of the Undivided Interest and the Real Property Interest and shall pay to the Person or

Persons entitled thereto all Supplemental Rent (*other than* Termination Value). Upon compliance by the Lessee with the applicable provisions of this Section 14, the obligation of the Lessee to pay Basic Rent for any period after the Termination Date shall cease and the Basic Lease Term shall end on t[redacted] Termination Date, but the obligations of the Lessee to pay Supplemental Rent when and as due sh[redacted] continue in full force and effect and shall not be impaired by reason of any such termination. If, *other than* as a result of the Lessor's election to retain the Undivided Interest and the Real Property Interest as provided in Section 14(b), on or as of the Termination Date no such sale shall occur or the Lessee shall not have complied in full with this Section 14, this Facility Lease shall continue in full force and effect in accordance with its terms and the Lessee shall not thereafter be entitled to deliver another Termination Notice. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise take any action in connection with any such sale, *other than*, if the Lessor has not elected to retain the Undivided Interest and the Real Property Interest, to Transfer the Undivided Interest and the Real Property Interest to the purchaser named in the highest bid certified by the Lessee to the Lessor or obtained by the Lessor, against receipt of the payments provided for herein.

(d) *Early Termination.* If the Lessee shall fail to exercise its renewal option or purchase option within the time provided by Section 13(a), the Lessor shall have the option, on any Basic Rent Payment Date thereafter, on at least 60 days prior written notice (an *Early Termination Notice*) to the Lessee and the Indenture Trustee, to terminate this Facility Lease on the Basic Rent Payment Date specified in such notice (the *Early Termination Date*). Any Early Termination Notice may be revoked by the Lessor at any time on or prior to the Early Termination Date if any purchaser from or lessee of the Lessor shall fail to fulfill its obligation to purchase or lease on the Early Termination Date. On or prior to the Early Termination Date, the Lessor shall pay (or make provision for payment) to the Indenture Trustee the unpaid principal amount of all Notes outstanding on such date and all premium, if any, and interest accrued and unpaid on the date of payment. On the Early Termination Date, the Lessee shall pay to the Lessor any Basic Rent due or accrued, as the case may be, to and including the Early Termination Date, and shall pay to the Person or Persons entitled thereto all Supplemental Re[redacted] whereupon the obligation of the Lessee to pay any Basic Rent for any period after the Ea[redacted] Termination Date shall cease and the Lease Term shall end, but the obligations of the Lessee to pay Supplemental Rent when and as due shall continue in full force and effect and shall not be impaired by reason of any such termination.

SECTION 15. *Events of Default.*

The term *Event of Default*, wherever used herein, shall mean any of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary, or come about or be effected by operation of law, or be pursuant to or in compliance with any Applicable Law or Governmental Action):

(i) the Lessee shall fail to make, or cause to be made, (x) payment of Casualty Value, Special Casualty Value or Termination Value when due or payment due pursuant to exercise of the Cure Option when due (unless such amount shall have been wholly satisfied by a drawing under the Letter of Credit), (y) any payment of Basic Rent within 5 Business Days after the same shall become due or (z) any payment of Supplemental Rent (*other than* Casualty Value, Special Casualty Value, Termination Value, Special Termination Value or payment due pursuant to exercise of the Cure Option) within 20 days after the same shall become due or demanded, as the case may be (unless such amount shall have been wholly satisfied by a drawing under the Letter of Credit and the maximum drawing amount under the Letter of Credit shall have been reinstated within three Business Days of such drawing); *provided, however*, that in respect of Early Payment Obligations, an Event of Default shall not be deemed to occur until the Lessee shall have failed to make, or cause to be made, payment thereof (i) in the case of an Early Payment Obligation in respect of Section 9(c), on the Basic Rent Payment date next following the occurrence of an Event of Loss (the last day of the Lease Term being deemed a Basic Rent Payment Date for this purpose) or (ii) in the case of an Early Payment Obligation in respect of Section 9(d), the n[redacted]

date specified in Schedule 2 hereto following the date that written notice of a Deemed Loss Event has been delivered (or if such notice shall be given less than 10 days prior to such next date, on the second succeeding date specified in Schedule 2 hereto following such notice); or

(ii) the Lessee shall fail to perform or observe any covenant, condition or agreement to be performed or observed by it under Section 10(b)(3)(i), 10(b)(3)(ii), 10(b)(3)(iii), 10(b)(3)(v), or 10(b)(3)(xi) (but, with respect to the Lessee's obligation to make payments into the Decommissioning Trust Fund and the Second Fund, if any, only after 30 days following the date such payment is due) of the Participation Agreement or Section 7 or 11 of this Facility Lease; or

(iii) the remaining Economic Useful Life of Unit 2, as determined under Section 8(g) if required thereby to be so determined, shall be less than (x) five and one-half years as of April 1, 2013 or (y) three and one-half years as of the date six months prior to the end of the Renewal Term; or

(iv) the Lessee shall fail to perform or observe any covenant or agreement to be performed or observed by it under Section 10(b)(3)(viii) of the Participation Agreement and such failure shall continue for a period of 15 days after there shall have been given to the Lessee by the Lessor or the Owner Participant a notice specifying such failure and requiring it to be remedied and stating that such notice is a "*Notice of Default*" hereunder; or

(v) the Lessee shall fail to perform or observe any covenant, condition or agreement (*other than* those referred to in clauses (i) through (iv) above) to be performed or observed by it under this Facility Lease (other than Section 10) or any other Transaction Document, and such failure shall continue for a period of 30 days after there shall have been given to the Lessee by the Lessor or the Owner Participant a notice specifying such failure and requiring it to be remedied and stating that such notice is a "*Notice of Default*" hereunder; or

(vi) any representation or warranty made by the Lessee in this Facility Lease, any other Transaction Document (*other than* Section 13(c) of the Participation Agreement) or any agreement, document or certificate delivered by the Lessee in connection herewith or therewith shall prove to have been incorrect in any material respect when any such representation or warranty was made or given and shall remain material and materially incorrect at the time in question; or

(vii) the Lessee shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking of possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall take any corporate action to authorize any of the foregoing; or an involuntary case or other proceeding shall be commenced against the Lessee seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed or unstayed for a period of 60 consecutive days; or

(viii) final judgment for the payment of money in excess of $3,000,000 shall be rendered against the Lessee and the Lessee shall not have discharged the same or provided for its discharge in accordance with its terms or bonded the same or procured a stay of execution thereof within 60 days from the entry thereof; or

(ix) (1) a default by the Lessee under the ANPP Participation Agreement in consequence of which the Lessee's right to receive its Generation Entitlement Share is suspended by the other ANPP Participants or (2) the giving by any ANPP Participant of a notice under Section 23.2 (or

any comparable successor provision) of the ANPP Participation Agreement respecting a default thereunder by the Lessee and the lapse of 15 Business Days from the giving of such notice without the Lessee having cured such default; *provided, however*, that for purposes of this clause (2) if the Lessee shall have disputed the existence or nature of a default and such dispute shall have become the subject of an arbitration under Section 24 (or any comparable successor provision) of the ANPP Participation Agreement, such 15 Business Day period shall commence on the date of the final determination of the board of arbitrators under such provision; or

(x) (1) the Lessee shall fail to pay when due (whether by schedule maturity, required prepayment, acceleration, demand or otherwise) any Debt of the Lessee the principal amount (or equivalent) of which is greater than $10,000,000 and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt; or (2) any other default under any agreement or instrument relating to any such Debt, or any other event, shall occur and such Debt shall become due as a result thereof; or

(xi) the Lessee shall, at any time, (A) fail to maintain or replace a Letter of Credit then in effect, in accordance with all of the terms and conditions of Section 10(b)(3)(xvii) of the Participation Agreement (unless the Lessee has exercised its purchase option, and paid all amounts due in connection therewith, under Section 10(b)(3)(xvii) of the Participation Agreement), or otherwise be in breach of such Section 10(b)(3)(xvii), unless such failure or breach is the direct result of the failure of the Owner Participant to fulfill any Fee Obligation (as defined in such Section 10(b)(3)(xvii)) or (B) fail to provide a replacement Letter of Credit complying with all the terms and conditions of Section 10(b)(3)(xvii) of the Participation Agreement (1) within 25 days after the receipt by the Owner Participant of notice that an existing Letter of Credit will be terminated prior to its stated termination date under circumstances in which at least 30 days' notice of such termination is required or (2) concurrently with the receipt by the Lessor of notice that an existing Letter of Credit will be terminated prior to its stated termination date under circumstances in which less than 30 days' notice of such termination is required.

SECTION 16. *Remedies.*

(a) *Remedies.* Upon the occurrence of any Event of Default and so long as the same shall be continuing, the Lessor may, to the extent permitted by Applicable Law, exercise one or more of the following remedies as the Lessor in its sole discretion shall elect:

(i) the Lessor may declare this Facility Lease to be in default by written notice to such effect given to the Lessee, or may, by notice to the Lessee, rescind or terminate this Facility Lease;

(ii) the Lessor may (x) demand that the Lessee, and thereupon the Lessee shall, return possession of the Undivided Interest and the Real Property Interest promptly to the Lessor in the manner and condition required by, and otherwise in accordance with the provisions of, this Facility Lease as if the Undivided Interest and the Real Property Interest were being returned at the end of the Lease Term, and the Lessor shall not be liable for the reimbursement of the Lessee for any costs and expenses incurred by the Lessee in connection therewith or (y) enter upon the PVNGS Site and take immediate possession of (to the exclusion of the Lessee) the Undivided Interest and the Real Property Interest, by summary proceedings or otherwise, all without liability to the Lessee for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by such taking or otherwise;

(iii) the Lessor may sell the Undivided Interest and the Real Property Interest, or any part thereof, together with any interest of the Lessor under the Assignment and Assumption, at public or private sale, as the Lessor may determine, free and clear of any rights of the Lessee and without any duty to account to the Lessee with respect to such action or inaction or any proceeds with respect thereto (*except to the extent* required by clause (v) or (vi) below if the Lessor shall el

to exercise its rights thereunder), in which event the Lessee's obligation to pay Basic Rent hereunder for periods commencing after the date of such sale shall be terminated or proportionately reduced, as the case may be (*except to the extent* that Basic Rent is to be included in computations under clause (v) or (vi) below if the Lessor shall elect to exercise its rights thereunder);

(iv) the Lessor may hold, keep idle or lease to others all or any part of the Undivided Interest and the Real Property Interest, as the Lessor in its sole discretion may determine, free and clear of any rights of the Lessee and without any duty to account to the Lessee with respect to such action or inaction or for any proceeds with respect to such action or inaction, *except* that the Lessee's obligation to pay Basic Rent for periods commencing after the Lessee shall have been deprived of use of the Undivided Interest and the Real Property Interest pursuant to this clause (iv) shall be reduced by an amount equal to the net proceeds, if any, received by the Lessor from leasing the Undivided Interest and the Real Property Interest to any Person other than the Lessee for the same periods or any portion thereof;

(v) except in the case of an Event of Default specified in clause (iii) of Section 15, the Lessor may, whether or not the Lessor shall have exercised or shall thereafter at any time exercise its rights under clause (i), (ii), (iii) or (iv) above, demand, by written notice to the Lessee specifying a payment date which shall be a Basic Rent Payment Date not earlier than 10 days after the date of such notice, that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor, on the Basic Rent Payment Date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent due after the Basic Rent Payment Date specified in such notice), any unpaid Rent due through the Basic Rent Payment Date specified in such notice *plus* whichever of the following amounts the Lessor, in its sole discretion, shall specify in such notice, together with interest on such amount at the higher of the Overdue Interest Rate and the Penalty Rate from the Basic Rent Payment Date specified in such notice to the date of actual payment:

(A) an amount equal to *the excess, if any,* of Casualty Value, computed as of the Basic Rent Payment Date specified in such notice, *over* the Fair Market Rental Value of the Undivided Interest and the Real Property Interest (determined on the basis of the then actual condition of Unit 2) until the end of the remaining useful life of Unit 2, after discounting such Fair Market Rental Value semiannually to present value as of the Basic Rent Payment Date specified in such notice at a rate of 12% per annum; or

(B) an amount equal to *the excess, if any,* of such Casualty Value over the Fair Market Sales Value of the Undivided Interest and the Real Property Interest (determined on the basis of the then actual condition of Unit 2) as of the Basic Rent Payment Date specified in such notice; or

(C) an amount equal to *the excess, if any,* of (1) the present value as of the Basic Rent Payment Date specified in such notice of all installments of Basic Rent until the end of the Basic Lease Term or the Renewal Term, as the case may be, discounted semiannually at a rate of 10% per annum, *over* (2) the present value as of such Basic Rent Payment Date of the Fair Market Rental Value of the Undivided Interest and the Real Property Interest (determined on the basis of the then actual condition of Unit 2) until the end of the Basic Lease Term or the Renewal Term, as the case may be, discounted semiannually at a rate of 10% per annum; or

(D) an amount equal to the highest of (X) such Casualty Value, (Y) such discounted Fair Market Rental Value and (Z) such Fair Market Sales Value and, in this event, upon full payment by the Lessee of all sums due hereunder, the Lessor shall, at its option, either Transfer the Undivided Interest and the Real Property Interest to the Lessee or promptly sell the Undivided Interest and the Real Property Interest and pay over to the Lessee the net

proceeds thereof up to the amount set forth in (X), (Y) or (Z) above actually paid by the Lessee to the Lessor;

(vi) if the Lessor shall have sold all the Undivided Interest and the Real Property Interest pursuant to clause (iii) above, the Lessor, in lieu of exercising its rights under clause (v) above, may, if it shall so elect, but not in the case of an Event of Default specified in clause (iii) of Section 15, demand that the Lessee pay to the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty (in lieu of Basic Rent due for periods commencing after the next Basic Rent Payment Date following the date of such sale), any unpaid Basic Rent due through such Basic Rent Payment Date, plus the amount of any difference between the Sale Proceeds and Casualty Value, computed as of such Basic Rent Payment Date, together with interest at the higher of the Overdue Interest Rate and the Penalty Rate on the amount of such Rent and such deficiency from the date of such sale until the date of actual payment;

(vii) in the case of an Event of Default specified in clause (iii) of Section 15, the Lessor may demand, by written notice to the Lessee specifying a payment date which shall be the last Basic Rent Payment Date of the Lease Term, that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor, on such Basic Rent Payment Date, as liquidated damages for loss of a bargain and not as a penalty, any unpaid Rent due through such Basic Rent Payment Date *plus* an amount equal to the Fair Market Sales Value (without including in such value the availability of the Decommissioning Trust Fund and the Second Fund, if any, or the benefit to the Lessor of the Lessee's obligations under Section 10(b)(3)(xi) of the Participation Agreement) of the Undivided Interest and the Real Property Interest (determined on the basis of the then actual condition of Unit 2) determined as of such Basic Rent Payment Date, together with interest on such amount at the higher of the Overdue Interest Rate and the Penalty Rate from the Basic Rent Payment Date specified in such notice to the date of actual payment, and upon receipt of such payment the Lessor shall Transfer to the Lessee the Undivided Interest and the Real Property Interest.

(b) *No Release.* No rescission or termination of this Facility Lease, in whole or in part, or repossession of the Undivided Interest and the Real Property Interest or exercise of any remedy under Section 16(a) shall, *except* as specifically provided therein, relieve the Lessee of any of its liabilities and obligations hereunder. In addition, the Lessee shall be liable, *except* as otherwise provided above, for any and all unpaid Rent due hereunder before, after or during the exercise of any of the foregoing remedies, including all reasonable legal fees and other costs and expenses incurred by the Lessor, the Owner Participant and the Indenture Trustee by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto. At any sale of the Undivided Interest and the Real Property Interest or any part thereof pursuant to this Section 16, the Owner Participant, the Lessor or the Indenture Trustee may bid for and purchase such property.

(c) *Remedies Cumulative.* No remedy under Section 16(a) is intended to be exclusive, but each shall be cumulative and in addition to any other remedy provided under Section 16(a) or otherwise available to the Lessor at law or in equity. No express or implied waiver by the Lessor of any Default or Event of Default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent Default or Event of Default. The failure or delay of the Lessor in exercising any right granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies and any single or partial exercise of any particular right by the Lessor shall not exhaust the same or constitute a waiver of any other right provided herein. To the extent permitted by Applicable Law, the Lessee hereby waives any rights now or hereafter conferred by statute or otherwise which may require the Lessor to sell, lease or otherwise use the Undivided Interest or the Real Property Interest in mitigation of the Lessor's damages as set forth in Section 16(a) or which may otherwise limit or modify any of the Lessor's rights and remedies provided in this Section 16.

(d) *Exercise of Other Rights or Remedies.* In addition to all other rights and remedies provided in this Section 16, the Lessor may exercise any other right or remedy that may be available to it under Applicable Law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof.

(e) *Special Cure Right of Lessee.* If a *Notice of Default* is given under clause (iv) of Section 15, the Lessee may, on or prior to the occurrence of an Event of Default resulting therefrom, give written notice to the Lessor stating that the Lessee has elected to exercise the option (the *Cure Option)* provided in this Section 16(e), which election shall be irrevocable as to the Lessee. Promptly after the giving of such notice, the Lessee and the Owner Participant shall agree upon the Fair Market Sales Value of the Undivided Interest and the Real Property Interest or, if they shall be unable so to agree within one month after the date of the Lessee's notice, such value shall be determined by the Appraisal Procedure. On the Basic Rent Payment Date next following the date that such Fair Market Sales Value shall have been determined, the Lessee shall pay to the Lessor an amount equal to *the excess of* (i) the greater of such Fair Market Sales Value and the Casualty Value determined as of such Basic Rent Payment Date *over* (ii) the unpaid principal amount of, and (if such Casualty Value is greater than or equal to such Fair Market Sales Value) accrued interest since the last preceding Basic Rent Payment Date on, the Notes Outstanding on such date after giving effect to the payment, if any, of the principal installment due and payable and paid in respect of the Notes on such date. If the Lessee shall have made such payment and shall have assumed all obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Lessor shall Transfer the Undivided Interest and the Real Property Interest to the Lessee. If the Lessee shall have made such payment but shall not have assumed all obligations and liabilities of the Owner Trustee under the Indenture and the Notes pursuant to Section 3.9(b) of the Indenture, the Owner Participant shall effect the Special Transfer, *in which case, without further act on the part of the Lessor or the Lessee,* (i) the obligation of the Lessee to pay further Basic Rent shall be reduced to an amount, payable on each Basic Rent Payment Date thereafter, equal to the aggregate amount of principal, premium, if any, and accrued interest then payable on all Notes then Outstanding and (ii) this Facility Lease shall become a security agreement for all purposes of Applicable Law.

SECTION 17. *Notices.*

All communications and notices provided for in this Facility Lease shall be in writing and shall be given in person or by means of telex, telecopy, or other wire transmission, or mailed by registered or certified mail, addressed as provided in the Participation Agreement. All such communications and notices given in such manner shall be effective on the date of receipt of such communication or notice.

SECTION 18. *Successors and Assigns.*

This Facility Lease, including all agreements, covenants, indemnities, representations and warranties, shall be binding upon and inure to the benefit of the Lessor and its successors and permitted assigns, and the Lessee and its successors and, to the extent permitted hereby, assigns.

SECTION 19. *Right to Perform for Lessee.*

If the Lessee shall fail to make any payment of Rent to be made by it, or shall fail to perform or comply with any of its other agreements contained herein, or shall fail to make any payment to be made by it under any ANPP Project Agreement, or shall fail to perform or comply with any of its other agreements contained in any ANPP Project Agreement either the Lessor or the Owner Participant may, but shall not be obligated to (i) to the extent not prohibited by Applicable Law, tender such payment, or (ii) to the extent not prohibited by Applicable Law and, in the case of the ANPP Project Agreements, to the extent not expressly prohibited thereby, effect such performance or compliance, and the amount of such payment and the amount of all costs and expenses (including, without limitation, attorneys' and other professionals' fees and expenses) of the Lessor or the Owner Participant, as the case may be, incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the higher of the Overdue Interest Rate and the Penalty Rate, shall be deemed Supplemental Rent, payable by the

Lessee upon demand. In the event that the Lessor or the Owner Participant shall cure any default by the Lessee under the ANPP Participation Agreement, then (so long as an Event of Default ha[s] occurred and is continuing) the Lessor, together with each other Person contributing to such cur[e] shall be entitled (to the full extent enforceable in accordance with Applicable Law and the ANPP Participation Agreement) to receive the Generation Entitlement Share of the Lessee under the ANPP Participation Agreement (not limited to Unit 2), with each contributor to receive a percentage of such Generation Entitlement Share equal to the percentage of the cure contributed thereby.

SECTION 20. *Additional Covenants.*

The Lessee agrees to comply with and to pay, as Supplemental Rent, all amounts payable by it under the provisions of Section 13 of the Participation Agreement, which provisions are incorporated herein by this reference as fully as if set forth in full at this place. The Lessee agrees to comply with its covenants and agreements set forth in Sections 10(b), 14 and 16 of the Participation Agreement and Articles III, IV, V, VI and VII of the Assignment and Assumption, which covenants and agreements are incorporated herein by this reference as fully as if set forth in full at this place.

SECTION 21. *Lease of Real Property Interest.*

Pursuant to the Deed and the Assignment of Beneficial Interest, the Lessee has sold to the Lessor the Real Property Interest. The Lessor hereby grants to the Lessee a leasehold interest in the Real Property Interest, such leasehold to be coterminous with the lease of the Undivided Interest hereunder and to be at a rent per annum equal to 12% of the Real Estate Investment payable by the Lessee to the Lessor in arrears in equal semiannual installments on each Basic Rent Payment Date during the Lease Term.

SECTION 22. *Amendments and Miscellaneous.*

(a) *Amendments in Writing.* The terms of this Facility Lease may not be waived, altered, modifie[d] amended, supplemented or terminated in any manner whatsoever *except* by written instrument sign[ed] by the Lessor and the Lessee.

(b) *Survival.* (1) All indemnities, representations and warranties contained in this Facility Lease and the other Transaction Documents and the Financing Documents and in any agreement, document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith shall survive, and continue in effect following, the execution and delivery of this Facility Lease and the expiration or other termination of this Facility Lease.

(2) The obligations of the Lessee to pay Supplemental Rent and the obligations of the Lessee under Sections 5, 10(a)(2)(ii), 16, 19 and 20 shall survive the expiration or termination of this Facility Lease. The modification by law of any statute of limitations or the waiver or extension of any statute of limitations by the Owner Trustee, the Indenture Trustee, the Lessee, the Owner Participant, the Loan Participant or any Indemnitee shall not affect such survival. The obligations of the Lessee under Section 20 are expressly made for the benefit of, and shall be enforceable by, any Indemnitee, separately or together, without declaring this Facility Lease to be in default and notwithstanding any assignment by the Lessor of this Facility Lease or any of its rights thereunder or any disposition of all or any part of any interest in the Undivided Interest, the Real Property Interest, Unit 2 or any other property referred to in this Facility Lease or any other Transaction Document or Financing Document. All payments required to be made pursuant to Section 20 shall be made directly to, or as otherwise requested by, the Indemnitee entitled thereto upon written demand by such Indemnitee.

(c) *Severability of Provisions.* Any provision of this Facility Lease which may be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforc[e]able such provision in any other jurisdiction. To the extent permitted by Applicable Law, the Less[ee]

hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(d) *True Lease.* This Facility Lease shall constitute an agreement of lease and nothing herein shall be construed as conveying to the Lessee any right, title or interest in or to the Undivided Interest or the Real Property Interest, except as lessee only.

(e) *Original Lease.* The single executed original of this Facility Lease marked "THIS COUNTERPART IS THE ORIGINAL COUNTERPART" and containing the receipt of the Indenture Trustee thereon shall be the *Original* of this Facility Lease. No security interest in this Facility Lease may be created through the transfer or possession of any counterpart other than the Original.

(f) *Governing Law.* This Facility Lease shall be governed by and construed in accordance with the law of the State of New York, *except* to the extent that pursuant to the law of the State of Arizona the law of the State of Arizona is mandatorily applicable hereto.

(g) *Headings.* The division of this Facility Lease into sections, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Facility Lease.

(h) *Concerning the Owner Trustee.* FNB is entering into this Facility Lease solely as Owner Trustee under the Trust Agreement and not in its individual capacity. Anything herein to the contrary notwithstanding, all and each of the representations, warranties, undertakings and agreements herein made on the part of the Owner Trustee are made and intended not as personal representations, warranties, undertakings and agreements by or for the purpose or with the intention of binding FNB personally but are made and intended for the purpose of binding only the Trust Estate, and this Facility Lease is executed and delivered by the Owner Trustee solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or responsibility is assumed hereunder by or shall at any time be enforceable against FNB or any successor in trust or the Owner Participant on account of any representation, warranty, undertaking or agreement hereunder of the Owner Trustee, either expressed or implied, all such personal liability, if any, being expressly waived by the Lessee, *except that* the Lessee or any Person claiming by, through or under it, making claim hereunder, may look to the Trust Estate for satisfaction of the same and the Owner Trustee or its successor in trust, as applicable, shall be personally liable for its own gross negligence or willful misconduct. If a successor owner trustee is appointed in accordance with the terms of the Trust Agreement, such successor owner trustee shall, without any further act, succeed to all the rights, duties, immunities and obligations of the Owner Trustee hereunder and the predecessor owner trustee shall be released from all further duties and obligations hereunder. .

(i) *Disclosure.* Pursuant to Arizona Revised Statutes Section 33-401, the beneficiary of the Trust Agreement is Commercial Federal Investment Corporation, a Nebraska corporation, whose address is Commercial Federal Tower, 2120 South 72nd Street, Omaha, Nebraska 68124, Attention: Jeff Bainbridge. A copy of the Trust Agreement is available for inspection at the offices of the Owner Trustee at 100 Federal Street, Boston, Massachussetts 02110, Attention: Corporate Trust Division.

(j) *Counterpart Execution.* This Facility Lease may be executed in any number of counterparts and by each of the parties hereto or thereto on separate counterparts, all such counterparts together constituting but one and the same instrument.

(k) *Notice Prior to Exercise of Rights.* Before sending any notice or otherwise exercising any right with respect to any of its rights referred to in Section 12, 13(b), 13(c) or 14(a), the Lessee shall give notice to the Owner Participant of any facts known to the Lessee with respect to any possible Event of Loss or Deemed Loss Event, and the Lessee shall have no right to exercise any of its rights referred to Section 12, 13(b), 13(c) or 14 until 15 days after receipt of such notice by the Owner Participant.

IN WITNESS WHEREOF, each of the parties hereto has caused this Facility Lease to be duly executed in New York, New York by an officer thereunto duly authorized.

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as Owner Trustee under a Trust Agreement dated as of December 1, 1986, with COMMERCIAL FEDERAL INVESTMENT CORPORATION

By _____
Assistant Vice President

EL PASO ELECTRIC COMPANY

By _____
Vice President

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss:

The foregoing instrument was acknowledged before me this 16th day of December, 1986 by WILLIAM J. JOHNSON, the Vice President of EL PASO ELECTRIC COMPANY, a Texas corporation, on behalf of said corporation.

David A. Spivak

Notary Public
DAVID A. SPIVAK
Notary Public, State of New York
No. 31-4693468
Qualified in New York County
Commission Expires March 30, 1987

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss:

. The foregoing instrument was acknowledged before me this 16th day of December, 1986 by MARTIN P. HENRY, an Assistant Vice President of THE FIRST NATIONAL BANK OF BOSTON, a national banking association, on behalf of the banking association as trustee under that certain Trust Agreement, dated as of December 1, 1986, with Commercial Federal Investment Corporation.

David A. Spivak

Notary Public
DAVID A. SPIVAK
Notary Public, State of New York
No. 31-4693468
Qualified in New York County
Commission Expires March 30, 1987

SCHEDULE 1
TO
FACILITY LEASE

SCHEDULE OF CASUALTY VALUES

Date	Percentage of Facility Cost
2 JAN 1987	106.83251
2 FEB 1987	107.87160
2 MAR 1987	108.91404
2 APR 1987	109.87933
2 MAY 1987	110.90096
2 JUN 1987	111.92578
2 JUL 1987	110.18816
2 AUG 1987	106.32801
2 SEP 1987	107.26865
2 OCT 1987	108.18978
2 NOV 1987	109.08869
2 DEC 1987	110.01576
2 JAN 1988	110.90602
2 FEB 1988	107.00652
2 MAR 1988	107.91591
2 APR 1988	108.78834
2 MAY 1988	109.68869
2 JUN 1988	110.59113
2 JUL 1988	111.45652
2 AUG 1988	107.53221
2 SEP 1988	108.41635
2 OCT 1988	109.28504
2 NOV 1988	110.13435
2 DEC 1988	111.00713
2 JAN 1989	111.84897
2 FEB 1989	107.92367
2 MAR 1989	108.78528
2 APR 1989	109.61591
2 MAY 1989	110.46989
2 JUN 1989	111.32558
2 JUL 1989	112.15022
2 AUG 1989	108.20738
2 SEP 1989	109.05136
2 OCT 1989	109.88245
2 NOV 1989	110.69872
2 DEC 1989	111.53380
2 JAN 1990	112.34438
2 FEB 1990	108.38270
2 MAR 1990	109.20774
2 APR 1990	110.00824
2 MAY 1990	110.82746
2 JUN 1990	111.64818
2 JUL 1990	112.44432
2 AUG 1990	108.46791
2 SEP 1990	109.27812
2 OCT 1990	110.07820
2 NOV 1990	110.86176
2 DEC 1990	111.66364
2 JAN 1991	112.44128
2 FEB 1991	108.44570
2 MAR 1991	109.23663
2 APR 1991	110.00327
2 MAY 1991	110.78813
2 JUN 1991	111.57429
2 JUL 1991	112.33613
2 AUG 1991	108.32441
2 SEP 1991	109.09909
2 OCT 1991	109.86365
2 NOV 1991	110.61184
2 DEC 1991	111.37780
2 JAN 1992	112.11982
2 FEB 1992	108.08753
2 MAR 1992	108.84155
2 APR 1992	109.57156
2 MAY 1992	110.31925
2 JUN 1992	111.06803
2 JUL 1992	111.79275
2 AUG 1992	107.74280
2 SEP 1992	108.47906
2 OCT 1992	109.20518
2 NOV 1992	109.91824
2 DEC 1992	110.64643
2 JAN 1993	111.35414
2 FEB 1993	107.28336
2 MAR 1993	107.99865
2 APR 1993	108.69341
2 MAY 1993	109.40320
2 JUN 1993	110.11387
2 JUL 1993	110.80397
2 AUG 1993	106.71510
2 SEP 1993	107.41222
2 OCT 1993	108.10064
2 NOV 1993	108.77539
2 DEC 1993	109.46462
2 JAN 1994	110.13384
2 FEB 1994	106.02313
2 MAR 1994	106.69828
2 APR 1994	107.35337
2 MAY 1994	108.02285
2 JUN 1994	108.69300
2 JUL 1994	109.34304
2 AUG 1994	105.21262
2 SEP 1994	105.86799
2 OCT 1994	106.51474
2 NOV 1994	107.14814
2 DEC 1994	107.79533

Commercial

SCHEDULE 1
TO
FACILITY LEASE

SCHEDULE OF CASUALTY VALUES

Date	Percentage of Facility Cost
2 JAN 1995	108.42301
2 FEB 1995	104.26918
2 MAR 1995	104.90103
2 APR 1995	105.51331
2 MAY 1995	106.13929
2 JUN 1995	106.76572
2 JUL 1995	107.37253
2 AUG 1995	103.19728
2 SEP 1995	103.80759
2 OCT 1995	104.40939
2 NOV 1995	104.99818
2 DEC 1995	105.60002
2 JAN 1996	106.18291
2 FEB 1996	101.98259
2 MAR 1996	102.56772
2 APR 1996	103.13656
2 MAY 1996	103.71656
2 JUN 1996	104.29678
2 JUL 1996	104.87722
2 AUG 1996	100.66122
2 SEP 1996	101.23059
2 OCT 1996	101.80018
2 NOV 1996	102.37000
2 DEC 1996	102.94005
2 JAN 1997	103.51034
2 FEB 1997	99.28365
2 MAR 1997	99.84234
2 APR 1997	100.40127
2 MAY 1997	100.96043
2 JUN 1997	101.51984
2 JUL 1997	102.07966
2 AUG 1997	97.84183
2 SEP 1997	98.38941
2 OCT 1997	98.94065
2 NOV 1997	99.50055
2 DEC 1997	100.05370
2 JAN 1998	100.61781
2 FEB 1998	96.35524
2 MAR 1998	96.89477
2 APR 1998	97.44522
2 MAY 1998	97.98891
2 JUN 1998	98.53289
2 JUL 1998	99.08783
2 AUG 1998	94.81834
2 SEP 1998	95.34866
2 OCT 1998	95.88399
2 NOV 1998	96.42791
2 DEC 1998	96.96459
2 JAN 1999	97.51302
2 FEB 1999	93.23094
2 MAR 1999	93.75291
2 APR 1999	94.28659
2 MAY 1999	94.81303
2 JUN 1999	95.33978
2 JUL 1999	95.87829
2 AUG 1999	91.58956
2 SEP 1999	92.10171
2 OCT 1999	92.61923
2 NOV 1999	93.14596
2 DEC 1999	93.66493
2 JAN 2000	94.19650
2 FEB 2000	89.89432
2 MAR 2000	90.39756
2 APR 2000	90.91336
2 MAY 2000	91.42140
2 JUN 2000	91.92978
2 JUL 2000	92.45076
2 AUG 2000	88.14149
2 SEP 2000	88.63426
2 OCT 2000	89.13278
2 NOV 2000	89.64117
2 DEC 2000	90.14126
2 JAN 2001	90.65484
2 FEB 2001	86.33123
2 MAR 2001	86.81449
2 APR 2001	87.31122
2 MAY 2001	87.79963
2 JUN 2001	88.28841
2 JUL 2001	88.79070
2 AUG 2001	84.45955
2 SEP 2001	84.93165
2 OCT 2001	85.40991
2 NOV 2001	85.89874
2 DEC 2001	86.37869
2 JAN 2002	86.87310
2 FEB 2002	82.52665
2 MAR 2002	82.98862
2 APR 2002	83.46501
2 MAY 2002	83.93250
2 JUN 2002	84.40039
2 JUL 2002	84.88275
2 AUG 2002	80.52827
2 SEP 2002	80.97832
2 OCT 2002	81.43499
2 NOV 2002	81.90298
2 DEC 2002	82.36145
2 JAN 2003	82.83543
2 FEB 2003	78.46461

Commercial

SCHEDULE 1
TO
FACILITY LEASE

SCHEDULE OF CASUALTY VALUES

Date	Percentage of Facility Cost
2 MAR 2003	78.90387
2 APR 2003	79.35858
2 MAY 2003	79.80376
2 JUN 2003	80.24937
2 JUL 2003	80.71049
2 AUG 2003	76.33111
2 SEP 2003	76.75766
2 OCT 2003	77.19129
2 NOV 2003	77.63706
2 DEC 2003	78.07264
2 JAN 2004	78.52483
2 FEB 2004	74.12800
2 MAR 2004	74.54303
2 APR 2004	74.97462
2 MAY 2004	75.39601
2 JUN 2004	75.81787
2 JUL 2004	76.25633
2 AUG 2004	71.85041
2 SEP 2004	72.25188
2 OCT 2004	72.66096
2 NOV 2004	73.08303
2 DEC 2004	73.49419
2 JAN 2005	73.92315
2 FEB 2005	69.49859
2 MAR 2005	69.88780
2 APR 2005	70.29474
2 MAY 2005	70.69076
2 JUN 2005	71.08729
2 JUL 2005	71.50160
2 AUG 2005	67.06736
2 SEP 2005	67.44210
2 OCT 2005	67.82498
2 NOV 2005	68.22180
2 DEC 2005	68.60693
2 JAN 2006	69.01112
2 FEB 2006	64.55700
2 MAR 2006	64.91867
2 APR 2006	65.29933
2 MAY 2006	65.66831
2 JUN 2006	66.03783
2 JUL 2006	66.42641
2 AUG 2006	61.96197
2 SEP 2006	62.30821
2 OCT 2006	62.66318
2 NOV 2006	63.03308
2 DEC 2006	63.39047
2 JAN 2007	63.76830
2 FEB 2007	59.28714
2 MAR 2007	59.62021
2 APR 2007	59.97366
2 MAY 2007	60.31460
2 JUN 2007	60.65616
2 JUL 2007	61.01816
2 AUG 2007	56.55432
2 SEP 2007	56.87631
2 OCT 2007	57.20781
2 NOV 2007	57.55600
2 DEC 2007	57.89058
2 JAN 2008	58.24776
2 FEB 2008	53.77651
2 MAR 2008	54.09130
2 APR 2008	54.42877
2 MAY 2008	54.75280
2 JUN 2008	55.07779
2 JUL 2008	55.42555
2 AUG 2008	50.94352
2 SEP 2008	51.24770
2 OCT 2008	51.56263
2 NOV 2008	51.89640
2 DEC 2008	52.21541
2 JAN 2009	52.55975
2 FEB 2009	48.07136
2 MAR 2009	48.36941
2 APR 2009	48.69290
2 MAY 2009	49.00182
2 JUN 2009	49.31212
2 JUL 2009	49.64797
2 AUG 2009	45.14958
2 SEP 2009	45.43786
2 OCT 2009	45.73838
2 NOV 2009	46.06010
2 DEC 2009	46.36581
2 JAN 2010	46.69992
2 FEB 2010	42.19654
2 MAR 2010	42.48010
2 APR 2010	42.79221
2 MAY 2010	43.08851
2 JUN 2010	43.38672
2 JUL 2010	43.71358
2 AUG 2010	39.20133
2 SEP 2010	39.47627
2 OCT 2010	39.76515
2 NOV 2010	40.07754
2 DEC 2010	40.37278
2 JAN 2011	40.69953
2 FEB 2011	36.11319
2 MAR 2011	36.37326
2 APR 2011	36.66469

Commercial

SCHEDULE 1
TO
FACILITY LEASE

SCHEDULE OF CASUALTY VALUES

Date	Percentage of Facility Cost	Date	Percentage of Facility Cost
2 MAY 2011	36. 93897		
2 JUN 2011	37. 21547		
2 JUL 2011	37. 52347		
2 AUG 2011	32. 83341		
2 SEP 2011	33. 05970		
2 OCT 2011	33. 30078		
2 NOV 2011	33. 56477		
2 DEC 2011	33. 81109		
2 JAN 2012	34. 08905		
2 FEB 2012	29. 36837		
2 MAR 2012	29. 56377		
2 APR 2012	29. 79034		
2 MAY 2012	29. 99889		
2 JUN 2012	30. 20904		
2 JUL 2012	30. 45049		
2 AUG 2012	25. 69296		
2 SEP 2012	25. 85117		
2 OCT 2012	26. 02372		
2 NOV 2012	26. 21842		
2 DEC 2012	26. 39479		
2 JAN 2013	26. 60215		
2 FEB 2013	21. 81884		
2 MAR 2013	21. 94527		
2 APR 2013	22. 09361		
2 MAY 2013	22. 22895		
2 JUN 2013	22. 36520		
2 JUL 2013	22. 53207		
2 AUG 2013	20. 23598		
2 SEP 2013	20. 16755		
2 OCT 2013	20. 00000		

Commercial

SCHEDULE 2
TO
FACILITY LEASE

SCHEDULE OF SPECIAL CASUALTY VALUES

Date	Percentage of Facility Cost
2 JAN 1987	105. 64758
2 FEB 1987	106. 67877
2 MAR 1987	107. 71325
2 APR 1987	108. 67054
2 MAY 1987	109. 68412
2 JUN 1987	110. 70082
2 JUL 1987	108. 95503
2 AUG 1987	105. 08666
2 SEP 1987	106. 01803
2 OCT 1987	106. 93183
2 NOV 1987	107. 82235
2 DEC 1987	108. 74098
2 JAN 1988	109. 62274
2 FEB 1988	105. 71468
2 MAR 1988	106. 61546
2 APR 1988	107. 47922
2 MAY 1988	108. 37084
2 JUN 1988	109. 26449
2 JUL 1988	110. 12105
2 AUG 1988	106. 18783
2 SEP 1988	107. 06301
2 OCT 1988	107. 92267
2 NOV 1988	108. 76290
2 DEC 1988	109. 62654
2 JAN 1989	110. 45917
2 FEB 1989	106. 52461
2 MAR 1989	107. 37690
2 APR 1989	108. 19813
2 MAY 1989	109. 04266
2 JUN 1989	109. 88883
2 JUL 1989	110. 70390
2 AUG 1989	106. 75142
2 SEP 1989	107. 58569
2 OCT 1989	108. 40701
2 NOV 1989	109. 21344
2 DEC 1989	110. 03862
2 JAN 1990	110. 83923
2 FEB 1990	106. 86752
2 MAR 1990	107. 68245
2 APR 1990	108. 47279
2 MAY 1990	109. 28177
2 JUN 1990	110. 09219
2 JUL 1990	110. 87786
2 AUG 1990	106. 89110
2 SEP 1990	107. 69080
2 OCT 1990	108. 48030
2 NOV 1990	109. 25320
2 DEC 1990	110. 04436
2 JAN 1991	110. 81120
2 FEB 1991	106. 80476
2 MAR 1991	107. 58475
2 APR 1991	108. 34038
2 MAY 1991	109. 11416
2 JUN 1991	109. 88916
2 JUL 1991	110. 63976
2 AUG 1991	106. 61672
2 SEP 1991	107. 38003
2 OCT 1991	108. 13312
2 NOV 1991	108. 86877
2 DEC 1991	109. 62413
2 JAN 1992	110. 35445
2 FEB 1992	106. 31039
2 MAR 1992	107. 05256
2 APR 1992	107. 77065
2 MAY 1992	108. 50634
2 JUN 1992	109. 24302
2 JUL 1992	109. 95558
2 AUG 1992	105. 89338
2 SEP 1992	106. 61731
2 OCT 1992	107. 33102
2 NOV 1992	108. 03159
2 DEC 1992	108. 74720
2 JAN 1993	109. 44224
2 FEB 1993	105. 35872
2 MAR 1993	106. 06118
2 APR 1993	106. 74302
2 MAY 1993	107. 43981
2 JUN 1993	108. 13739
2 JUL 1993	108. 81431
2 AUG 1993	104. 71219
2 SEP 1993	105. 39595
2 OCT 1993	106. 07093
2 NOV 1993	106. 73214
2 DEC 1993	107. 40776
2 JAN 1994	108. 06326
2 FEB 1994	103. 93874
2 MAR 1994	104. 60000
2 APR 1994	105. 24110
2 MAY 1994	105. 89650
2 JUN 1994	106. 55248
2 JUL 1994	107. 18824
2 AUG 1994	103. 04346
2 SEP 1994	103. 68437
2 OCT 1994	104. 31656
2 NOV 1994	104. 93530
2 DEC 1994	105. 56775

Commercial

SCHEDULE 2
TO
FACILITY LEASE

SCHEDULE OF SPECIAL CASUALTY VALUES

Date	Percentage of Facility Cost
2 JAN 1995	106. 18057
2 FEB 1995	102. 01180
2 MAR 1995	102. 62859
2 APR 1995	103. 22572
2 MAY 1995	103. 83645
2 JUN 1995	104. 44753
2 JUL 1995	105. 03888
2 AUG 1995	100. 84808
2 SEP 1995	101. 44273
2 OCT 1995	102. 02876
2 NOV 1995	102. 60168
2 DEC 1995	103. 18754
2 JAN 1996	103. 75435
2 FEB 1996	99. 53784
2 MAR 1996	100. 10667
2 APR 1996	100. 65911
2 MAY 1996	101. 22259
2 JUN 1996	101. 78619
2 JUL 1996	102. 34989
2 AUG 1996	98. 11704
2 SEP 1996	98. 66944
2 OCT 1996	99. 22196
2 NOV 1996	99. 77460
2 DEC 1996	100. 32735
2 JAN 1997	100. 88021
2 FEB 1997	96. 63599
2 MAR 1997	97. 17703
2 APR 1997	97. 71819
2 MAY 1997	98. 25947
2 JUN 1997	98. 80086
2 JUL 1997	99. 34255
2 AUG 1997	95. 08648
2 SEP 1997	95. 61569
2 OCT 1997	96. 14844
2 NOV 1997	96. 68973
2 DEC 1997	97. 22414
2 JAN 1998	97. 76938
2 FEB 1998	93. 48782
2 MAR 1998	94. 00824
2 APR 1998	94. 53944
2 MAY 1998	95. 06376
2 JUN 1998	95. 58825
2 JUL 1998	96. 12356
2 AUG 1998	91. 83430
2 SEP 1998	92. 34473
2 OCT 1998	92. 86003
2 NOV 1998	93. 38379
2 DEC 1998	93. 90017
2 JAN 1999	94. 42818
2 FEB 1999	90. 12553
2 MAR 1999	90. 62680
2 APR 1999	91. 13964
2 MAY 1999	91. 64510
2 JUN 1999	92. 15073
2 JUL 1999	92. 66798
2 AUG 1999	88. 35784
2 SEP 1999	88. 84845
2 OCT 1999	89. 34428
2 NOV 1999	89. 84917
2 DEC 1999	90. 34617
2 JAN 2000	90. 85561
2 FEB 2000	86. 53116
2 MAR 2000	87. 01198
2 APR 2000	87. 50521
2 MAY 2000	87. 99053
2 JUN 2000	88. 47604
2 JUL 2000	88. 97399
2 AUG 2000	84. 64155
2 SEP 2000	85. 11098
2 OCT 2000	85. 58602
2 NOV 2000	86. 07076
2 DEC 2000	86. 54704
2 JAN 2001	87. 03667
2 FEB 2001	82. 68893
2 MAR 2001	83. 14792
2 APR 2001	83. 62019
2 MAY 2001	84. 08400
2 JUN 2001	84. 54801
2 JUL 2001	85. 02536
2 AUG 2001	80. 66911
2 SEP 2001	81. 11594
2 OCT 2001	81. 56876
2 NOV 2001	82. 03199
2 DEC 2001	82. 48615
2 JAN 2002	82. 95462
2 FEB 2002	78. 58205
2 MAR 2002	79. 01772
2 APR 2002	79. 46763
2 MAY 2002	79. 90848
2 JUN 2002	80. 34954
2 JUL 2002	80. 80489
2 AUG 2002	76. 42323
2 SEP 2002	76. 84591
2 OCT 2002	77. 27503
2 NOV 2002	77. 71528
2 DEC 2002	78. 14584
2 JAN 2003	78. 59171
2 FEB 2003	74. 19260

Commercial

SCHEDULE 2
TO
FACILITY LEASE

SCHEDULE OF SPECIAL CASUALTY VALUES

Date	Percentage of Facility Cost
2 MAR 2003	74.60338
2 APR 2003	75.02942
2 MAY 2003	75.44574
2 JUN 2003	75.86230
2 JUL 2003	76.29417
2 AUG 2003	71.88535
2 SEP 2003	72.28226
2 OCT 2003	72.68606
2 NOV 2003	73.10179
2 DEC 2003	73.50714
2 JAN 2004	73.92889
2 FEB 2004	69.50141
2 MAR 2004	69.88561
2 APR 2004	70.28615
2 MAY 2004	70.67628
2 JUN 2004	71.06667
2 JUL 2004	71.47346
2 AUG 2004	67.03565
2 SEP 2004	67.40503
2 OCT 2004	67.78179
2 NOV 2004	68.17133
2 DEC 2004	68.54975
2 JAN 2005	68.94575
2 FEB 2005	64.48800
2 MAR 2005	64.84381
2 APR 2005	65.21712
2 MAY 2005	65.57929
2 JUN 2005	65.94174
2 JUL 2005	66.32176
2 AUG 2005	61.85298
2 SEP 2005	62.19296
2 OCT 2005	62.54085
2 NOV 2005	62.90243
2 DEC 2005	63.25210
2 JAN 2006	63.62060
2 FEB 2006	59.13054
2 MAR 2006	59.45603
2 APR 2006	59.80028
2 MAY 2006	60.13259
2 JUN 2006	60.46521
2 JUL 2006	60.81664
2 AUG 2006	56.31480
2 SEP 2006	56.62339
2 OCT 2006	56.94046
2 NOV 2006	57.27221
2 DEC 2006	57.59120
2 JAN 2007	57.93036
2 FEB 2007	53.41029
2 MAR 2007	53.70418
2 APR 2007	54.01818
2 MAY 2007	54.31943
2 JUN 2007	54.62101
2 JUL 2007	54.94278
2 AUG 2007	50.43843
2 SEP 2007	50.71966
2 OCT 2007	51.01011
2 NOV 2007	51.31699
2 DEC 2007	51.60897
2 JAN 2008	51.92528
2 FEB 2008	47.41188
2 MAR 2008	47.68424
2 APR 2008	47.97900
2 MAY 2008	48.26003
2 JUN 2008	48.54173
2 JUL 2008	48.84591
2 AUG 2008	44.32002
2 SEP 2008	44.58004
2 OCT 2008	44.85052
2 NOV 2008	45.13955
2 DEC 2008	45.41351
2 JAN 2009	45.71251
2 FEB 2009	41.17847
2 MAR 2009	41.43057
2 APR 2009	41.70780
2 MAY 2009	41.97015
2 JUN 2009	42.23357
2 JUL 2009	42.52223
2 AUG 2009	37.97634
2 SEP 2009	38.21679
2 OCT 2009	38.46917
2 NOV 2009	38.74244
2 DEC 2009	38.99835
2 JAN 2010	39.28436
2 FEB 2010	34.73154
2 MAR 2010	34.96534
2 APR 2010	35.22734
2 MAY 2010	35.47322
2 JUN 2010	35.72065
2 JUL 2010	35.99641
2 AUG 2010	31.43271
2 SEP 2010	31.65586
2 OCT 2010	31.89260
2 NOV 2010	32.15251
2 DEC 2010	32.39492
2 JAN 2011	32.66848
2 FEB 2011	28.02860
2 MAR 2011	28.23477
2Apr2011	28.49217

Commercial 3

SCHEDULE 2
TO
FACILITY LEASE

SCHEDULE OF SPECIAL CASUALTY VALUES

Date	Percentage of Facility Cost
2 MAY 2011	28.69161
2 JUN 2011	28.91312
2 JUL 2011	29.16578
2 AUG 2011	24.41899
2 SEP 2011	24.59020
2 OCT 2011	24.77481
2 NOV 2011	24.98197
2 DEC 2011	25.17107
2 JAN 2012	25.39142
2 FEB 2012	20.61277
2 MAR 2012	20.74980
2 APR 2012	20.91761
2 MAY 2012	21.06700
2 JUN 2012	21.21760
2 JUL 2012	21.39911
2 AUG 2012	16.58124
2 SEP 2012	16.67871
2 OCT 2012	16.79010
2 NOV 2012	16.92325
2 DEC 2012	17.03765
2 JAN 2013	17.18263
2 FEB 2013	12.33652
2 MAR 2013	12.39974
2 APR 2013	12.48444
2 MAY 2013	12.55572
2 JUN 2013	12.62748
2 JUL 2013	12.72943
2 AUG 2013	10.36799
2 SEP 2013	10.23377
2 OCT 2013	10.00000

Date	Percentage of Facility Cost

SCHEDULE 3
TO
FACILITY LEASE

SCHEDULE OF TERMINATION VALUES

Basic Rent Payment Date	Percentage of Facility Cost	Basic Rent Payment Date	Percentage of Facility Cost
		2 JUL 1999	92. 66798
		2 JAN 2000	90. 85561
		2 JUL 2000	88. 97399
		2 JAN 2001	87. 03667
2 JUL 1997	99. 34255	2 JUL 2001	85. 02536
2 JAN 1998	97. 76938	2 JAN 2002	82. 95462
2 JUL 1998	96. 12356	2 JUL 2002	80. 80489
2 JAN 1999	94. 42818	2 JAN 2003	78. 59171

Commercial

SCHEDULE 3
TO
FACILITY LEASE

SCHEDULE OF TERMINATION VALUES

Basic Rent Payment Date	Percentage of Facility Cost	Basic Rent Payment Date	Percentage of Facility Cost
2 JUL 2003	76. 29417	2 JUL 2007	54. 94278
2 JAN 2004	73. 92889	2 JAN 2008	51. 92528
2 JUL 2004	71. 47346	2 JUL 2008	48. 84591
2 JAN 2005	68. 94575	2 JAN 2009	45. 71251
2 JUL 2005	66. 32176	2 JUL 2009	42. 52223
2 JAN 2006	63. 62060	2 JAN 2010	39. 28436
2 JUL 2006	60. 81664	2 JUL 2010	35. 99641
2 JAN 2007	57. 93036		

SCHEDULE 4
TO
FACILITY LEASE

SCHEDULE OF SPECIAL TERMINATION VALUES

Date	Percentage of Facility Cost
2 JAN 1987	104. 46264
2 FEB 1987	105. 48594
2 MAR 1987	106. 51247
2 APR 1987	107. 46175
2 MAY 1987	108. 46727
2 JUN 1987	109. 47586
2 JUL 1987	107. 72190
2 AUG 1987	103. 84531
2 SEP 1987	104. 76940
2 OCT 1987	105. 67387
2 NOV 1987	106. 55601
2 DEC 1987	107. 46619
2 JAN 1988	108. 33945
2 FEB 1988	104. 42284
2 MAR 1988	105. 31501
2 APR 1988	106. 17010
2 MAY 1988	107. 05300
2 JUN 1988	107. 93786
2 JUL 1988	108. 78557
2 AUG 1988	104. 84345
2 SEP 1988	105. 70967
2 OCT 1988	106. 56031
2 NOV 1988	107. 39145
2 DEC 1988	108. 24594
2 JAN 1989	109. 06938
2 FEB 1989	105. 12555
2 MAR 1989	105. 96851
2 APR 1989	106. 78036
2 MAY 1989	107. 61543
2 JUN 1989	108. 45209
2 JUL 1989	109. 25758
2 AUG 1989	105. 29546
2 SEP 1989	106. 12002
2 OCT 1989	106. 93157
2 NOV 1989	107. 72816
2 DEC 1989	108. 54344
2 JAN 1990	109. 33408
2 FEB 1990	105. 35234
2 MAR 1990	106. 15717
2 APR 1990	106. 93733
2 MAY 1990	107. 73608
2 JUN 1990	108. 53619
2 JUL 1990	109. 31159
2 AUG 1990	105. 31429
2 SEP 1990	106. 10348
2 OCT 1990	106. 88239
2 NOV 1990	107. 64465
2 DEC 1990	108. 42508
2 JAN 1991	109. 18113
2 FEB 1991	105. 16382
2 MAR 1991	105. 93287
2 APR 1991	106. 67748
2 MAY 1991	107. 44018
2 JUN 1991	108. 20402
2 JUL 1991	108. 94339
2 AUG 1991	104. 90904
2 SEP 1991	105. 66096
2 OCT 1991	106. 40260
2 NOV 1991	107. 12771
2 DEC 1991	107. 87045
2 JAN 1992	108. 58908
2 FEB 1992	104. 53326
2 MAR 1992	105. 26358
2 APR 1992	105. 96974
2 MAY 1992	106. 69342
2 JUN 1992	107. 41802
2 JUL 1992	108. 11841
2 AUG 1992	104. 04397
2 SEP 1992	104. 75556
2 OCT 1992	105. 45686
2 NOV 1992	106. 14493
2 DEC 1992	106. 84797
2 JAN 1993	107. 53035

Commercial

SCHEDULE 5
TO
FACILITY LEASE

DESCRIPTION OF REAL PROPERTY INTEREST

The Real Property Interest consists of a .666007% undivided interest in the following:

I. PVNGS PLANT SITE

PARCEL NO. 1: Lot Four (4); the Southwest quarter of the Northwest quarter; and the West half of the Southwest quarter, all in Section Two (2), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 2: All of Section Three (3), Township One (1) South, Range Six (6) West of the Gila And Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 3: The East half of Section Four (4), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 4: The West half of Section Twenty-six (26), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 5: Section Twenty-seven (27), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the Northwest quarter of Section 27.

PARCEL NO. 6: The Southeast quarter of Section Twenty-eight (28), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona: EXCEPT [redacted]% of all oil, gas and other mineral deposits and geothermal resources recovered from or developed [redacted] the property, as reserved in instrument recorded May 10, 1974 in Docket 10647, page 136.

PARCEL NO. 7: The East half of Section Thirty-three (33), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 8: All of Section Thirty-four (34), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 9: The West half of Section Thirty-five (35), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 10: The Southeast quarter of Section Nine (9), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona: EXCEPT the Northwest quarter thereof.

PARCEL NO. 11: All of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona: EXCEPT the East half of the Southeast quarter thereof; and EXCEPT the North half of the South half of the Northwest quarter of the Northwest quarter thereof.

PARCEL NO. 12: That part of the East half of the Southwest quarter of Section Twenty-three (23), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Southeast corner of the said East half of the Southwest quarter of Section 23; thence West, an assumed bearing along the South line of the said East half of the Southwest quarter of Section 23, for a distance of 762.04 feet; thence North 0 degrees 03 minutes 39 seconds West; parallel to the East line of the said East half of the Southwest quarter of Section 23, for a distance of 1946.46 feet to a point on the South right-of-way line of the 200 foot

wide HASSAYAMPA-SALOME HIGHWAY, as recorded in Book 12 of Road Maps, page 82, Maricopa County Recorder, Maricopa County, Arizona; thence continuing North 0 degrees 03 minutes 39 seconds West for a distance of 234.15 feet to a point on the North right-of-way line of said highway; thence South 58 degrees 43 minutes 35 seconds East, along said North right-of-way line for a distance of 892.17 feet to a point on the said East line of the East half of the Southwest quarter of Section 23; thence South 0 degrees 03 minutes 39 seconds East, along said East line for a distance of 234.15 feet to a point on the said South right-of-way line; thence continuing South 0 degrees 03 minutes 39 seconds East for a distance of 1483.31 feet to the true point of beginning;

EXCEPT the East 305 feet of the South 305 feet thereof; and

EXCEPT one-half of the minerals and mineral rights and mineral estates of every kind and nature, as set forth in Deed recorded in Docket 11652, page 52, Maricopa County Records.

PARCEL NO. 13: The North half of the South half of the Northwest quarter of the Northwest quarter of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

II. HASSAYAMPA PUMPING STATION AND EFFLUENT PIPELINE

All real property, leases, licenses, easements, rights-of-way and other property held by Title USA Company of Arizona Trust No. 530 established by that certain Trust Agreement dated October 15, 1975, as amended, but excluding therefrom all improvements.

III. MISCELLANEOUS REAL PROPERTY INTERESTS

Those ANPP Project Agreements (as defined in the ANPP Participation Agreement), other than the Trust Agreement for Title USA Company of Arizona Trust 530, consisting of leases, licenses, easements, and permits, which provide land and land rights for (a) the pipeline to supply waste water effluent to PVNGS from the 91st Avenue sewage treatment plant serving the Phoenix Metropolitan area and (b) railroad access to the Nuclear Plant Site (as defined in the ANPP Participation Agreement).

SCHEDULE 6
TO
FACILITY LEASE

DESCRIPTION OF UNDIVIDED INTEREST

A. A 1.998026% undivided interest in Unit 2 of the Palo Verde Nuclear Generating Station (PVNGS), located in Maricopa County, Arizona, approximately 55 miles west of the City of Phoenix, Arizona, and approximately 16 miles west of the City of Buckeye, Arizona, consisting of:

I. Unit 2 Combustion Engineering "System 80" pressurized water reactor nuclear steam supply system (the NSSS). The NSSS is comprised of a reactor vessel containing 241 fuel assemblies with approximately 100 tons of enriched uranium (fuel assemblies, however, are not part of Unit 2 and are not included in the Undivided Interest being sold), two steam generators, four reactor coolant pumps and various additional systems and subsystems. The licensed thermal rating of the NSSS is 3800 MW.

II. Unit 2 GE TC6F-43, 1800 RPM tandem-compound, six flow, reheat turbine-generator including turbine, generator, moisture separator-reheater, exciter, controls, and auxiliary subsystems. The turbine-generator is conductor cooled and rated at 1,554 MVA at 24,000 V, 3 phase, 60 Hz, 1.5 in Hg ABS back pressure, and approximately 1,363 MW maximum gross electric output.

III. Unit 2 146 ft. inside diameter, steel-lined, pre-stressed concrete cylindrical containment building with a hemispherical dome designed for 60 psig. The containment building houses the reactor system.

IV. Unit 2 auxiliary systems and equipment including engineered safeguards systems, reactor auxiliary systems and turbine-generator auxiliary systems associated with items I, II, and III above, extending to and including the Unit 2 start-up transformer.

V. Unit 2 cooling tower system consisting of three (3) mechanical draft cooling towers, including a closed cycle circulating water system, make-up water systems and essential spray ponds.

VI. Unit 2 radioactive waste treatment system, including liquid, gaseous, and solid waste subsystems, controls, instrumentation, storage, handling and shipment facilities.

VII. Unit 2 emergency diesel-generator system, including a diesel-generator building which contains two diesel generators, fuel oil systems, storage tanks, control and instrumentation systems and other equipment.

VIII. Unit 2 internal communication systems, including associated interconnections and computer data links.

BUT EXCLUDING:

I. Nuclear fuel for Unit 2, including spare fuel assemblies, and nuclear waste.

II. Spare Parts (Unit 2).

III. Transmission facilities (including any and all facilities and equipment providing interconnection between the Unit 2 turbine generator and the ANPP High Voltage Switchyard, including stepup transformers and standby equipment and systems).

IV. Oil and diesel fuel inventories (Unit 2).

B. A 0.666007% undivided interest in all PVNGS common facilities, *INCLUDING BUT NOT LIMITED TO:*

I. Surveillance systems, including associated radioactive monitoring systems and equipment.

II. Water treatment facilities and transport systems for supply of waste water effluent.

III. Related storage facilities and equipment (excluding Warehouses).

BUT EXCLUDING:

I. Nuclear fuel, including spare fuel assemblies, and nuclear waste.

II. Electrical power facilities including Construction Switchyard and all transmission and ANPP High Voltage Switchyard facilities.

III. Administration Building.

IV. Administration Annex Building.

V. Technical Support Center.

VI. Visitor Center.

VII. External communication systems and equipment, including associated interconnections and computer data links.

VIII. Parking lot improvements, road improvements, site improvements. fencing and dik

IX. Spare parts (Common Facilities).

X. Simulator.

XI. Oil and diesel fuel inventories.

XII. Evaporation Pond.

XIII. Guard house.

XIV. Coating facility.

XV. Fire pump house.

XVI. Radiation Instrument calibration lab.

XVII. Service building.

XVIII. Water treatment building.

XIX. Shooting range.

XX. WRF operations building.

XXI. Warehouses.

XXII. Real Property, beneficial interest in Title USA Company of Arizona Trust 530. a Project Agreement interests described in Schedule 5.

Trust Indenture, Mortgage, Security Agreement and Assignment of Rents

Dated as of December 1, 1986

between

THE FIRST NATIONAL BANK OF BOSTON,
not in its individual capacity, but solely
as Owner Trustee under a Trust
Agreement dated as of December 1, 1986,
with
COMMERCIAL FEDERAL INVESTMENT CORPORATION

and

FIRST CITY NATIONAL BANK OF HOUSTON,
as Indenture Trustee

Sale and Leaseback of an Undivided Interest in
Palo Verde Nuclear Generating Station Unit 2
and Certain Common Facilities

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Appendix A — Definitions

TRUST INDENTURE, MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS dated as of December 1, 1986, between THE FIRST NATIONAL BANK OF BOSTON, a national banking association, not in its individual capacity, but solely as trustee under a Trust Agreement dated of December 1, 1986 between FNB (whose address is 100 Federal Street, Boston, Massachusetts 2110) and COMMERCIAL FEDERAL INVESTMENT CORPORATION, and FIRST CITY NATIONAL BANK OF HOUSTON, a national banking association, whose address is First City Financial Center, 1301 Fannin Street, 21st Floor, Houston, Texas 77002.

WITNESSETH:

WHEREAS, the Owner Trustee has entered into a Participation Agreement, dated as of December 1, 1986 among the Owner Participant, El Paso Funding Corporation, a Delaware corporation, El Paso Electric Company, a Texas corporation (*El Paso*), and the Indenture Trustee;

WHEREAS, the Owner Trustee, acting on behalf of the Owner Participant, pursuant to the Trust Agreement and the Participation Agreement, intends to purchase the Undivided Interest and the Real Property Interest from El Paso and lease the Undivided Interest and the Real Property Interest to El Paso pursuant to the Facility Lease;

WHEREAS, in order to finance a portion of the Purchase Price of the Undivided Interest, the Owner Trustee desires to issue its promissory notes hereunder with such promissory notes to be substantially in the form of Exhibits A-1, A-2 and A-3 hereto;

WHEREAS, in the circumstances contemplated by Sections 2(c), 2(d) and 2(e) of the Participation Agreement, the Owner Trustee may desire to finance a greater portion of the Purchase Price of the Undivided Interest than the portion financed from the proceeds of the Initial Series Note (but in no event in an amount in excess of 80% of said Purchase Price) and in connection therewith to issue its promissory note or notes or to change the amortization of any Notes;

WHEREAS, in order to finance all or a portion of the Supplemental Financing Amount of Capital Improvements and to refund Notes of any series previously issued, the Owner Trustee may desire to issue additional promissory notes hereunder (together with the Releveraging Notes and the Refunding Notes, the *Additional Notes)* secured on a *pari passu* basis with other Notes Outstanding from time to time;

WHEREAS, in order to secure the obligations referred to herein, the Owner Trustee desires to grant to the Indenture Trustee the security interest herein provided and the parties hereto desire that this Indenture be regarded as a "security agreement" and as a "financing statement" for such security agreement under the Uniform Commercial Code;

NOW, THEREFORE, in consideration of the premises, of the acceptance by the Indenture Trustee of the trusts hereby created and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

CONSTRUCTION, GOVERNING LAW, INTERPRETATION AND DEFINITIONS.

SECTION 1.1. *Governing Law.*

This Indenture (i) is being executed and delivered in the State of New York, (ii) shall be deemed to be a contract made in such State and (iii) for all purposes shall be construed in accordance with and governed by the laws of the State of New York, except to the extent to which the laws of the State of Arizona are mandatorily applicable hereto.

SECTION 1.2. *Headings and Table of Contents.*

The division of this Indenture into articles and sections, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Indenture.

SECTION 1.3. *Definitions; Construction of References.*

In this Indenture, unless the context otherwise requires:

(a) the term *this Indenture* means this instrument together with all exhibits, appendices and schedules hereto as originally executed and as it may from time to time be supplemented or amended by one or more indentures supplemental hereto pursuant to the provisions hereof;

(b) all references in this instrument to designated Articles, Sections and other subdivisions are to designated Articles, Sections and other subdivisions of this instrument unless otherwise indicated;

(c) all accounting terms not otherwise defined herein shall have the meanings assigned to them in accordance with generally accepted accounting principles;

(d) capitalized terms used herein which are not otherwise defined herein shall have the meanings set forth in Appendix A hereto, and the rules of construction set forth in Appendix A hereto shall be applicable hereto; and

(e) to the extent different from Appendix A hereto, the definitions of Deemed Loss Event, Event of Loss, Economic Useful Life and Final Shutdown (including for purposes of such definitions all defined terms contained in or relating to any of such definitions) shall have the respective meanings set forth in or appended to the Facility Lease as amended from time to time in accordance with its terms.

SECTION 1.4. *Disclosure of Beneficiaries.*

Pursuant to Arizona Revised Statutes Section 33-401, (i) the beneficiary of the Trust Agreement is Commercial Federal Investment Corporation, a Nebraska corporation, whose address is Commercial Federal Tower, 2120 South 72nd Street, Omaha, Nebraska 68124, Attention: Jeff Bainbridge and (ii) the beneficiary of this Indenture is the Holder of the Notes, El Paso Funding Corporation, whose address is Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801 and, by pledge and assignment, First City National Bank of Houston, as trustee under the Collateral Trust Indenture, whose address is First City Financial Center, 1301 Fannin Street, 21st Floor, Houston, Texas 77002: Attention: Corporate Trust Department. Copies of the Trust Agreement and this Indenture are available for inspection at the Indenture Trustee's office.

ARTICLE II

SECURITY

SECTION 2.1. *Grant of Security Interest; Mortgage.*

As security for the due and punctual payment of the principal of and premium, if any, and interest on the Notes according to their respective terms and effect and the performance and observance by the Owner Trustee of all the covenants and agreements made by it or on its behalf in the Notes, the Participation Agreement and this Indenture, the Owner Trustee does by its execution and delivery hereof hereby grant a security interest in and grant, bargain, convey, warrant, assign, transfer, mortgage, pledge and set over unto the Indenture Trustee, and to its successors and assigns in trust, the following (the *Lease Indenture Estate*):

(1) all right, title and interest of the Owner Trustee in, to and under the Facility Lease recorded December , 1986 as Instrument No. , records of Maricopa County, Arizona

to the extent, and only to the extent, constituting Rent (including, without limitation, Basic Rent, payments of Casualty Value, Termination Value and Special Casualty Value, and payments under and pursuant to Sections 13(c) and 16 of the Facility Lease) (the *Assigned Payments*), together with all rights, powers and remedies on the part of the Owner Trustee arising under the Facility Lease to demand, collect or receive the Assigned Payments;

(2) all moneys and securities deposited or required to be deposited with the Indenture Trustee pursuant to any term of this Indenture and held or required to be held by the Indenture Trustee hereunder;

(3) all profits, revenues and other income of all property from time to time subjected to the lien of this Indenture, and all right, title and interest of every nature whatsoever of the Owner Trustee in and to the same and every part thereof;

(4) all right, title and interest of the Owner Trustee in and to any right to restitution from the Lessee in respect of any determination of invalidity of the Facility Lease; and

(5) all proceeds of the foregoing;

but excluding, however, from the Lease Indenture Estate any and all Excepted Payments; and *subject, however,* to (i) the terms and provisions of this Indenture and (ii) the rights of the Lessee under the Facility Lease.

To the extent that any portion of the Lease Indenture Estate constitutes fixtures or real property, this Indenture constitutes a realty mortgage and an assignment of rents with respect to all such items of real property and in addition to all other rights or remedies set forth in this Indenture, the Indenture Trustee shall have, to the extent not inconsistent with this Indenture, all of the rights, remedies and benefits of a mortgagee of real property under Applicable Law, including, without limitation, the rights and remedies pursuant to Arizona Revised Statutes § 33-702.B and the Owner Trustee shall be deemed a mortgagor with respect to such items.

TO HAVE AND TO HOLD all the aforesaid properties, rights and interests unto the Indenture Trustee, its successors and assigns forever, but in trust, nevertheless, for the use and purposes and with the power and authority and subject to the terms and conditions mentioned and set forth in this Indenture.

UPON CONDITION that, unless and until an Indenture Event of Default shall have occurred and be continuing, the Owner Trustee shall be permitted, to the exclusion of the Indenture Trustee, to possess and use the Lease Indenture Estate and exercise all rights with respect thereto and, without limitation of the foregoing, the Owner Trustee may exercise all of its rights under the Facility Lease to the same extent as if its right, title and interest therein had not been assigned to the Indenture Trustee to the extent set forth above, except that the Indenture Trustee shall receive all payments of Assigned Payments and all moneys and securities required to be held by or deposited with the Indenture Trustee hereunder.

It is expressly agreed that, anything herein contained to the contrary notwithstanding, the Owner Trustee shall remain obligated to the Lessee under the Facility Lease to perform all of the Owner Trustee's obligations thereunder in accordance with and pursuant to the terms and provisions thereof, and the Indenture Trustee shall not be required or obligated in any manner, except as expressly provided herein, to perform or fulfill any obligations of the Owner Trustee under the Facility Lease or to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim, or to take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

The Owner Trustee hereby warrants and represents that it has not assigned or pledged any of its right, title or interest in and to the Lease Indenture Estate to anyone other than the Indenture Trustee.

SECTION 2.2. *Payments Under the Facility Lease.*

The Facility Lease provides that (i) all payments constituting Assigned Payments shall be made to the Indenture Trustee at such office in New York, N.Y. of Mellon Trust Company, or of such oth bank or trust company in New York, N.Y., all as the Indenture Trustee shall specify in writing to t Lessee, (ii) all other payments other than Excepted Payments shall be made to the Lessor at such address as the Lessor may direct by notice in writing to the Lessee, and (iii) all Excepted Payments shall be made to the Person entitled to receive such payments. The Owner Trustee agrees that, so long as any Notes shall be Outstanding hereunder, all payments described in clause (i) above shall be directed to be made to the Indenture Trustee or in accordance with the Indenture Trustee's instruction and that if it should receive any such payments or any proceeds for or with respect to the Lease Indenture Estate or otherwise constituting part of the Lease Indenture Estate, it will promptly forward such payments to the Indenture Trustee or in accordance with the Indenture Trustee's instructions. The Indenture Trustee agrees to apply payments from time to time received by it (from the Lessee, the Owner Trustee or otherwise) with respect to the Lease Indenture Estate in the manner provided in Section 3.11 and Article V.

SECTION 2.3. *Release of Lien on Lease Indenture Estate.*

(a) Upon receiving evidence satisfactory to the Indenture Trustee that (i) it has received, or provision has been made in accordance with paragraph (c) of this Section 2.3 for, full payment of all principal of and premium, if any, and interest on the Notes and any other sums payable to the Indenture Trustee and the Holders of the Notes under this Indenture or the Facility Lease, and (ii) all Trustee's Expenses shall have been paid in full or provision satisfactory to the Indenture Trustee shall have been made for such payment,

(A) the security interest and all other estate and rights granted by this Indenture shall cease and become null and void and all of the property, rights and interests included in the Lease Indenture Estate shall revert to and revest in the Owner Trustee *without any other act or formality whatsoever*, and

(B) the Indenture Trustee shall, at the request of the Owner Trustee, execute and deliver to the Owner Trustee such termination statements, releases or other instruments presented to the Indenture Trustee by or at the direction of the Owner Trustee as shall be requisite to evidence the satisfaction and discharge of this Indenture and the lien hereby created with respect to the Lease Indenture Estate, to release or reconvey to the Owner Trustee or as directed by the Owner Trustee all the Lease Indenture Estate, freed and discharged from the provisions herein contained with respect thereto, and to release the Owner Trustee from its covenants herein contained.

(b) Upon receipt by the Indenture Trustee of the Assumption Agreement and other documents and opinions described in Section 3.9(b), (i) the security interest and all other estate and rights granted by this Indenture by or on behalf of the Owner Trustee shall cease and become null and void and all of the property, rights and interests included in the Lease Indenture Estate shall revert to and revest in the Owner Trustee without any other act or formality whatsoever and (ii) the Indenture Trustee shall, at the request of the Owner Trustee, execute and deliver to the Owner Trustee such termination statements, releases or other instruments presented to the Indenture Trustee by or at the direction of the Owner Trustee as shall be requisite to evidence the satisfaction and discharge of this Indenture as to the Owner Trustee and the lien hereby created with respect to the Lease Indenture Estate, to release or reconvey to the Owner Trustee or as directed by the Owner Trustee all the Lease Indenture Estate, freed and discharged from the provisions herein contained with respect thereto, and to release the Owner Trustee from its covenants herein contained.

(c) Any Note shall, prior to the maturity or redemption date thereof, be deemed to have been paid within the meaning and with the effect expressed in this Section 2.3(c) if (i) there shall have been deposited with the Indenture Trustee either moneys in an amount which shall be sufficient, or direct obligations of or obligations the principal of and interest on which are unconditionall

guaranteed by the United States of America or certificates of an ownership interest in the principal of or interest on obligations of or guaranteed as to principal and interest by the United States of America *(Federal Securities)*, in each case which shall not contain provisions permitting the redemption thereof at the option of the issuer, the principal of and the interest on which when due, and without any reinvestment thereof, will provide moneys in an amount which shall be sufficient, together with the moneys, if any, deposited with or held by the Indenture Trustee at the same time (such sufficiency to be established by the delivery to the Indenture Trustee of a certificate of an independent public accountant), to pay when due the principal of and premium, if any, and interest due and to become due on said Note on and prior to the redemption date or maturity date thereof, as the case may be, and (ii) in the event said Note does not mature or is not to be redeemed within the next 45 days, the Indenture Trustee shall have been given irrevocable instructions to give, as soon as practicable, a notice to the registered Holder of such Note that the deposit required by subclause (i) above has been made with the Indenture Trustee and that said Note is deemed to have been paid in accordance with this Section 2.3(c) and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal of and premium, if any, and interest on said Note. Neither the Federal Securities nor moneys deposited with the Indenture Trustee pursuant to this Section 2.3(c) or principal or interest payments on any such Federal Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and premium, if any, and interest on said Note; *provided, however*, that any cash received from such principal or interest payments on such Federal Securities deposited with the Indenture Trustee shall be reinvested pursuant to Section 8.8 in Federal Securities. At such time as any Note shall be deemed paid as aforesaid, it shall no longer be secured by or entitled to the benefits of the Lease Indenture Estate or this Indenture, *except* that such Note shall be entitled to the benefits of the portions of the Lease Indenture Estate described in Granting Clauses (2), (3) and (5), to the extent such portions relate to such moneys or Federal Securities deposited with the Indenture Trustee.

(d) So long as any Note as to which this Indenture has been discharged remains unpaid, this Indenture shall continue in effect with respect to such Note solely with respect to rights of registration of transfer, exchange or replacement of such Note, rights to receive payment of the principal thereof and premium, if any, and interest thereon in accordance with the terms of this Indenture from such deposited funds or the proceeds of or interest on such Federal Securities and the correlative rights and responsibilities of the Indenture Trustee; *provided, however*, that following such discharge, no claim for payment of principal of or premium, if any, or interest on such Note shall be made against the Owner Trustee or the Lease Indenture Estate other than as provided in this Section; *provided further*, that the Owner Trustee, following such discharge, shall be released from any further duties or obligations under this Indenture and, except as expressly provided therein, any other Transaction Document.

SECTION 2.4. *Power of Attorney.*

Subject to the other terms of this Indenture, the Owner Trustee hereby appoints, effective whenever an Indenture Event of Default shall have occurred and be continuing, the Indenture Trustee the Owner Trustee's attorney-in-fact, irrevocably, with full power of substitution, to collect, ask, require, demand, receive and give acquittance for any and all moneys and claims for moneys due and to become due to the Owner Trustee under or arising out of the Lease Indenture Estate, to endorse any checks or other instruments or orders in connection therewith, and to take any action (including the filing of financing statements or other documents) or institute any proceedings which the Indenture Trustee may deem to be necessary or appropriate to protect and preserve the interest of the Indenture Trustee in the Lease Indenture Estate. Prior to any exercise by it (acting as attorney in fact for the Owner Trustee) of the powers, authority or rights granted by this Section 2.4, the Indenture Trustee will give three Business Days' prior written notice to the Owner Trustee and the Owner Participant.

ARTICLE III

ISSUE, EXECUTION, AUTHENTICATION, FORM AND REGISTRATION OF NOTES

SECTION 3.1. *Limitation on Notes.*

No Notes may be issued under the provisions of, or become secured by, this Indenture except in accordance with the provisions of this Article III. No Note shall be issued in an original principal amount of less than $150,000.

SECTION 3.2. *Execution of Notes.*

All Notes shall be manually executed on behalf of the Owner Trustee by one of its Responsible Officers. In case any Responsible Officer of the Owner Trustee who shall have executed any of the Notes shall cease to be such a Responsible Officer before such Notes so executed shall have been authenticated by the Indenture Trustee and delivered or disposed of by the Owner Trustee, such Notes nevertheless may be authenticated and delivered or disposed of as though the person who executed such Notes had not ceased to be such a Responsible Officer of the Owner Trustee; and any Note may be executed on behalf of the Owner Trustee by such person as, at the actual time of execution of such Note, shall be a Responsible Officer of the Owner Trustee, although at the date of such Note any such person was not such a Responsible Officer.

SECTION 3.3. *Effect of Certificate of Authentication.*

Only such Notes as shall bear thereon a certificate of authentication substantially in the following form manually executed by the Indenture Trustee shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate of authentication of the Indenture Trustee upon any Note executed by the Owner Trustee shall be conclusive evidence that the Note so authenticated was duly issued, authenticated and delivered under this Indenture:

This Note is one of the series of Notes referred to therein and in the within-mentioned Indentur

FIRST CITY NATIONAL BANK OF HOUSTON
as Indenture Trustee,

By: _____
Authorized Officer

SECTION 3.4. *Creation of the Initial Series Note; Aggregate Principal Amount, Dating and Terms.*

(a) There is hereby created and established a separate series of Notes of the Owner Trustee designated: "Nonrecourse Promissory Note, Initial Series," which will be substantially in the forms of Exhibits A-1, A-2 and A-3 hereto, and are herein referred to as the *"Initial Series Notes."*

(b) Subject to the provisions of Section 3.10, the aggregate principal amount of the Initial Series Notes issued by the Owner Trustee and authenticated and delivered by the Indenture Trustee hereunder shall not exceed $69,905,000.

(c) The Initial Series Notes shall be executed and issued by the Owner Trustee and authenticated and delivered by the Indenture Trustee on the date and to the Person specified by the Owner Trustee in its request and authorization for issuance, shall be dated the date specified by the Owner Trustee in its request and authorization for issuance, and shall be in the form of registered Notes, registered in the name of the Person designated in the Owner Trustee's request and authorization for issuance or its registered assigns.

(d) The Initial Series Notes shall bear interest on the principal amounts thereof from time to time Outstanding from the date thereof until paid at the rates of interest set forth in the form of the Initial Series Notes. The principal amounts of the Initial Series Notes shall be payable as set forth in the Schedules of Principal Payments attached thereto. Interest on the Initial Series Notes shall be due and payable on the dates specified in the forms of the Initial Series Notes.

SECTION 3.5. *Additional Notes.*

(1) Subject to Section 3.6, Additional Notes of the Owner Trustee may be issued under and secured by this Indenture, at any time or from time to time, in addition to the Initial Series Notes and subject to the conditions hereinafter provided in this Section, for cash in the amount of the original principal amount of such Additional Notes, for the purpose of (i) refunding any previously issued series of Notes, in whole or in part and/or (ii) providing funds for the payment of all or any portion of the Supplemental Financing Amount relating to Capital Improvements made or installed from time to time pursuant to the Facility Lease and/or (iii) providing funds to be paid to the Owner Trustee in the event of a partial return of the Investment to the Owner Trustee as contemplated by Section 2(c) or 2(d) of the Participation Agreement; *provided, however,* that in the case of Notes issued for the purposes set forth in clause (i) or (iii) of this Section 3.5(1), no Note shall be issued by the Owner Trustee pursuant to this Section 3.5 unless Section 2(c) and/or 2(d) of the Participation Agreement (if applicable) shall have been complied with.

(2) Before any Additional Notes shall be issued under the provisions of this Section 3.5, the Owner Trustee shall have received from the Owner Participant, and delivered to the Indenture Trustee not less than 10 nor more than 30 days prior to the proposed date of issuance of such Additional Notes as set forth in the below-mentioned request and authorization, a request and authorization to issue Additional Notes, which request and authorization shall include the amount of such Additional Notes, the date of issuance of such Additional Notes and details with respect thereto which are not inconsistent with this Section. Additional Notes shall have a designation so as to distinguish such Additional Notes from the Initial Series Notes but otherwise shall be substantially similar in terms to the Initial Series Notes, shall specify maturity date, rank *pari passu* with all Notes then Outstanding, be dated their respective dates of authentication, bear interest at such rates (which may be fixed or floating) as shall be indicated in the aforementioned request and authorization, and shall be stated to be payable by their terms not later than the last day of the Basic Lease Term.

(3) Except as to any differences in the maturity dates and amortization schedules of the Additional Notes or the rate or rates of interest thereon and the date or dates such interest is payable or the provisions for redemption with respect thereto, if any, such Additional Notes shall be on a parity with, and shall be entitled to the same benefits and security of this Indenture as, other Notes issued pursuant to the terms hereof.

(4) The terms, conditions and designations of such Additional Notes (which shall be consistent with this Indenture) shall be set forth in an indenture supplemental to this Indenture executed by the Owner Trustee and the Indenture Trustee. Such Additional Notes shall be executed as provided in Section 3.2 and deposited with the Indenture Trustee for authentication, but before such Additional Notes shall be authenticated and delivered by the Indenture Trustee there shall be filed with the Indenture Trustee, in addition to the other documents and certificates required by this Section 3.5, the following, all of which shall be dated as of the date of the supplemental indenture:

(a) a copy of such supplemental indenture (which shall include the form of such series of Notes in respect thereof);

(b) such additional documents, certificates and opinions as shall be reasonably requested by, and acceptable to, the Owner Trustee and the Indenture Trustee;

(c) a request and authorization to the Indenture Trustee by or on behalf of the Owner Trustee to authenticate and deliver such Additional Notes to or upon the order of the Person or

Persons noted in such request at the address set forth therein, and in such principal amounts as are stated therein, upon payment to the Indenture Trustee, but for the account of the Owner Trustee, of the sum or sums specified in such request and authorization; and

(d) an opinion of counsel to the effect that the conditions precedent required under this Indenture for the issuance of such Additional Notes have been complied with.

When the documents referred to in the foregoing clauses (a) through (d) above shall have been filed with the Indenture Trustee and when the Additional Notes described in the above-mentioned order and authorization shall have been executed and authenticated as required by this Indenture, the Indenture Trustee shall deliver such Additional Notes in the manner described in clause (c) above, but only upon payment to the Indenture Trustee of the sum or sums specified in such request and authorization.

SECTION 3.6. *Security for and Parity of Notes.*

All Notes issued and Outstanding hereunder shall rank on a parity with each other and shall as to each other be secured equally and ratably by this Indenture, without preference, priority or distinction of any thereof over any other by reason of difference in time of issuance or otherwise.

SECTION 3.7. *Source of Payments Limited.*

All payments to be made by the Owner Trustee under this Indenture or on the Notes shall be made only from the Lease Indenture Estate and the Trust Estate. Each Holder of a Note, by its acceptance of such Note, and the Indenture Trustee agree that they will look solely to the Trust Estate and the income and proceeds from the Lease Indenture Estate to the extent available for distribution to such Holder or the Indenture Trustee as herein provided and that neither the Owner Participant nor, except as expressly provided in this Indenture, the Owner Trustee nor the Indenture Trustee, shall be personally liable to such Holder of a Note or the Indenture Trustee, as the case may be, for any amounts payable hereunder or under such Note; *provided, however,* that in the event that the Lessee shall assume all the obligations and liabilities of the Owner Trustee hereunder and under the Notes pursuant to Section 3.9(b), then all payments to be made under this Indenture and the Notes shall be made only from payments made by the Lessee under the Notes in accordance with the Assumption Agreement referred to in Section 3.9(b) and each Holder of a Note and the Indenture Trustee agree that in such event they will look solely to the Lessee for such payment. Nothing herein contained shall be interpreted as affecting the duties and obligations of the Indenture Trustee set forth in Section 7.4.

In furtherance of the foregoing, to the fullest extent permitted by law, each Holder of a Note (and each assignee of such Person), by its acceptance thereof, and the Indenture Trustee agree, as a condition to the Notes being secured under this Indenture, that neither such Holder nor the Indenture Trustee will exercise any statutory right to negate the agreements set forth in this Section 3.7.

SECTION 3.8. *Place and Medium of Payment.*

The principal of and premium, if any, and interest on each Note shall be payable at the Indenture Trustee's Office in immediately available funds in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Notwithstanding the foregoing or any provision in any Note to the contrary, if so requested by the Holder of any Note, by written notice to the Indenture Trustee, all amounts (other than the final payment) payable with respect to such obligation shall be paid by crediting the amount to be distributed to such Holder to an account maintained by such Holder with the Indenture Trustee or by the Indenture Trustee's transferring such amount by wire, with such wire transfer to be initiated by such time as to permit, to the extent practicable, oral confirmation thereof (specifying the wire number) to be given no later than 1:00 p.m. Houston time on the date scheduled for payment, but only to the extent of funds available for such wire transfer, to such other bank in the United States having

wire transfer facilities, including a Federal Reserve Bank, as shall have been specified in such notice, for credit to the account of such Holder maintained at such bank, any such credit or transfer pursuant to this Section 3.8 to be in immediately available funds, without any presentment or surrender of such Note. Final payment of any such Note shall be made only against surrender of such Note at the Indenture Trustee's Office.

SECTION 3.9. *Prepayment of Notes; Assumption by Lessee; Notice of Assumption or Prepayment.*

(a) Notes shall be subject to prepayment (other than through application of the installment payments on such Notes) from time to time only as provided in this Indenture and as otherwise specifically provided, with respect to Notes of a particular series, in such Notes.

(b) In the event of the occurrence of an Event of Loss, declaration of a Deemed Loss Event, exercise of the Cure Option, exercise of the purchase option provided in Section 13(c) of the Facility Lease or exercise of the purchase option provided in Section 10(b)(3)(xvii) of the Participation Agreement), and upon receipt by the Indenture Trustee of the documents listed below, (i) all the obligations and liabilities of the Owner Trustee hereunder and under the Notes (including payments of accrued interest) shall be assumed by the Lessee, and (ii) the Owner Trustee shall be released and discharged without further act or formality whatsoever from all obligations and liabilities hereunder and under the Notes:

(1) a duly executed Assumption Agreement substantially in the form of Exhibit B hereto;

(2) an opinion of counsel addressed to the Indenture Trustee and the Holders of the Outstanding Notes, to the effect that the conditions precedent required by this Indenture for such assumption have been complied with, that the Assumption Agreement has been duly authorized, executed and delivered on behalf of the Lessee, that no Governmental Action is necessary or required in connection therewith (or if any such Governmental Action is necessary or required, that the same has been duly obtained and is in full force and effect), and that the Assumption Agreement is a legal, valid and binding agreement and obligation of the Lessee, enforceable in accordance with its terms (except as limited by bankruptcy, insolvency or similar laws of general application affecting the enforcement of creditors' rights generally and equitable principles);

(3) copies of all Governmental Actions referred to in such opinion;

(4) an indenture supplemental to this Indenture which shall, among other things, if the Lessee shall so request, grant to the Indenture Trustee a Lien on all of the Owner Trustee's right, title and interest in and to the Undivided Interest and the Real Property Interest, which supplemental indenture shall, in either case, confirm the release of the Owner Trustee and the Lease Indenture Estate thereby effected and may contain provisions appropriately amending references to the Facility Lease in this Indenture;

(5) a certificate of a Responsible Officer of the Lessee stating that, to the best of his knowledge, (i) the conditions precedent required by this Indenture for such assumption have been complied with, (ii) no Indenture Event of Default has occurred and is continuing, (iii) such assumption is permitted by the provisions of the Lessee's Articles of Incorporation and By-Laws and (iv) the Lessee is not insolvent within the meaning of any applicable preferential transfer, fraudulent conveyance or bankruptcy law; and

(6) a certificate of a Responsible Officer of the Owner Trustee stating that, to the best of his knowledge, no Indenture Event of Default has occurred and is continuing.

(c) The Notes shall be prepaid on the date of the termination of the Facility Lease pursuant to Section 14(b) or 14(d) thereof at a price equal to their outstanding principal amount, premium, if any, and accrued interest to, but not including, the date of prepayment.

(d) Notice of any assumption or prepayment of Notes shall be given to the registered Holders of Notes which have been assumed or are to be prepaid (and any assignee of a registered Holder

which has given the Indenture Trustee written notice of such assignment) as promptly as practicable after the Indenture Trustee is notified thereof, and, in the event of the exercise by the Lessee or the Owner Trustee, as the case may be, of its option to terminate the Facility Lease pursuant to Section 14(b) or 14(d) thereof, in no event less than 30 days before the date fixed for prepayment (provided the Indenture Trustee receives such notification at least three Business Days before such 30th day).

(e) If the assumption described in paragraph (b) above has not occurred, then, as required by Section 9(j) of the Facility Lease, not less than 2 Business Days prior to any Special Transfer, the Owner Trustee will execute and deliver to the Indenture Trustee an Undivided Interest Indenture Supplement substantially in the form of Exhibit C hereto.

SECTION 3.10. *Mutilated, Destroyed, Lost or Stolen Notes.*

If any Note shall become mutilated or shall be destroyed, lost or stolen, the Owner Trustee shall, upon the written request of the Holder of such Note, execute, and the Indenture Trustee shall authenticate and deliver in replacement thereof, a new Note, payable in the same original principal amount and dated the same date and of the same series as the Note so mutilated, destroyed, lost or stolen. The Indenture Trustee shall make a notation on each new Note of the amount of all payments of principal theretofore made on the Note so mutilated, destroyed, lost or stolen and the date to which interest on such old Note has been paid. If the Note being replaced has been mutilated, such Note shall be delivered to the Indenture Trustee who shall then deliver a certificate of destruction of the type required by Section 4.3. If the Note being replaced has been destroyed, lost or stolen, the Holder of such Note shall furnish to the Lessee, the Owner Trustee and the Indenture Trustee a bond or surety agreement of such Holder as shall be satisfactory to them to save the Lessee, the Owner Trustee, the Indenture Trustee, the Trust Estate and the Lease Indenture Estate harmless from any loss, however remote, including claims for principal of, and premium, if any, and interest on the purportedly destroyed, lost or stolen Note, together with evidence satisfactory to the Lessee, the Owner Trustee and the Indenture Trustee of the destruction, loss or theft of such Note and of the ownership thereof; *provided, however*, that if the Holder of such Note is the Collateral Trust Trustee, the unsecured written undertaking of the Collateral Trust Trustee, in its individual capacity, shall be sufficient indemnity for purposes of this Section.

SECTION 3.11. *Allocation of Principal and Interest.*

In the case of each Note, each payment of principal thereof and interest thereon shall be applied, *first*, to the payment of accrued but unpaid interest on such Note (as well as any interest on overdue principal or, to the extent permitted by law, interest) to the date of such payment, *second*, to the payment of the principal amount of, and premium, if any, on such Note then due (including any overdue installment of principal) thereunder and *third*, the balance, if any, remaining thereafter, to the balance of the payment of the principal amount of, and premium, if any, on such Note.

SECTION 3.12. *Certain Adjustments to Amortization Schedules of Initial Series Notes.*

The schedules of principal amortization attached to the Initial Series Notes may be adjusted at the discretion of the Owner Trustee at one time prior to June 30, 1990; *provided, however*, that no such adjustment shall be made by the Owner Trustee which will increase or reduce the average life of any stated maturity of principal of the Initial Series Notes (calculated in accordance with generally accepted financial practice from the date of initial issuance) by more than six months; *provided further, however*, such adjustment only may be made in connection with an adjustment to Basic Rent pursuant to Section 3(d) of the Facility Lease. If the Owner Trustee shall elect to make the foregoing adjustment, the Owner Trustee shall deliver to the Indenture Trustee and to the Lessee at least 60 days prior to the first payment date (specified on the schedules thereto) proposed to be affected by such adjustment, a certificate of the Owner Trustee (x) stating that the Owner Trustee has elected to make such adjustment, (y) setting forth the revised schedules of principal amortization and (z) attaching calculations showing that the average life of the Initial Series Notes will not be reduced or increased except as permitted by this Section 3.12. The Indenture Trustee may rely on such Owner Trustee certificate and shall have no duty with respect to the calculations referred to in the foregoing clause (z).

ARTICLE IV

REGISTRATION, TRANSFER, EXCHANGE, CANCELLATION AND OWNERSHIP OF NOTES

SECTION 4.1. *Register of Notes.*

The Indenture Trustee on behalf of the Owner Trustee shall maintain at the Indenture Trustee's office a register for the purpose of registration, and registration of transfer and exchange, of the Notes by series and in which shall be entered the names and addresses of the owners of such Notes and the principal amounts of the Notes owned by them, respectively.

SECTION 4.2. *Registration of Transfer or Exchange of Notes.*

A Holder of a Note intending to register the transfer of any Outstanding Note held by such Holder (including any transfer in the form of a pledge or assignment) or to exchange any Outstanding Note held by such Holder for a new Note or Notes of the same series may surrender such Outstanding Note at the Indenture Trustee's Office, together with the written request of such Holder, or of its attorney duly authorized in writing, in each case with signatures guaranteed, for the registration of such Note in the name of any pledgee or assignee (in the case of a transfer in the form of a pledge or assignment) or for the issuance of a new Note or Notes of the same series, specifying the authorized denomination or denominations of any new Note or Notes to be issued and the name and address of the Person or Persons in whose name or names the Note or Notes are to be registered (either as pledgee or assignee or as owner). Promptly upon receipt by the Indenture Trustee of the foregoing and satisfaction of the requirements of Sections 4.5 and 4.6, the Indenture Trustee shall register such Note or Notes in the name or names of the Person or Persons as shall be specified in the written request and, in the case in which a new Note or Notes are to be issued, the Owner Trustee shall execute and the Indenture Trustee shall authenticate and deliver such new Note or Notes of the same series, in the same aggregate principal amount and dated the same date as the Outstanding Note surrendered, in such authorized denomination or denominations as shall be specified in the written request. The Indenture Trustee shall make a notation on each new Note of the amount of all payments of principal theretofore made on the old Note or Notes in exchange or transfer for which any new Note has been issued and the date to which interest on such old Note or Notes has been paid.

SECTION 4.3. *Cancellation of Notes.*

All Notes surrendered to the Indenture Trustee for payment in full, prepayment in full or registration of transfer or exchange shall be cancelled by it; and no Notes shall be issued in lieu thereof except as expressly permitted by this Indenture. The Indenture Trustee shall destroy cancelled Notes held by it in a manner satisfactory to the Owner Trustee and deliver a certificate of destruction to the Owner Trustee. If the Owner Trustee shall acquire any of the Notes, such acquisition shall not operate as a redemption of or the satisfaction of the indebtedness represented by such Notes unless and until the same shall be delivered to the Indenture Trustee for cancellation.

SECTION 4.4. *Limitation on Timing of Registration of Notes.*

The Indenture Trustee shall not be required to register transfers or exchanges of Notes on any date fixed for the payment or prepayment of principal of or interest on the Notes or during the fifteen days preceding any such date.

SECTION 4.5. *Restrictions on Transfer Resulting from Federal Securities Laws; Legend.*

If not prohibited by the Securities Act, each Note shall be delivered to the initial Holder thereof without registration of such Note under the Securities Act and without qualification of this Indenture under the Trust Indenture Act. Prior to any transfer of any Note, in whole or in part, to any Person other than the Collateral Trust Trustee, the Holder thereof shall furnish to the Lessee, the Indenture Trustee and the Owner Trustee an opinion of counsel, which opinion and which counsel shall be reasonably satisfactory to the Indenture Trustee, the Owner Trustee and the Lessee, to the effect that such transfer will not violate the registration provisions of the Securities Act or require qualification of this Indenture under the Trust Indenture Act, and all Notes issued hereunder shall be endorsed with a legend which shall read substantially as follows:

The Note has not been registered under the Securities Act of 1933 and may not be transferred, sold or offered for sale in violation of such Act.

SECTION 4.6. *Charges upon Transfer or Exchange of Notes.*

As a further condition to registration of transfer or exchange of any Note, the Indenture Trustee and the Owner Trustee may charge the Holder thereof for any stamp taxes or governmental charges required to be paid with respect to such registration of transfer or exchange.

SECTION 4.7. *Inspection of Register of Notes.*

The register of the Holders of the Notes referred to in Section 4.1 shall at all reasonable times be open for inspection by any Holder of a Note. Upon request by any Holder of a Note, or the Owner Trustee or the Lessee, the Indenture Trustee shall furnish such Person, at the expense of such Person, with a list of the names and addresses of all Holders of Notes entered on the register kept by the Indenture Trustee indicating the series, principal amount and number of each Note held by each such Holder.

SECTION 4.8. *Ownership of Notes.*

(a) Prior to due presentment for registration of transfer of any Note, the Owner Trustee and the Indenture Trustee may deem and treat the Holder of record of such Note as the absolute owner of such Note for the purpose of receiving payment of all amounts payable with respect to such Note and for all other purposes, and neither the Owner Trustee nor the Indenture Trustee shall be affected by any notice to the contrary.

(b) The Owner Trustee and the Indenture Trustee may, in their discretion, treat the Holder of record of any Note as the owner thereof without actual production of such Note for any purpose hereunder, except as provided in the last sentence of Section 3.8.

(c) Neither the Owner Trustee nor the Indenture Trustee shall be bound to take notice of or carry out the execution of any trust in respect of any Note, and may register the transfer of the same on the direction of the Holder of record thereof, whether named as trustee or otherwise, as though such Holder were the beneficial owner thereof.

(d) The receipt by the Holder of record of any Note of any payment of principal, premium or interest shall be a good discharge to the Owner Trustee and the Indenture Trustee for the same and neither the Owner Trustee nor the Indenture Trustee shall be bound to inquire into the title of any such Holder.

SECTION 4.9. *Paying Agent.*

The Owner Trustee agrees at all times to have in effect a Paying Agent which shall be a bank or trust company in New York, N.Y., as agent for purposes of making payments on the Notes. Mellon Trust Company has initially been appointed as the Paying Agent. The Paying Agent may not be replaced without the consent of the Indenture Trustee, which consent shall not be unreasonably withheld. The Indenture Trustee will notify the Collateral Trust Trustee of the name and address of any replacement Paying Agent. The making by the Paying Agent of any payment required to be made by the Indenture Trustee pursuant to Article III shall be deemed to be a payment by the Indenture Trustee for the purposes of Article III.

ARTICLE V

RECEIPT, DISTRIBUTION AND APPLICATION OF INCOME AND PROCEEDS FROM THE LEASE INDENTURE ESTATE

SECTION 5.1. *Basic Rent and Interest on Overdue Installments of Basic Rent.*

Except as otherwise provided in Section 5.3 or 5.7 and the fourth sentence of Section 6.8(a), each payment of Basic Rent, as well as any payment of Supplemental Rent representing interest on overdue installments of Basic Rent, received by the Indenture Trustee at any time, shall be distributed by the Indenture Trustee in the following order of priority: *first*, so much of such payment as shall be required to pay in full the aggregate amount of the payment or payments of principal and/or interest (as well as any interest on overdue principal or, to the extent permitted by law, interest) then due and unpaid on all Notes shall be distributed to the Holders of the Notes ratably, without priority of one over the other, in the proportion that the aggregate amount of such payment or payments then due and unpaid on all Notes held by each such Holder on such date bears to the aggregate amount of such payment or payments then due and unpaid on all Notes Outstanding on such date, without priority of interest over principal or principal over interest; and *second*, the balance, if any, of such payment remaining thereafter shall be distributed, concurrently with any distribution pursuant to clause *first* hereof, to the Owner Trustee or as the Owner Trustee may direct. If there shall not otherwise have been distributed on any date (or within any applicable period of grace), pursuant to this Section 5.1, the full amount then distributable pursuant to clause *first* of this Section 5.1, the Indenture Trustee shall distribute other payments of the character referred to in Sections 5.4 and 5.5 then held by it or thereafter received by it, except as otherwise provided in Section 5.3, to the Holders of all Notes to the extent necessary to enable it to make all the distributions then due pursuant to such clause *first*; *provided that* to the extent any distribution is made from amounts held pursuant to Section 5.4 and the Lessee subsequently makes the payment of Basic Rent or Supplemental Rent in respect of which such distribution was made, such payment of Basic Rent or Supplemental Rent shall, unless a Default or Event of Default shall have occurred and be continuing, be applied to the purpose for which such amount held pursuant to Section 5.4 had been held, *subject*, in all cases, to the terms of Section 5.4. The portion of each such payment made to the Indenture Trustee which is to be distributed by the Indenture Trustee in payment of Notes shall be applied in accordance with Section 3.11. Any payment received by the Indenture Trustee pursuant to Section 6.8 shall be distributed to the Holders of the

Notes, ratably, without priority of one over the other, in the proportion that the amount of such payment or payments then due and unpaid on all Notes held by each such Holder bears to the aggregate amount of the payments then due and unpaid on all Notes Outstanding. Amounts distributed by the Indenture Trustee pursuant to this Section 5.1 shall be distributed as promptly as practicable after such amounts are actually received by the Indenture Trustee; in the event the Indenture Trustee shall be directed to make payments to the Holder of any Note by wire transfer in accordance with Section 3.8, any amounts received by the Indenture Trustee after 1:00 p.m., Houston time, may be so distributed on the following Business Day.

SECTION 5.2. *Amounts Received as Result of Event of Loss, Deemed Loss Event, Exercise of Options to Terminate, Exercise of Cure Option.*

If an Event of Loss shall occur or Deemed Loss Event shall be declared or the Lessee shall exercise the Cure Option or the Lessee shall exercise its purchase option under Section 13(c) of the Facility Lease or Section 10(b)(3)(xvii) of the Participation Agreement, and if either the Assumption Agreement or the Undivided Interest Indenture Supplement shall have been executed and delivered, any amounts of Casualty Value, Special Casualty Value, Special Termination Value or Fair Market Sales Value received or held by the Indenture Trustee in respect of such Event of Loss or Deemed Loss Event or exercise of the Cure Option or such purchase option shall be distributed forthwith to the Owner Participant. If the Lessee or the Owner Trustee, as the case may be, shall exercise its option to terminate the Facility Lease pursuant to Section 14 thereof, then there shall be prepaid, on the date payments or proceeds with respect thereto are received by the Indenture Trustee (or as soon thereafter as practicable) under Section 14 of the Facility Lease, the unpaid principal amount of all Notes, together with the premium, if any, and all accrued but unpaid interest thereon to the date of such prepayment. Notice of such prepayment shall be given as provided in Section 3.9(d) and may provide that it is subject to receipt of funds for such prepayment. Except as otherwise provided in Section 5.3 or 5.7, any payments received and amounts realized by the Indenture Trustee upon exercise of the Lessee's or the Owner Trustee's option to terminate the Facility Lease under Section 14 thereof shall in each case be distributed on the date of prepayment as provided in clauses *first*, *second* and *fifth* of Section 5.3.

SECTION 5.3. *Amounts Received After, or Held at Time of, Indenture Event of Default under Section 6.2.*

Except as otherwise provided in Section 5.7, all payments received and amounts realized by the Indenture Trustee in respect of the Lease Indenture Estate (including any amounts realized by the Indenture Trustee from the exercise of any remedies pursuant to the Facility Lease or Article VI of this Indenture) after an Indenture Event of Default referred to in Section 6.2 shall have occurred and be continuing and the Notes have been accelerated pursuant to Section 7.1, as well as all payments thereafter received or amounts then held by the Indenture Trustee as part of the Lease Indenture Estate, shall be distributed by the Indenture Trustee in the following order of priority:

first, so much of such payments or amounts as shall be required to reimburse the Indenture Trustee for any Trustee's Expenses (to the extent not previously reimbursed) and to pay the reasonable remuneration of the Indenture Trustee, shall be applied by the Indenture Trustee to such reimbursement and payment;

second, so much of such payments or amounts remaining as shall be required to pay in full the aggregate unpaid principal amount of all Notes, together with premium, if any, plus accrued but unpaid interest (as well as interest on overdue principal and, to the extent permitted by law, on overdue interest) thereon to the date of distribution, shall be distributed to the Holders of such Notes and in case the aggregate amount so to be distributed shall be insufficient to pay all such Notes in full as aforesaid, then ratably, without priority of one over the other, in the proportion that the aggregate unpaid principal amount of all such Notes held by each such Holder, together with premium, if any, plus accrued but unpaid interest thereon to the date of distribution bears to

the aggregate unpaid principal amount of all Notes, together with premium, if any, plus accrued but unpaid interest thereon to the date of distribution;

third, so much of such payments or amounts remaining as shall be required to pay the present or former Holders of the Notes the amounts payable to them as Indemnitees (to the extent not previously reimbursed) shall be distributed to such Holders; and in case the aggregate amount so to be paid to all such Holders in accordance with this clause *third* shall be insufficient to pay all such amounts as aforesaid, then ratably, without priority of one over the other, in the proportion that the amount of such indemnity or other payments to which such Person is entitled bears to the aggregate amount of such indemnity or other payments to which all such Persons are entitled:

fourth, the balance, if any, of such payments or amounts remaining shall be applied to the payment of any other indebtedness at the time due and owing to the Indenture Trustee or the Holders of the Notes which this Indenture by its terms secures; and

fifth, the balance, if any, of such payments or amounts remaining thereafter shall be distributed to or upon the direction of the Owner Trustee.

SECTION 5.4. *Amounts Received for Which Provision is Made in a Transaction Document.*

Except as otherwise provided in Section 5.1, 5.3 or 5.7, any payments received by the Indenture Trustee in respect of the Lease Indenture Estate for which provision as to the application thereof is made in a Transaction Document shall be applied to the purpose for which such payment was made in accordance with the terms of such Transaction Document, as determined in the first instance from instructions or other information accompanying such payment or otherwise in accordance with instructions from the payor of such payments.

SECTION 5.5. *Amounts Received for Which No Provision is Made.*

Except as otherwise provided in Section 5.1, 5.3 or 5.7, any payments received and any amounts realized by the Indenture Trustee in respect of the Lease Indenture Estate (a) for which no provision as to the application thereof is made in a Transaction Document or elsewhere in this Article V shall be held by the Indenture Trustee as part of the Lease Indenture Estate, and (b) to the extent received or realized at any time after payment in full of the principal of and premium, if any, and interest on all the Notes, as well as any other amounts remaining as part of the Lease Indenture Estate after payment in full of the principal of and premium, if any, and interest on all the Notes, shall be distributed by the Indenture Trustee in the order of priority set forth in Section 5.3 (omitting clause *second* thereof).

SECTION 5.6. *Payments to Owner Trustee.*

Unless otherwise directed by the Owner Trustee, all payments to be made to the Owner Trustee hereunder shall be made to the Owner Participant by wire transfer of immediately available funds as soon as practicable but in any event no later than the close of business on the date of receipt (assuming the Indenture Trustee (at the office of any bank or trust company in New York, N.Y. specified by the Indenture Trustee in accordance with Section 11(b) of the Facility Lease) has received such funds prior to 12:30 p.m., New York time, on the same day), to such account at such bank or trust company as the Owner Participant shall from time to time designate in writing to the Indenture Trustee.

SECTION 5.7. *Excepted Payments.*

Anything in this Article V or elsewhere in this Indenture to the contrary notwithstanding, any Excepted Payment received at any time by the Indenture Trustee shall be distributed as promptly as practicable to the Person entitled to receive such Payment (such entitlement to be conclusively determined by reference to payment instructions from such Person).

ARTICLE VI

REPRESENTATIONS, WARRANTIES AND COVENANTS OF OWNER TRUSTEE; EVENTS OF DEFAULT; REMEDIES OF THE INDENTURE TRUSTEE

SECTION 6.1. *Representations, Warranties and Covenants of Owner Trustee.*

The Owner Trustee hereby covenants and agrees that (i) it will duly and punctually pay the principal of, and premium, if any, and interest on, the Notes in accordance with the terms thereof and this Indenture, (ii) it will not pledge, create a security interest in or mortgage, so long as this Indenture shall remain in effect, any of its estate, right, title or interest in and to the Lease Indenture Estate or otherwise constituting part of the Trust Estate, to anyone other than the Indenture Trustee, (iii) so long as this Indenture shall remain in effect, it will not purchase or agree to purchase any property or asset other than the Undivided Interest and the Real Property Interest and other than as contemplated by the Transaction Documents, (iv) it will not, except with the prior written concurrence of the Indenture Trustee or as expressly provided in or permitted by, this Indenture, or with respect to the Trust Agreement or any property not constituting part of the Lease Indenture Estate, take any action which would result in an impairment of any Note or the obligation of the Lessee to pay any amount under the Facility Lease which is part of the Lease Indenture Estate (not in any event including in respect of Excepted Payments) or any of the other rights or security created or effected thereby, or (v) issue, or incur any obligation in respect of, indebtedness for borrowed money except for its obligations in respect of Notes.

A signed copy of any amendment or supplement to the Trust Agreement shall be delivered by the Owner Trustee to the Indenture Trustee and the Lessee. This Indenture and the Lease Indenture Estate shall not be affected by any action taken under or in respect of the Trust Agreement except as otherwise provided in or permitted by this Indenture. The Owner Trustee may resign as Owner Trustee, appoint a successor Owner Trustee and take all necessary and proper action to constitute one or more Persons as co-trustee(s) jointly with the Owner Trustee or as separate trustee(s), all in accordance with the terms and conditions of Article IX of the Trust Agreement.

SECTION 6.2. *Indenture Events of Default.*

The term *Indenture Event of Default*, wherever used herein, shall mean any of the following events (whatever the reason for such Indenture Event of Default and whether it shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) any of the Events of Default specified in the following clauses of Section 15 of the Facility Lease: (1) clause (i)(y), except a failure of the Lessee to pay any amount which shall constitute an Excepted Payment; (2) clause (i)(x), except a failure of the Lessee to pay any amount which shall constitute an Excepted Payment or except where the Owner Trustee shall not have rescinded or terminated the Facility Lease pursuant to Section 16(a)(i) of the Facility Lease; or (3) clause (vii); or

(b) the rescission or termination of, or the taking of action by the Owner Trustee or the Owner Participant the effect of which would be to rescind or terminate, the Facility Lease, whether pursuant to Section 16(a)(i) of the Facility Lease or otherwise; or

(c) any failure by the Lessee to perform and observe Section 10(b)(3)(iii) of the Participation Agreement; or

(d) the Owner Trustee shall fail to make any payment in respect of the principal of, or premium, if any, or interest on, the Notes within ten Business Days after the same shall have become due (other than by virtue of any failure by the Lessee to make any payment of Rent therefor); or

(e) the Owner Trustee shall fail to perform or observe any covenant or agreement to be performed or observed by it under Section 6.1, or the Owner Participant shall fail to perform or observe any covenant or agreement to be performed or observed by it under Section 7(b)(1) of the Participation Agreement, and, in any such case, such failure shall continue for a period of 30 days after notice thereof shall have been given to the Owner Trustee and the Owner Participant and the Lessee by the Indenture Trustee, specifying such failure and requiring it to be remedied.

SECTION 6.3. *Enforcement of Remedies.*

(a) In the event that an Indenture Event of Default shall have occurred and be continuing, then and in every such case the Indenture Trustee, subject to paragraph (b) of this Section 6.3 and Section 6.11, may, and when required pursuant to the provisions of Article VII hereof, shall, exercise any or all of the rights and powers and pursue, subject to the rights of the Lessee under the Facility Lease, (x) in the event such Indenture Event of Default is referred to in paragraph (d) or (e) of Section 6.2, any or all of the remedies then available pursuant to this Article VI and Article VII, or (y) in the event such Indenture Event of Default is referred to in paragraph (a), (b) or (c) of Section 6.2, any or all of such remedies concurrently with the exercise and pursuit by the Owner Trustee of any or all of the remedies then available to the Owner Trustee under the Facility Lease.

(b) Any provisions of the Facility Lease or this Indenture to the contrary notwithstanding, if the Lessee shall fail to pay any Excepted Payment to any Person entitled thereto as and when due, such Person shall have the right at all times, to the exclusion of the Indenture Trustee, to demand, collect, sue for, enforce performance of obligations relating to, or otherwise obtain all amounts due in respect of, such Excepted Payment.

SECTION 6.4. *Specific Remedies; Enforcement of Claims without Possession of Notes.*

Subject to Sections 6.2, 6.3 and 6.11 and the terms of the documents constituting a part of the Lease Indenture Estate, upon the occurrence and during the continuance of an Indenture Event of Default:

(a) The Indenture Trustee may, in order to enforce the rights of the Indenture Trustee and of the Holders of the Notes, direct payment to it of all moneys and enforce any agreement or undertaking constituting a part of the Lease Indenture Estate by any action, suit, remedy or proceeding authorized or permitted by this Indenture or by law or by equity, and whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by Applicable Law, and in addition may sell, assign, transfer and deliver, from time to time to the extent permitted by Applicable Law, all or any part of the Lease Indenture Estate or any interest therein, at any private sale or public auction with or without demand, advertisement or notice (except as herein required or as may be required by Applicable Law) of the date, time and place of sale and any adjournment thereof, for cash or credit or other property, for immediate or future delivery and for such price or prices and on such terms as the Indenture Trustee, in its uncontrolled discretion, may determine, or as may be required by Applicable Law, so long as the Owner Participant and the Owner Trustee are afforded a commercially reasonable opportunity to bid for all or such part of the Lease Indenture Estate in connection therewith. It is agreed that 90 days' notice to the Owner Participant, the Owner Trustee and the Lessee of the date, time and place of any proposed sale by the Indenture Trustee of all or any part of the Lease Indenture Estate or interest therein is reasonable. The Indenture Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Indenture Trustee and of the Holders of the Notes asserted or upheld in any bankruptcy, receivership or other judicial proceedings.

(b) Without limiting the foregoing, the Indenture Trustee, its assigns and its legal representatives, subject to the rights of the Lessee under the Facility Lease, shall have as to such of the Lease Indenture Estate as is subject to the Uniform Commercial Code or similar law in each relevant jurisdiction all the remedies of a secured party under the Uniform Commercial Code or similar law in

such jurisdiction and such further remedies as from time to time may hereafter be provided in such jurisdiction for a secured party.

(c) All rights of action and rights to assert claims under this Indenture or under any of the No[redacted] may be enforced by the Indenture Trustee without the possession of the Notes at any trial or oth[redacted] proceedings instituted by the Indenture Trustee, and any such trial or other proceedings shall be brought in its own name as trustee of an express trust, and any recovery or judgment shall be for the ratable benefit of the Holders of the Notes as herein provided. In any proceedings brought by the Indenture Trustee (and also any proceedings involving the interpretation of any provision of this Indenture to which the Indenture Trustee shall be a party) the Indenture Trustee shall be held to represent all the Holders of the Notes, and it shall not be necessary to make any such Holders parties to such proceedings.

(d) The Indenture Trustee may exercise any other right or remedy that may be available to it under Applicable Law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof.

SECTION 6.5. *Rights and Remedies Cumulative.*

Subject to Sections 6.2, 6.3 and 6.11, (a) each and every right, power and remedy herein specifically given to the Indenture Trustee under this Indenture shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Indenture Trustee, and the exercise or the beginning of the exercise of any right, power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and (b) no delay or omission by the Indenture Trustee in the exercise of any right, power or remedy or in the pursuance of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of [redacted] Owner Participant, the Owner Trustee or the Lessee or to be an acquiescence therein.

SECTION 6.6. *Restoration of Rights and Remedies.*

In case the Indenture Trustee shall have proceeded to enforce any right, power or remedy under this Indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Indenture Trustee, then and in every such case the Owner Trustee, the Owner Participant, the Indenture Trustee and the Lessee shall be restored to their former positions and rights hereunder with respect to the Lease Indenture Estate, and all rights, powers and remedies of the Indenture Trustee shall continue as if no such proceedings had been taken.

SECTION 6.7. *Waiver of Past Defaults.*

Any past Indenture Default or Indenture Event of Default and its consequences may be waived by the Indenture Trustee, except an Indenture Default or an Indenture Event of Default (i) in the payment of the principal of or interest on any Note, subject to the provisions of Section 7.1, or (ii) in respect of a covenant or provision hereof which, under Section 10.2, cannot be modified or amended without the consent of each Holder of a Note then Outstanding. Upon any such waiver, such Indenture Default or Indenture Event of Default shall cease to exist, and any other Indenture Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Indenture Default or Indenture Event of Default or impair any right consequent thereon.

SECTION 6.8. *Right of Owner Trustee to Pay Rent; Note Purchase; Substitute Lessee.*

Anything in this Article VI or Article VII to the contrary notwithstanding:

(a) An Indenture Event of Default shall be deemed cured if such Indenture Event of Default results from non-payment of Basic Rent or Supplemental Rent under the Facility Lease, and the Owner Trustee or the Owner Participant shall have paid all principal of and interest on the Notes due (other than by acceleration) on the date such Rent was payable (plus interest on such amount as required hereby) within 15 days after the receipt by the Owner Trustee of notice of such non-payment, such receipt to be evidenced by, among other things, any notice thereof given to the Owner Trustee in accordance with the notice provisions of the Participation Agreement. The Owner Trustee or the Owner Participant, upon exercising cure rights under this paragraph (a), shall not obtain any Lien on any part of the Lease Indenture Estate on account of such payment for the costs and expenses incurred in connection therewith nor, except as expressly provided in the succeeding sentence, shall any claims of the Owner Trustee or the Owner Participant against the Lessee or any other Person for the repayment thereof impair the prior right and security interest of the Indenture Trustee in and to the Lease Indenture Estate. Upon any payment by the Owner Trustee or the Owner Participant pursuant to this Section 6.8, the Owner Trustee or the Owner Participant, as the case may be, shall (to the extent of such payment made by it) be subrogated to the rights of the Indenture Trustee and the Holders of the Notes to receive the payment of Rent with respect to which the Owner Trustee or the Owner Participant made such payment and interest on account of such Rent payment being overdue in the manner set forth in the next sentence. If the Indenture Trustee shall thereafter receive such payment of Rent or such interest, the Indenture Trustee shall, notwithstanding the requirements of Section 5.1, on the date such payment is received by the Indenture Trustee, remit such payment of Rent (to the extent of the payment made by the Owner Trustee or the Owner Participant pursuant to this Section 6.8) and such interest to the Owner Trustee or the Owner Participant, as the case may be, in reimbursement for the funds so advanced by it.

(b) Each Holder of a Note agrees, by acceptance thereof, that if the Notes have been accelerated pursuant to Section 7.1, and the Owner Trustee, within 30 days after receiving notice from the Indenture Trustee pursuant to Section 7.1, shall give written notice to the Indenture Trustee of the Owner Trustee's intention to purchase all of the Notes in accordance with this paragraph, accompanied by assurances of the Owner Trustee to purchase the Notes, then, upon receipt within 10 Business Days after such notice from the Owner Trustee of an amount equal to the aggregate unpaid principal amount of and any premium with respect to any unpaid Notes then held by such Holder, together with accrued but unpaid interest thereon to the date of such receipt (as well as any interest on overdue principal and, to the extent permitted by law, interest), such Holder will forthwith sell, assign, transfer and convey to the Owner Trustee (without recourse or warranty of any kind other than of title to the Notes so conveyed) all of the right, title and interest of such Holder in and to the Lease Indenture Estate, this Indenture and all Notes held by such Holder; *provided*, that no such Holder shall be required so to convey unless (1) the Owner Trustee shall have simultaneously tendered payment for all other Notes issued by the Owner Trustee at the time Outstanding pursuant to this paragraph and (2) such conveyance is not in violation of any Applicable Law.

(c) Each Holder of a Note further agrees by its acceptance thereof that the Owner Trustee shall have the right, pursuant to Section 16 of the Facility Lease, to terminate the Facility Lease and, in connection therewith, to arrange for the substitution of another Person as lessee under a new lease substantially similar to the Facility Lease (hereinafter the *Substituted Lessee)* and, subject to (i) any Indenture Event of Default under paragraphs (d) and (e) of Section 6.2 having been cured by the Owner Trustee and (ii) the Substituted Lessee's assuming all of the obligations of the Lessee under the Facility Lease, the Facility Lease between the Owner Trustee and such Substituted Lessee shall, for all purposes of this Indenture, be deemed to be the Facility Lease subject to the lien of this Indenture. The Owner Trustee shall use its best efforts to obtain a Substituted Lessee having an assigned credit rating by Standard & Poor's Corporation or Moody's Investors Service, Inc. (or, if either of such organizations shall not rate securities issued by such Substituted Lessee, by any other nationally recognized rating organization in the United States of America) with respect to at least one series of its debt obligations or preferred stock equal to or better than the ratings assigned, immediately prior to such substitution, by such organizations to comparable securities of the Lessee immediately prior to

such substitution, but in no event less than the "investment grade" rating assigned by such organizations.

SECTION 6.9. *Further Assurances.*

Subject to Section 7.6, the Owner Trustee covenants and agrees from time to time to do all such acts and execute all such instruments of further assurance as shall be reasonably requested by the Indenture Trustee for the purpose of fully carrying out and effectuating this Indenture and the intent hereof.

SECTION 6.10. *Right of Indenture Trustee to Perform Covenants, etc.*

If the Owner Trustee shall fail to make any payment or perform any act required to be made or performed by it hereunder or under the Facility Lease or if the Owner Trustee shall fail to release any Lien affecting the Lease Indenture Estate which it is required to release by the terms of this Indenture, the Indenture Trustee, without notice to or demand upon the Owner Trustee and without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of the Lease Indenture Estate. All sums so paid by the Indenture Trustee and all costs and expenses (including without limitation reasonable fees and expenses of legal counsel and other professionals) so incurred, together with interest thereon from the date of payment or occurrence, shall constitute additional indebtedness secured by this Indenture and shall be paid from the Lease Indenture Estate to the Indenture Trustee on demand. The Indenture Trustee shall not be liable for any damages resulting from any such payment or action unless such damages shall be a consequence of willful misconduct or gross negligence on the part of the Indenture Trustee.

SECTION 6.11. *Certain Other Rights of the Owner Trustee.*

Notwithstanding any provision to the contrary in this Indenture, the Owner Trustee shall at all times retain, to the exclusion of the Indenture Trustee, all rights of the Owner Trustee to exercise any election or option or to make any decision or determination or to give or receive any notice, consent, waiver or approval or to take any other action under or in respect of the Facility Lease, as well as all rights, powers and remedies on the part of the Owner Trustee, whether arising under the Facility Lease or by statute or at law or in equity or otherwise, arising out of any Default or Event of Default *subject, however,* to Section 10.2. Without the prior written consent of the Indenture Trustee, the exercise of any of the aforesaid rights so retained by the Owner Trustee shall not be exercised in such a manner as to (i) reduce the amounts payable by the Lessee under the Facility Lease below the amounts necessary to provide the Owner Trustee with sufficient moneys to make timely payments in full of amounts due with respect to the principal of and premium, if any, and interest on all Notes or (ii) rescind or terminate the Facility Lease pursuant to Section 16 thereof. The Owner Trustee shall not exercise any other right or remedy under the Facility Lease the effect of which would be to effect such rescission or termination.

ARTICLE VII

CERTAIN DUTIES OF THE OWNER TRUSTEE AND THE INDENTURE TRUSTEE

SECTION 7.1. *Duties in Respect of Events of Default, Deemed Loss Events and Events of Loss; Acceleration of Maturity.*

In the event the Owner Trustee shall have actual knowledge of an Indenture Event of Default, an Event of Default, a Deemed Loss Event or an Event of Loss, the Owner Trustee shall give prompt written notice thereof to the Owner Participant, the Lessee and the Indenture Trustee. In the event the Indenture Trustee shall have actual knowledge of an Event of Default, an Indenture Event of Default, a Deemed Loss Event or an Event of Loss, the Indenture Trustee shall give prompt writ

notice thereof to the Owner Participant, the Owner Trustee, the Lessee and each Holder of a Note. Subject to the terms of Sections 6.2, 6.3, 6.4, 6.8, 6.11 and 7.3, (a) the Indenture Trustee shall take such action (including the waiver of past Defaults in accordance with Section 6.7), or refrain from taking such action, with respect to any such Indenture Event of Default, Event of Default, Deemed Loss Event or Event of Loss as the Indenture Trustee shall be instructed by a Directive, (b) if the Indenture Trustee shall not have received instructions as above provided within 20 days after mailing by the Indenture Trustee of notice of such Indenture Event of Default, Event of Default, Deemed Loss Event or Event of Loss to the Persons referred to above, the Indenture Trustee may, subject to instructions thereafter received pursuant to the preceding sentence, take such action, or refrain from taking such action, but shall be under no duty to take or refrain from taking any action, with respect to such Indenture Event of Default, Event of Default, Deemed Loss Event or Event of Loss as it shall determine advisable in the best interests of the Holders of the Notes of all series and (c) in the event that an Indenture Event of Default shall have occurred and be continuing, the Indenture Trustee in its discretion may, or upon receipt of a Directive shall, by written notice to the Owner Trustee, declare the unpaid principal amount of all Notes with accrued interest thereon to be immediately due and payable, upon which declaration such principal amount and such accrued interest shall immediately become due and payable without further act or notice of any kind. For all purposes of this Indenture, in the absence of actual knowledge, neither the Owner Trustee nor the Indenture Trustee shall be deemed to have knowledge of an Indenture Event of Default or Event of Default except that the Indenture Trustee shall be deemed to have knowledge of the failure of the Lessee to pay any installment of Basic Rent within 10 Business Days after the same shall become due. For purposes of this Section 7.1, neither the Owner Trustee nor the Indenture Trustee shall be deemed to have actual knowledge of any Indenture Event of Default, Event of Default, Deemed Loss Event or Event of Loss unless it shall have received notice thereof pursuant to Section 11.6 or such Indenture Event of Default or Event of Default shall actually be known by an officer in the corporate trust department of the Owner Trustee or by an officer in the corporate trust department of the Indenture Trustee, as the case may be.

SECTION 7.2. *Duties in Respect of Matters Specified in Directive.*

Subject to the terms of Sections 6.2, 6.3, 6.4, 6.8, 6.11, 7.1 and 7.3, upon receipt of a Directive, the Indenture Trustee shall take such of the following actions as may be specified in such Directive: (i) give such notice or direction or exercise such right, remedy or power permitted hereunder or permitted with respect to the Facility Lease or in respect of any part or all of the Lease Indenture Estate as shall be specified in such Directive; and (ii) take such action to preserve or protect the Lease Indenture Estate as shall be specified in such Directive, it being agreed that without such a Directive, the Indenture Trustee shall not waive, consent to or approve any such matter as satisfactory to it.

SECTION 7.3. *Indemnification.*

The Indenture Trustee shall not be required to take or refrain from taking any action under Section 7.1 or 7.2 or Article VI which shall require the Indenture Trustee to expend or risk its own funds or otherwise incur any financial liability unless the Indenture Trustee shall have been indemnified by the Holders of the Notes against liability, cost or expense (including counsel fees) which may be incurred in connection therewith, or unless, in the reasonable judgment of the Indenture Trustee, the indemnities of the Lessee shall be adequate for such purpose; provided, however, that if the Holder of such Notes is the Collateral Trust Trustee, the unsecured written undertaking of the Collateral Trust Trustee, in its individual capacity, shall be sufficient indemnity for purposes of this Section. The Indenture Trustee shall not be required to take any action under Section 7.1 or 7.2 or Article VI nor shall any other provision of this Indenture be deemed to impose a duty on the Indenture Trustee to take any action, if the Indenture Trustee shall reasonably determine, or shall have been advised by counsel, that such action is likely to result in personal liability or is contrary to the terms hereof or of the Facility Lease or is otherwise contrary to law.

SECTION 7.4. *Limitations on Duties; Discharge of Certain Liens Resulting from Claims Against Indenture Trustee.*

The Indenture Trustee shall have no duty or obligation to take or refrain from taking any act under, or in connection with, this Indenture or the Facility Lease, except as expressly provided by terms of this Indenture. The Indenture Trustee nevertheless agrees that it will, in its individual capacity and at its own cost and expense, promptly take such action as may be necessary duly to discharge all Liens on any part of the Lease Indenture Estate which result from acts by or claims against it arising out of events or conditions not related to its rights in the Lease Indenture Estate or the administration of the Lease Indenture Estate or the transactions contemplated hereby.

SECTION 7.5. *Restrictions on Dealing with Lease Indenture Estate.*

Except as provided in the Transaction Documents, the Owner Trustee shall not use, operate, store, lease, control, manage, sell, dispose of or otherwise deal with any part of the Lease Indenture Estate.

SECTION 7.6. *Filing of Financing Statements and Continuation Statements.*

Pursuant to Section 10(b)(2) of the Participation Agreement, the Lessee has covenanted to maintain the priority of the lien of this Indenture on the Lease Indenture Estate. The Indenture Trustee shall, at the request and expense of the Lessee as provided in the Participation Agreement, execute and deliver to the Lessee and the Lessee will file, if not already filed, such financing statements or other documents and such continuation statements or other documents with respect to financing statements or other documents previously filed relating to the lien created under this Indenture in the Lease Indenture Estate as may be necessary to protect, perfect and preserve the lien created under this Indenture. At any time and from time to time, upon the request of the Lessee or the Indenture Trustee, at the expense of the Lessee as provided in the Participation Agreement (and upon receipt of the form of document so to be executed), the Owner Trustee shall promptly and d execute and deliver any and all such further instruments and documents as the Lessee or Indenture Trustee may request in order for the Indenture Trustee to obtain the full benefits of the security interest, assignment and mortgage created hereby and of the rights and powers herein granted. Upon the reasonable instructions (which instructions shall be accompanied by the form of document to be filed) at any time and from time to time of the Lessee or the Indenture Trustee, the Owner Trustee shall execute and file any financing statement (and any continuation statement with respect to any such financing statement), any certificate of title or any other document, in each case relating to the security interest, assignment and mortgage created by this Indenture, as may be specified in such instructions. In addition, the Indenture Trustee and the Owner Trustee will execute such continuation statements with respect to financing statements and other documents relating to the lien created under this Indenture in the Lease Indenture Estate as may be reasonably specified from time to time in written instructions of any Holder of a Note (which instructions may, by their terms, be operative only at a future date and which shall be accompanied by the form of such continuation statement or other document so to be filed).

ARTICLE VIII

CONCERNING THE OWNER TRUSTEE AND THE INDENTURE TRUSTEE

SECTION 8.1. *Acceptance of Trusts; Standard of Care.*

The Indenture Trustee accepts the trusts hereby created and applicable to it and agrees to perform the same but only upon the terms of this Indenture and the Participation Agreement and agrees to receive and disburse all moneys constituting part of the Lease Indenture Estate

accordance with the provisions hereof, but no implied duties or obligations shall be read into this Indenture or the Participation Agreement against the Indenture Trustee. The Indenture Trustee shall enter into and perform its obligations under the Participation Agreement, and, at the request of the Owner Trustee, any other agreement relating to any transfer of the Undivided Interest or the Real Property Interest or the assignment of rights under the Assignment and Assumption or, at the request of the Owner Trustee, the purchase by any Person of Notes or Additional Notes issued hereunder, all as contemplated hereby. The Indenture Trustee shall not be liable under any circumstances, except for its own willful misconduct or gross negligence. If any Indenture Event of Default shall have occurred and be continuing, the Indenture Trustee shall exercise such of the rights and remedies vested in it by this Indenture, subject to the provisions hereof, and shall use the same degree of care in their exercise as a prudent man would exercise or use in the circumstances in the conduct of his own affairs, but if in the opinion of the Indenture Trustee such action may tend to involve expense or liability, it shall not be obligated to take such action unless it is furnished with indemnity satisfactory to it.

SECTION 8.2. *No Duties of Maintenance, Etc.*

Except pursuant to Section 7.2 and except as provided in, and without limiting the generality of, Sections 7.1 and 7.4, the Indenture Trustee shall have no duty (i) to see to any recording or filing of any Transaction Document, or to see to the maintenance of any such recording or filing, or (ii) to see to the payment or discharge of any tax, assessment or other governmental charge or any lien or encumbrance of any kind owing with respect to, or assessed or levied against, any part of the Lease Indenture Estate (except such as are required to be paid or discharged by it pursuant to this Indenture or any of the other Transaction Documents) or to make or file any reports or returns related thereto.

SECTION 8.3. *Representations and Warranties of Indenture Trustee and the Owner Trustee.*

NEITHER THE OWNER TRUSTEE NOR THE INDENTURE TRUSTEE MAKES ANY REPRESENTATION OR WARRANTY AS TO THE VALUE, CONDITION, MERCHANTABILITY OR FITNESS FOR USE OF UNIT 2, THE UNDIVIDED INTEREST OR ANY PART OF THE LEASE INDENTURE ESTATE OR AS TO ITS INTEREST THEREIN, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO UNIT 2, THE UNDIVIDED INTEREST OR ANY PART OF THE LEASE INDENTURE ESTATE WHATSOEVER. The Owner Trustee and the Indenture Trustee each represents and warrants, in its individual capacity, as to itself that this Indenture has been executed and delivered by one or more of its officers who are duly authorized to execute and deliver this Indenture on its behalf.

SECTION 8.4. *Moneys Held in Trust; Non-Segregation of Moneys.*

All moneys and securities deposited with and held by the Indenture Trustee under this Indenture for the purpose of paying, or securing the payment of, the principal of or premium or interest on the Notes shall be held in trust. Except as provided in Sections 2.3(c), 8.8 and 11.1, moneys received by the Indenture Trustee under this Indenture need not be segregated in any manner except to the extent required by law, and may be deposited under such general conditions as may be prescribed by law; *provided, however*, that any payments received or applied hereunder by the Indenture Trustee shall be accounted for by the Indenture Trustee so that any portion thereof paid or applied pursuant hereto shall be identifiable as to the source thereof. Except as otherwise expressly provided herein, the Indenture Trustee shall not be liable for any interest on any money held pursuant to this Indenture.

SECTION 8.5. *Reliance on Writings, Use of Agents, Etc.*

The Indenture Trustee shall incur no liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, telegram, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties. In the case of the Lessee, the Indenture Trustee may accept a copy of a resolution of the Board of Directors or any duly constituted and authorized committee of the Board of Directors of the Lessee, certified by the Secretary or an Assistant Secretary of the Lessee as duly adopted and in full force and effect, as conclusive evidence that such resolution has been duly adopted by such Board or Committee

and that the same is in full force and effect. As to the aggregate unpaid principal amount of the Notes Outstanding as of any date, the Owner Trustee may for all purposes hereof rely on a certificate signed by any Authorized Officer of the Indenture Trustee. As to any fact or matter the manner of ascertainment of which is not specifically described herein, the Indenture Trustee may for all purposes hereof rely on a certificate, signed by the Chairman of the Board, the President, any Vice President and the Treasurer or the Secretary or any Assistant Treasurer or Assistant Secretary of the Lessee, or a Holder of a Note or any Responsible Officer of the Owner Trustee, as the case may be, as to such fact or matter, and such certificate shall constitute full protection to the Indenture Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon. The Indenture Trustee shall furnish to the Owner Trustee upon request such information and copies of such documents as the Indenture Trustee may have and as are necessary for the Owner Trustee to perform its duties under Article III. In the administration of the trusts hereunder, the Indenture Trustee may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys selected by it in good faith and with reasonable care, and, with respect to matters relating to the Notes, the Lease Indenture Estate and its rights and duties under this Indenture and the other Transaction Documents, may, at the expense of the Lessee, or, if the Lessee shall have failed to pay or provide for the payment thereof, at the expense of the Lease Indenture Estate, consult with counsel, accountants and other skilled persons to be selected and employed by it in good faith and with reasonable care, and the Indenture Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons so selected. Unless otherwise specified herein or in any other Transaction Document, any opinion of counsel referred to in this Indenture or in such other Transaction Document may be relied on by the Indenture Trustee to the extent it is rendered by an attorney or firm of attorneys satisfactory to the Indenture Trustee (which may be counsel to the Owner Participant, the Owner Trustee, the Lessee or any party to any Transaction Document).

SECTION 8.6. *Indenture Trustee to Act Solely as Trustee.*

The Indenture Trustee acts hereunder solely as trustee as herein provided and not in its individual capacity, except as otherwise expressly provided herein; and except as provided in Sections 9(a) and 9(b) of the Participation Agreement or Section 7.4 or 8.1, all Persons having any claim against the Indenture Trustee arising from matters relating to the Notes by reason of the transactions contemplated hereby shall, subject to the lien and priorities of payment as herein provided and to Sections 3.6 and 5.7, look only to the Lease Indenture Estate for payment or satisfaction thereof.

SECTION 8.7. *Limitation on Rights Against Registered Holders, the Owner Trustee or Lease Indenture Estate.*

The Indenture Trustee shall be entitled to be paid or reimbursed for Trustee's Expenses as provided herein and in the other Transaction Documents. Nonetheless, the Indenture Trustee agrees that it shall have no right against the Holders of the Notes, the Owner Trustee (except to the extent included in Transaction Expenses payable by the Owner Participant) or, except as provided in Article V and Section 6.4 or this Article VIII, the Lease Indenture Estate for any fee as compensation for its services hereunder.

SECTION 8.8. *Investment of Certain Payments Held by the Indenture Trustee.*

Any amounts held by the Indenture Trustee hereunder other than pursuant to Section 2.3(c) or 11.1 shall be invested by the Indenture Trustee from time to time as directed in writing by the Owner Trustee or by the Owner Participant as agent of the Owner Trustee and at the expense and risk of the Owner Participant in (i) obligations of, or guaranteed as to interest and principal by, the United States Government maturing not more than 90 days after such investment, (ii) open market commercial paper of any corporation incorporated under the laws of the United States of America or any State thereof rated "prime-1" or its equivalent by Moody's Investors Service, Inc. or "A-1" or its equival

by Standard & Poor's Corporation or (iii) certificates of deposit maturing within 90 days after such investment issued by commercial banks organized under the laws of the United States of America or of any political subdivision thereof having a combined capital and surplus in excess of $500,000,000; provided, however, that the aggregate amount at any one time so invested (a) in open market commercial paper of any corporation shall not exceed $2,000,000 and (b) in certificates of deposit issued by any one bank shall not exceed $10,000,000. Any income or gain realized as a result of any such investment shall be applied to make up any losses resulting from any such investment to the extent such losses shall not have been paid by the Owner Trustee or the Owner Participant pursuant to this Section 8.8. Any further income or gain so realized shall be promptly distributed (in no event later than the next Business Day) to the Owner Trustee or the Owner Participant, except after the occurrence and during the continuance of an Indenture Event of Default. The Indenture Trustee shall have no liability for any loss resulting from any investment made in accordance with this Section. Any such investment may be sold (without regard to maturity date) by the Indenture Trustee whenever necessary to make any distribution required by Article V.

SECTION 8.9. *No Responsibility for Recitals, etc.*

The Indenture Trustee makes no representation or warranty as to the correctness of any statement, recital or representation made by any Person other than the Indenture Trustee in this Indenture, any other Transaction Document or the Notes.

SECTION 8.10. *Indenture Trustee May Engage in Certain Transactions.*

The Indenture Trustee may engage in or be interested in any financial or other transaction with the Lessee, the Owner Participant, the Owner Trustee and any other party to a Transaction Document, provided that if the Indenture Trustee determines that any such relation is in conflict with its duties under this Indenture, it shall eliminate the conflict or resign as Indenture Trustee.

SECTION 8.11. *Construction of Ambiguous Provisions.*

The Indenture Trustee, subject to Section 8.1, may construe any ambiguous or inconsistent provisions of this Indenture, and any such construction by the Indenture Trustee shall be binding upon the Noteholders. In construing any such provision, the Indenture Trustee will be entitled to rely upon opinions of counsel and will not be responsible for any loss or damage resulting from reliance in good faith thereon, except for its own gross negligence or willful misconduct.

ARTICLE IX

SUCCESSOR TRUSTEES

SECTION 9.1. *Resignation and Removal of Indenture Trustee; Appointment of Successor.*

(a) The Indenture Trustee may resign at any time without cause by giving at least 30 days' prior written notice to the Owner Participant, the Owner Trustee, the Lessee and to each Holder of a Note, such resignation to be effective upon the acceptance of such trusteeship by a successor. In addition, the Indenture Trustee may be removed without cause by a Directive delivered to the Owner Participant, the Owner Trustee, the Lessee and the Indenture Trustee, and the Indenture Trustee shall promptly give notice thereof in writing to each Holder of a Note. In the case of the resignation or removal of the Indenture Trustee, a successor trustee may be appointed by such a Directive. If a successor trustee shall not have been appointed within 30 days after such notice of resignation or removal, the Indenture Trustee, the Owner Trustee or any Holder of a Note may apply to any court of competent jurisdiction to appoint a successor to act until such time, if any, as a successor shall have been appointed as above provided. The successor so appointed by such court shall immediately and without further act be superseded by any successor appointed as above provided within one year from the date of the appointment by such court.

(b) Any successor trustee, however appointed, shall execute and deliver to its predecessor and to the Owner Trustee an instrument accepting such appointment, and thereupon such successor, without further act, shall become vested with all the estates, properties, rights, powers and duties of its predecessor hereunder in the trusts under this Indenture applicable to it with like effect as if originally named the Indenture Trustee; but, nevertheless, upon the written request of such successor trustee or receipt of a Directive, its predecessor shall execute and deliver an instrument transferring to such successor trustee, upon the trusts herein expressly applicable to it, all the estates, properties, rights and powers of such predecessor under this Indenture, and such predecessor shall duly assign, transfer, deliver and pay over to such successor trustee all moneys or other property then held by such predecessor under this Indenture.

(c) Any successor trustee, however appointed, shall be a bank or trust company organized under the laws of the United States or any jurisdiction thereof having a combined capital and surplus of at least $100,000,000, if there be such an institution willing, able and legally qualified to perform the duties of the Indenture Trustee hereunder upon reasonable or customary terms.

(d) Any corporation into which the Indenture Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Indenture Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Indenture Trustee may be transferred, shall, subject to the terms of paragraph (c) of this Section 9.1, be the Indenture Trustee under this Indenture without further act.

ARTICLE X

SUPPLEMENTS AND AMENDMENTS TO THIS INDENTURE AND OTHER DOCUMENTS

SECTION 10.1. *Supplements, Amendments and Modifications to This Indenture Without Consent of Holders of Notes.*

The Indenture Trustee may, with the written consent of the Owner Trustee, from time to time and at any time execute a supplement to this Indenture without the consent of the Holders of Notes Outstanding in order to (i) cure any defect, omission or ambiguity in this Indenture or for any other purpose if such action does not adversely affect the interests of such Holders, (ii) grant or confer upon the Indenture Trustee for the benefit of such Holders any additional rights, remedies, powers, authority or security which may be lawfully granted or conferred and which are not contrary to or inconsistent with this Indenture, (iii) add to the covenants or agreements to be observed by the Owner Trustee and which are not contrary to this Indenture or surrender any right or power of the Owner Trustee, (iv) confirm or amplify, as further assurance, any pledge under, and the subjection to any lien or pledge created or to be created by, this Indenture, of the properties covered hereby, or subject to the lien or pledge of this Indenture additional revenues, properties or other collateral, including pursuant to an Undivided Interest Indenture Supplement, (v) qualify this Indenture under the provisions of the Trust Indenture Act, (vi) evidence the appointment of any successor Indenture Trustee pursuant to the terms hereof, (vii) evidence the assumption and release effected by the Assumption Agreement, or (viii) execute supplemental indentures to evidence the issuance of and to provide the terms of, Additional Notes to be issued hereunder in accordance with the terms hereof.

SECTION 10.2. *Supplements and Amendments to this Indenture and the Facility Lease With Consent of Holders of Notes.*

Except as provided in Section 10.1, at any time and from time to time, (i) upon receipt of a Directive, the Indenture Trustee shall execute a supplement to this Indenture for the purpose of adding provisions to, or changing or eliminating provisions of, this Indenture, but only as specified in such Directive, and (ii) upon receipt of a written instruction from the Lessee and the Owner Trustee, the Indenture Trustee shall consent to any amendment of or supplement to the Facility Lease

execute and deliver such written waiver or modification of the terms of the Facility Lease to which the Owner Trustee may agree; *provided, however*, that, without the consent of the Holders of all the Notes then Outstanding no such supplement or amendment to this Indenture or the Facility Lease, or waiver or modification of the terms of either thereof, shall (x) modify any of the provisions of this Section or Section 7.1 or 7.2 or Section 4 of the Facility Lease or of the definition of Directive contained in Appendix A hereto or the definition of Indenture Event of Default herein, reduce the amount of the Basic Rent, Casualty Value, Termination Value or any payment under or pursuant to Section 16 of the Facility Lease as set forth in the Facility Lease below such amount as is required to pay the full principal of, and premium, if any, and interest on, the Notes when due, or extend the time of payment thereof, (y) except as permitted by clause (x) above, modify, amend or supplement the Facility Lease or consent to the termination or any assignment thereof, in any case reducing the Lessee's obligations in respect of the payment of the Basic Rent, Casualty Value, Termination Value or any payment under or pursuant to Section 16 of the Facility Lease below the amount referred to in clause (x) above, or (z) deprive the Holder of any Note of the lien of this Indenture on the Lease Indenture Estate (except as contemplated by Section 3.9(b)) or materially adversely affect the rights and remedies for the benefit of such Holder provided in Article VI; and, *provided further*, that, without the consent of the Holders of all the Notes then Outstanding and affected thereby, no such supplement or amendment to this Indenture or the Facility Lease, or waiver or modification of the terms of either thereof, shall reduce the amount or extend the time of payment of any amount payable under any Note, reduce or modify the provisions for the computation of the rate of interest owing or payable thereon, adversely alter or modify the provisions of Article V with respect to the order of priorities in which distributions thereunder with respect to the Notes shall be made, or reduce, modify or amend any indemnities in favor of the Holders of the Notes. Anything to the contrary contained herein notwithstanding, without the necessity of the consent of the Holders of Notes or the Indenture Trustee, (a) any indemnities in favor of the Owner Trustee or the Owner Participant may be modified, amended or changed and (b) the Owner Trustee may enter into any agreement with respect to the Lease Indenture Estate which by its terms does not become effective prior to the satisfaction and discharge of this Indenture, but any agreement entered into by the Owner Trustee pursuant to this clause (b) shall not materially adversely affect the Indenture Trustee or the Holder of any Note. Notwithstanding the foregoing, the Indenture Trustee shall, upon receipt of a written instruction from the Lessee and the Owner Trustee, consent to an amendment of any definitions contained in or appended to this Indenture which are being changed pursuant to the amendments referred to in Section 10(b)(3)(xiii) of the Participation Agreement. The Owner Trustee shall deliver to the Indenture Trustee a copy of each amendment to the Facility Lease whether or not the Indenture Trustee is required to consent or otherwise act with respect thereto.

SECTION 10.3. *Certain Limitations on Supplements and Amendments.*

If in the opinion of the Owner Trustee or the Indenture Trustee, each of which shall be entitled to rely on counsel for purposes of this Section 10.3, any document required to be executed by either of them pursuant to the terms of Section 10.1 or 10.2 does not comply with the provisions of this Indenture or adversely affects any right, immunity or indemnity in favor of, or increases any duty of, the Owner Trustee or the Indenture Trustee under this Indenture, the Facility Lease or the Participation Agreement, the Owner Trustee or the Indenture Trustee, as the case may be, may in its discretion decline to execute such document.

SECTION 10.4. *Directive Need Not Specify Particular Form of Supplement or Amendment.*

It shall not be necessary for any Directive furnished pursuant to Section 10.2 to specify the particular form of the proposed documents to be executed pursuant to such Section, but it shall be sufficient if such request shall indicate the substance thereof.

SECTION 10.5. *Trustee to Furnish Copies of Supplement or Amendment.*

Promptly after the execution by the Owner Trustee or the Indenture Trustee of any document entered into pursuant to Section 10.2, the Indenture Trustee shall mail, by first-class mail, postage prepaid, a conformed copy thereof to each Holder of an Outstanding Note at the address of such Person set forth in the register kept pursuant to Section 4.1 but the failure of the Indenture Trustee to mail such conformed copies shall not impair or affect the validity of such document.

ARTICLE XI

MISCELLANEOUS

SECTION 11.1. *Moneys for Payments in Respect of Notes to be Held in Trust.*

In case the Holder of any Note shall fail to present the same for payment on any date on which the principal thereof or interest thereon becomes payable, the Indenture Trustee may set aside in trust the moneys then due thereon uninvested and shall pay such moneys to the Holder of such Note or such Person upon due presentation or surrender thereof in accordance with the provisions of this Indenture, *subject always, however, to the provisions of Sections 3.8 and 11.2.*

SECTION 11.2. *Disposition of Moneys Held for Payments of Notes.*

Any moneys set aside under Section 11.1 and not paid to Holders of Notes as provided in Section 11.1 shall be held by the Indenture Trustee in trust until the latest of (i) the date three years after the date of such setting aside, (ii) the date all other Holders of the Notes shall have received full payment of all principal of and interest and other sums payable to them on such Notes or the Indenture Trustee shall hold (and shall have notified such Persons that it holds) in trust for that purpose an amount sufficient to make full payment thereof when due and (iii) the date the Owner Trustee shall have fully performed and observed all its covenants and obligations contained in this Indenture with respect to the Notes; and thereafter shall be paid to the Owner Trustee by the Indenture Trustee on demand; and thereupon the Indenture Trustee shall be released from all further liability with respect to such moneys; and thereafter the Holders of the Notes in respect of which such moneys were so paid to the Owner Trustee shall have no rights in respect thereof except to obtain payment of such moneys from the Owner Trustee. Upon the setting aside of such moneys, interest shall cease to accrue on the Notes.

SECTION 11.3. *Transfers Not to Affect Indenture or Trusts.*

No Holder of a Note shall have legal title to any part of the Lease Indenture Estate. No transfer, by operation of law or otherwise, of any Note or other right, title and interest of any Holder of a Note in and to the Lease Indenture Estate or hereunder shall operate to terminate this Indenture or the trusts hereunder with respect to such Note or entitle any successor or transferee of such Holder to an accounting or to the transfer to it of legal title to any part of the Lease Indenture Estate.

SECTION 11.4. *Binding Effect of Sale of Lease Indenture Estate.*

Any sale or other conveyance of the Lease Indenture Estate or any part thereof by the Indenture Trustee made pursuant to the terms of this Indenture or the Facility Lease shall bind the Holders of the Notes and shall be effective to transfer or convey all rights, title and interest of the Indenture Trustee, the Owner Trustee and such Holders in and to the same. No purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such sale or conveyance or as to the application of any sale or other proceeds with respect thereto by the Indenture Trustee.

SECTION 11.5. *Limitation as to Enforcement of Rights, Remedies and Claims.*

Nothing in this Indenture, whether express or implied, shall be construed to give to any Person, other than the Owner Trustee, the Owner Participant, the Lessee (to the extent the Lessee's consent or other action by the Lessee is expressly provided for), the Indenture Trustee and the Holders of the Notes, any legal or equitable right, remedy or claim under or in respect of this Indenture or any Note.

SECTION 11.6. *Notices.*

Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices given hereunder to the Lessee, the Owner Trustee, the Owner Participant or the Indenture Trustee shall be given in the manner provided in Section 18 of the Participation Agreement. Notices by the Indenture Trustee to any Holder of a Note shall be in writing and shall be given in person or by means of telex, telecopy or other wire transmission (with request for assurance of receipt in a manner typical with respect to communications of that type), or mailed by registered or certified mail, addressed to such Holder at the address set forth in the register kept pursuant to Section 4.1. Whenever any notice in writing is required to be given by the Indenture Trustee to any Holder of a Note such notice shall be effective (x) if sent by telex, telecopy or other wire transmission, on the date of transmission thereof, or (y) if sent by mail, three Business Days after being mailed.

SECTION 11.7. *Separability of Provisions.*

In case any one or more of the provisions of this Indenture or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof and any other application thereof shall not in any way be affected or impaired.

SECTION 11.8. *Benefit of Parties, Successors and Assigns.*

All representations, warranties, covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Owner Trustee, the Indenture Trustee and their respective successors and assigns and each Holder of a Note, all as herein provided. Any request, notice, direction, consent, waiver or other instrument or action by any Holder of a Note shall bind the successors and assigns of such Holder and any Holder of a Note issued in transfer or exchange of such Note.

SECTION 11.9. *Survival of Representations and Warranties.*

All representations and warranties made with respect to the Notes shall survive the execution and delivery of this Indenture and the issue, sale and delivery of any Notes and shall continue in effect so long as any Note issued hereunder is Outstanding and unpaid.

SECTION 11.10. *Bankruptcy of the Owner Trustee.*

If (a) the Owner Trustee becomes a debtor subject to the reorganization provisions of the Bankruptcy Code, or any successor provision, (b) pursuant to such reorganization provisions the Owner Trustee is required, by reason of the Owner Trustee being held to have recourse liability directly or indirectly to the Holder of any Note or the Indenture Trustee, to make payment on account of any amount payable as principal or interest on such Note and (c) such Holder or the Indenture Trustee actually receives any Excess Amount (as hereinafter defined) which reflects any payment by the Owner Trustee on account of clause (b) of this Section, then such Holder or the Indenture Trustee, as the case may be, shall promptly refund to the Owner Trustee such Excess Amount. For purposes of this Section, *"Excess Amount"* means the amount by which such payment exceeds the amount which would have been received on or prior to the date of such payment by such Holder or the Indenture Trustee if the Owner Trustee had not become subject to the recourse liability referred to in clause (b) of this Section.

SECTION 11.11. *Bankruptcy of the Owner Participant.*

The Indenture Trustee and the Holders of the Notes shall be bound by the provisions of Section 19(f) of the Participation Agreement.

SECTION 11.12. *Counterpart Execution.*

This Indenture and any amendment or supplement to this Indenture may be executed in any number of counterparts and by the different parties hereto and thereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument.

SECTION 11.13. *Dating of Indenture.*

Although this Indenture is dated for convenience and for the purpose of reference as of the date mentioned, the actual date or dates of execution by the Owner Trustee and the Indenture Trustee are as indicated by their respective acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Owner Trustee and the Indenture Trustee have each caused this Indenture to be duly executed by their respective officers thereunto duly authorized, all as of the date first set forth above.

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as Owner Trustee under the Trust Agreement dated as of December 1, 1986, with COMMERCIAL FEDERAL INVESTMENT CORPORATION

By: _____
Assistant Vice President

FIRST CITY NATIONAL BANK OF HOUSTON

By: _____
Assistant Vice President

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

On the 16th day of December, 1986, before me personally came MARTIN P. HENRY, to me known, who, being by me duly sworn, did acknowledge, depose and say that he resides at Boston, Massachusetts: that he is Assistant Vice President of THE FIRST NATIONAL BANK OF BOSTON, a national banking association, described in and which executed the foregoing instrument; and that he signed his name thereto on behalf of said association by authority of the Board of Directors of said association.

David A. Spivak

Notary Public

[NOTARIAL SEAL] Term Expires:

DAVID A. SPIVAK
Notary Public, State of New York
No. 31-4693468
Qualified in New York County
Commission Expires March 30, 1987

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

On the 11th day of December, 1986, before me personally came JOHN CHASE III, to me known, who, being by me duly sworn, did acknowledge, depose and say that he resides at Houston, Texas; that he is Assistant Vice President of FIRST CITY NATIONAL BANK OF HOUSTON, a national banking association, described in and which executed the foregoing instrument; and that he signed his name thereto on behalf of said association by authority of the Board of Directors of said association.

David A. Spivak

Notary Public

DAVID A. SPIVAK
Notary Public, State of New York
No. 31-4693468
Qualified in New York County
Commission Expires March 30, 1987

[NOTARIAL SEAL] Term Expires:

EXHIBIT A-1

FORM OF INITIAL SERIES NOTE
(DUE JULY 2, 1992)

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED, SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT

NONRECOURSE PROMISSORY NOTE, INITIAL SERIES
(DUE JULY 2, 1992)

Issue Date: December 18, 1986

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as Owner Trustee (the Owner Trustee) under a Trust Agreement dated as of December 1, 1986 with Commercial Federal Investment Corporation (the *Owner Participant*), hereby promises to pay to EL PASO FUNDING CORPORATION, or registered assigns, the principal sum of six million four hundred forty-seven thousand Dollars ($6,447,000) on July 2, 1992 together with interest (computed on the basis of a 360-day year of twelve 30-day months) on the aggregate amount of such principal sum remaining unpaid from time to time from the date of this Initial Series Note until due and payable, in arrears, at the rate of 8.10% per annum. Payments of principal installments of this Initial Series Note shall be made in the "Principal Amount Payable" and on the "Payment Dates" specified in Schedule 1 hereto. Payments of accrued interest on this Initial Series Note shall be made on each January 2 and July 2, commencing July 2, 1987, until the principal amount of this Initial Series Note shall have been paid in full.

Capitalized terms used in this Initial Series Note which are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture (as hereinafter defined).

Interest on any overdue principal and premium, if any, and (to the extent permitted by applicable law) any overdue interest shall be paid, on demand, from the due date thereof at the rate of interest per annum (computed on the basis of a 360-day year of twelve 30-day months) equal to 1% above the interest rate stated above for this Initial Series Note for the period during which any such principal, premium or interest shall be overdue.

In the event any date on which a payment is due under this Initial Series Note is not a Business Day, then payment thereof may be made on the next succeeding Business Day with the same force and effect as if made on the date on which such payment was due.

All payments of principal, premium, if any, and interest to be made by the Owner Trustee hereunder and under the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents dated as of December 1, 1986, as at any time amended or supplemented in accordance with the provisions thereof (the *Indenture*), between the Owner Trustee and First City National Bank of Houston, as Trustee (the *Indenture Trustee*), shall be made only from the Lease Indenture Estate and the Trust Estate and the Indenture Trustee shall have no obligation for the payment thereof except to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Lease Indenture Estate to make such payments in accordance with the terms of Article V of the Indenture. The Holder hereof, by its acceptance of this Initial Series Note, agrees that such Holder will look solely to the Trust Estate and the income and proceeds from the Lease Indenture Estate to the extent available for distribution to the Holder hereof as above provided, and that neither the Owner Participant nor, except as expressly provided in the Indenture, the Owner Trustee nor the Indenture Trustee is or shall be personally liable to the Holder hereof for any amounts payable under this Initial Series Note or for any performance to be rendered under the Indenture or any other Transaction Document or for any liability thereunder; *provided, however*, that in the event the Lessee shall assume all the obligations of the Owner Trustee hereunder and under the Indenture pursuant to Section 3.9(b) of the Indenture, then all payments to be made under this Initial Series Note shall be made only from payments made by the Lessee under this Initial Series Note in accordance with the

Assumption Agreement referred to in said Section 3.9(b) and the Holder of this Initial Series Note agrees that in such event it will look solely to the Lessee for such payment.

Principal, premium, if any, and interest shall be payable, in the manner provided in the Indenture, on presentment of this Initial Series Note at the Indenture Trustee's Office, or as otherwise provided in the Indenture.

In the manner and to the extent provided in the Indenture, Schedule 1 hereto may be adjusted once at the discretion of the Owner Trustee prior to June 30, 1990, in connection with an adjustment to Basic Rent under Section 3(d) of the Facility Lease.

The Holder hereof, by its acceptance of this Initial Series Note, agrees that each payment received by it hereunder shall be applied in the manner set forth in Section 3.11 of the Indenture. The Holder of this Initial Series Note agrees, by its acceptance hereof, that it will duly note by appropriate means all payments of principal or interest made hereon and that it will not in any event transfer or otherwise dispose of this Initial Series Note unless and until all such notations have been duly made.

This Initial Series Note is one of the Initial Series Notes referred to in the Indenture. The Indenture permits the issuance of additional series of Notes, as provided in Section 3.5 of the Indenture, and the several series may be for varying aggregate principal amounts and may have different maturity dates, interest rates, redemption provisions and other terms. The properties of the Owner Trustee included in the Lease Indenture Estate are pledged to the Indenture Trustee to the extent provided in the Indenture as security for the payment of the principal of and premium, if any, and interest on this Initial Series Note and all other Notes issued and outstanding from time to time under the Indenture. Reference is hereby made to the Indenture for a statement of the rights of the Holders of, and the nature and extent of the security for this Initial Series Note and of the rights of, and the nature and extent of the security for, the Holders of the other Notes and of certain rights of the Owner Trustee, as well as for a statement of the terms and conditions of the trust created by the Indenture, to all of which terms and conditions the Holder hereof agrees by its acceptance of this Initial Series Note.

This Initial Series Note is subject to purchase by the Owner Trustee as provided in Section 6.8(b) of the Indenture. This Initial Series Note is not subject to prepayment in whole or in part.

In case an Indenture Event of Default shall occur and be continuing, the unpaid balance of the principal of this Initial Series Note and any other Notes, together with all accrued but unpaid interest thereon, may, subject to certain rights of the Owner Trustee or the Owner Participant contained or referred to in the Indenture, be declared or may become due and payable in the manner and with the effect provided in the Indenture.

The lien upon the Lease Indenture Estate is subject to being legally discharged prior to the maturity of this Initial Series Note upon the deposit with the Indenture Trustee of cash or certain securities sufficient to pay this Initial Series Note when due or an assumption by the Lessee of the obligation of the Owner Trustee under this Initial Series Note and the Indenture, in each case in accordance with the terms of the Indenture.

There shall be maintained at the Indenture Trustee's Office a register for the purpose of registering transfers and exchanges of Notes in the manner provided in the Indenture. The transfer of this Initial Series Note is registrable, as provided in the Indenture, upon surrender of this Initial Series Note for registration of transfer duly accompanied by a written instrument of transfer duly executed by or on behalf of the registered Holder hereof with signature guaranteed, together with the amount of any applicable transfer taxes. Prior to due presentment for registration of transfer of this Initial Series Note, the Owner Trustee and the Indenture Trustee may treat the person in whose name this Initial Series Note is registered as the owner hereof for the purpose of receiving payments of principal of and premium, if any, and interest on this Initial Series Note and for all other purposes whatsoever, whether or not this Initial Series Note be overdue, and neither the Owner Trustee nor the Indenture Trustee shall be affected by notice to the contrary.

This Initial Series Note shall be governed by, and construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, the Owner Trustee has caused this Initial Series Note to be duly executed as of the date hereof.

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as *Owner Trustee* under a Trust Agreement dated as of December 1, 1986, with COMMERCIAL FEDERAL INVESTMENT CORPORATION

By: _____
Assistant Vice President

ASSIGNMENT

Date: December 18, 198

For value received, EL PASO FUNDING CORPORATION hereby sells, assigns and transfers to FIRST CITY NATIONAL BANK OF HOUSTON as Collateral Trust Trustee pursuant to the Collateral Trust Indenture dated as of August 1, 1986, as amended and supplemented, among EL PASO FUNDING CORPORATION, El Paso Electric Company and said Collateral Trust Trustee, without recourse, the Initial Series Note to which this Assignment is annexed and all rights thereunder.

EL PASO FUNDING CORPORATION

By: _____
Vice President

SCHEDULE 1

TO THE INITIAL SERIES NOTE
(DUE JULY 2, 1992)

SCHEDULE OF PRINCIPAL AMORTIZATION

Payment Date (month/day/year)	Principal Amount Payable	Principal Amount Paid
7/2/1987	$0.0000000	
1/2/1988	0.0000000	
7/2/1988	7000.00	
1/2/1989	698000.00	
7/2/1989	726000.00	
1/2/1990	755000.00	
7/2/1990	786000.00	
1/2/1991	818000.00	
7/2/1991	851000.00	
1/2/1992	885000.00	
7/2/1992	921000.00	
	$6,447,000	

EXHIBIT A-2

FORM OF INITIAL SERIES NOTE
(DUE JULY 2, 1997)

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED, SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT

NONRECOURSE PROMISSORY NOTE, INITIAL SERIES
(DUE JULY 2, 1997)

Issue date: December 18, 1986

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as Owner Trustee *(the Owner Trustee)* under a Trust Agreement dated as of December 1, 1986 with Commercial Federal Financial Corporation (the *Owner Participant*), hereby promises to pay to EL PASO FUNDING CORPORATION, or registered assigns, the principal sum of eleven million eight hundred thirty-four thousand dollars ($11,834,000) on July 2, 1997 together with interest (computed on the basis of a 360-day year of twelve 30-day months) on the aggregate amount of such principal sum remaining unpaid from time to time from the date of this Initial Series Note until due and payable, in arrears, at the rate of 9.20% per annum. Payments of principal installments of this Initial Series Note shall be made in the "Principal Amount Payable" and on the "Payment Dates" specified in Schedule 1 hereto. Payments of accrued interest on this Initial Series Note shall be made on each January 2 and July 2 commencing July 2, 1987, until the principal amount of this Initial Series Note shall have been paid in full.

Capitalized terms used in this Initial Series Note which are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture (as hereinafter defined).

Interest on any overdue principal and premium, if any, and (to the extent permitted by applicable law) any overdue interest shall be paid, on demand, from the due date thereof at the rate of interest per annum (computed on the basis of a 360-day year of twelve 30-day months) equal to 1% above the interest rate stated above for this Initial Series Note for the period during which any such principal, premium or interest shall be overdue.

In the event any date on which a payment is due under this Initial Series Note is not a Business Day, then payment thereof may be made on the next succeeding Business Day with the same force and effect as if made on the date on which such payment was due.

All payments of principal, premium, if any, and interest to be made by the Owner Trustee hereunder and under the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents dated as of December 1, 1986, as at any time amended or supplemented in accordance with the provisions thereof (the *Indenture*), between the Owner Trustee and First City National Bank of Houston, as Trustee (the *Indenture Trustee*), shall be made only from the Lease Indenture Estate and the Trust Estate and the Indenture Trustee shall have no obligation for the payment thereof except to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Lease Indenture Estate to make such payments in accordance with the terms of Article V of the Indenture. The Holder hereof, by its acceptance of this Initial Series Note, agrees that such Holder will look solely to the Trust Estate and the income and proceeds from the Lease Indenture Estate to the extent available for distribution to the Holder hereof as above provided, and that neither the Owner Participant nor, except as expressly provided in the Indenture, the Owner Trustee nor the Indenture Trustee is or shall be personally liable to the Holder hereof for any amounts payable under this Initial Series Note or for any performance to be rendered under the Indenture or any other Transaction Document or for any liability thereunder; *provided, however*, that in the event the Lessee shall assume all the obligations of the Owner Trustee hereunder and under the Indenture pursuant to Sec-

tion 3.9(b) of the Indenture, then all payments to be made under this Note shall be made only from payments made by the Lessee under this Initial Series Note in accordance with the Assumption Agreement referred to in said Section 3.9(b) and the Holder of this Initial Series Note agrees that such event it will look solely to the Lessee for such payment.

Principal, premium, if any, and interest shall be payable, in the manner provided in the Indenture, on presentment of this Initial Series Note at the Indenture Trustee's Office, or as otherwise provided in the Indenture.

In the manner and to the extent provided in the Indenture, Schedule 1 hereto may be adjusted once at the discretion of the Owner Trustee prior to June 30, 1990, in connection with an adjustment to Basic Rent under Section 3(d) of the Facility Lease.

The Holder hereof, by its acceptance of this Initial Series Note, agrees that each payment received by it hereunder shall be applied in the manner set forth in Section 3.11 of the Indenture. The Holder of this Initial Series Note agrees, by its acceptance hereof, that it will duly note by appropriate means all payments of principal or interest made hereon and that it will not in any event transfer or otherwise dispose of this Initial Series Note unless and until all such notations have been duly made.

This Initial Series Note is one of the Initial Series Notes referred to in the Indenture. The Indenture permits the issuance of additional series of Notes, as provided in Section 3.5 of the Indenture, and the several series may be for varying aggregate principal amounts and may have different maturity dates, interest rates, redemption provisions and other terms. The properties of the Owner Trustee included in the Lease Indenture Estate are pledged to the Indenture Trustee to the extent provided in the Indenture as security for the payment of the principal of and premium, if any, and interest on this Initial Series Note and all other Notes issued and outstanding from time to time under the Indenture. Reference is hereby made to the Indenture for a statement of the rights of the Holders of, and the nature and extent of the security for, this Initial Series Note and of the rights of, and the nature and extent of the security for, the Holders of the other Notes and of certain rights of the Owner Trustee, as well as for a statement of the terms and conditions of the trust created by the Indenture, to all of which terms and conditions the Holder hereof agrees by its acceptance of this Initial Series Note.

This Initial Series Note is subject to purchase by the Owner Trustee as provided in Section 6.8(b) of the Indenture. This Initial Series Note may be prepaid in whole or in part at any time on and after January 2, 1992 by the Owner Trustee as follows: upon the giving of not less than 30 days' notice as provided in the Indenture and at the following prepayment prices (expressed as a percentage of the unpaid principal amount hereof), together with interest accrued to the date fixed for prepayment:

Twelve Month Period Beginning January 2,	Prepayment Price
1992	102.63%
1993	101.31

and thereafter at the principal amount thereof, together with interest accrued to the prepayment date. This Initial Series Note is not otherwise subject to prepayment in whole or in part.

In case an Indenture Event of Default shall occur and be continuing, the unpaid balance of the principal of this Initial Series Note and any other Notes, together with all accrued by unpaid interest thereon, may, subject to certain rights of the Owner Trustee or the Owner Participant contained or referred to in the Indenture, be declared or may become due and payable in the manner and with the effect provided in the Indenture.

The lien upon the Lease Indenture Estate is subject to being legally discharged prior to the maturity of this Initial Series Note upon the deposit with the Indenture Trustee of cash or cer

securities sufficient to pay this Initial Series Note when due or an assumption by the Lessee of the obligation of the Owner Trustee under this Initial Series Note and the Indenture, in each case in accordance with the terms of the Indenture.

There shall be maintained at the Indenture Trustee's Office a register for the purpose of registering transfers and exchanges of Notes in the manner provided in the Indenture. The transfer of this Initial Series Note is registrable, as provided in the Indenture, upon surrender of this Initial Series Note for registration of transfer duly accompanied by a written instrument of transfer duly executed by or on behalf of the registered Holder hereof with signature guaranteed, together with the amount of any applicable transfer taxes. Prior to due presentment for registration of transfer of this Initial Series Note, the Owner Trustee and the Indenture Trustee may treat the person in whose name this Initial Series Note is registered as the owner hereof for the purpose of receiving payments of principal of and premium, if any, and interest on this Initial Series Note and for all other purposes whatsoever, whether or not this Initial Series Note be overdue, and neither the Owner Trustee nor the Indenture Trustee shall be affected by notice to the contrary.

This Initial Series Note shall be governed by, and construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, the Owner Trustee has caused this Initial Series Note to be duly executed as of the date hereof.

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as *Owner Trustee* under a Trust Agreement, dated as of December 1, 1986, with COMMERCIAL FEDERAL INVESTMENT CORPORATION

By: _____
Assistant Vice President

ASSIGNMENT

Date: December 18,19

For value received, EL PASO FUNDING CORPORATION hereby sells, assigns and transfers to FIRST CITY NATIONAL BANK OF HOUSTON as Collateral Trust Trustee pursuant to the Collateral Trust Indenture dated as of August 1, 1986, as amended and supplemented, among EL PASO FUNDING CORPORATION, El Paso Electric Company and said Collateral Trust Trustee, without recourse, the Initial Series Note to which this Assignment is annexed and all rights thereunder.

EL PASO FUNDING CORPORATION

By: _____
Vice President

SCHEDULE 1

TO THE INITIAL SERIES NOTE
(DUE JULY 2, 1997)

SCHEDULE OF PRINCIPAL AMORTIZATION

Payment Date (month/day/year)	Principal Amount Payable	Principal Amount Paid
7/2/1987	$ 0.0000000	
1/2/1988	0.0000000	
7/2/1988	0.0000000	
1/2/1989	0.0000000	
7/2/1989	0.0000000	
1/2/1990	0.0000000	
7/2/1990	0.0000000	
1/2/1991	0.0000000	
7/2/1991	0.0000000	
1/2/1992	0.0000000	
7/2/1992	0.0000000	
1/2/1993	959000.00	
7/2/1993	1003000.00	
1/2/1994	1049000.00	
7/2/1994	1097000.00	
1/2/1995	1147000.00	
7/2/1995	1200000.00	
1/2/1996	1255000.00	
7/2/1996	1313000.00	
1/2/1997	1374000.00	
7/2/1997	1437000.00	
	$11,834,000	

EXHIBIT A-3

FORM OF INITIAL SERIES NOTE
(DUE JANUARY 2, 2011)
THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED, SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT

NONRECOURSE PROMISSORY NOTE, INITIAL SERIES
(DUE JANUARY 2, 2011)

Issue date: December 18, 1986

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as Owner Trustee (the *Owner Trustee)* under a Trust Agreement dated as of December 1, 1986 with Commercial Federal Investment Corporation (the *Owner Participant*), hereby promises to pay to EL PASO FUNDING CORPORATION, or registered assigns, the principal sum of fifty-one million six hundred twenty four thousand dollars ($51,624,000) on January 2, 2011, together with interest (computed on the basis of a 360-day year of twelve 30-day months) on the aggregate amount of such principal sum remaining unpaid from time to time from the date of this Initial Series Note until due and payable, in arrears, at the rate of 10.375% per annum. Payments of principal installments of this Initial Series Note shall be made in the "Principal Amount Payable" and on the "Payment Dates" specified in Schedule 1 hereto. Payments of accrued interest on this Initial Series Note shall be made on each January 2 and July 2, commencing July 2, 1987; until the principal amount of this Initial Series Note shall have been paid in full.

Capitalized terms used in this Initial Series Note which are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture (as hereinafter defined).

Interest on any overdue principal and premium, if any, and (to the extent permitted by applicable law) any overdue interest shall be paid, on demand, from the due date thereof at the rate of interest per annum (computed on the basis of a 360-day year of twelve 30-day months) equal to 1% above the interest rate stated above for this Initial Series Note for the period during which any such principal, premium or interest shall be overdue.

In the event any date on which a payment is due under this Initial Series Note is not a Business Day, then payment thereof may be made on the next succeeding Business Day with the same force and effect as if made on the date on which such payment was due.

All payments of principal, premium, if any, and interest to be made by the Owner Trustee hereunder and under the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents dated as of December 1, 1986, as at any time amended or supplemented in accordance with the provisions thereof (the *Indenture*), between the Owner Trustee and First City National Bank of Houston, as Trustee (the *Indenture Trustee*), shall be made only from the Lease Indenture Estate and the Trust Estate and the Indenture Trustee shall have no obligation for the payment thereof except to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Lease Indenture Estate to make such payments in accordance with the terms of Article V of the Indenture. The Holder hereof, by its acceptance of this Initial Series Note, agrees that such Holder will look solely to the Trust Estate and the income and proceeds from the Lease Indenture Estate to the extent available for distribution to the Holder hereof as above provided, and that neither the Owner Participant nor, except as expressly provided in the Indenture, the Owner Trustee nor the Indenture Trustee is or shall be personally liable to the Holder hereof for any amounts payable under this Initial Series Note or for any performance to be rendered under the Indenture or any other Transaction Document or for any liability thereunder; *provided, however,* that in the event the Lessee shall assume all the obligations of the Owner Trustee hereunder and under the Indenture pursuant to Sec-

tion 3.9(b) of the Indenture, then all payments to be made under this Note shall be made only from payments made by the Lessee under this Initial Series Note in accordance with the Assumption Agreement referred to in said Section 3.9(b) and the Holder of this Initial Series Note agrees that such event it will look solely to the Lessee for such payment.

Principal, premium, if any, and interest shall be payable, in the manner provided in the Indenture, on presentment of this Initial Series Note at the Indenture Trustee's Office, or as otherwise provided in the Indenture.

In the manner and to the extent provided in the Indenture, Schedule 1 hereto may be adjusted once at the discretion of the Owner Trustee prior to June 30, 1990, in connection with an adjustment to Basic Rent under Section 3(d) of the Facility Lease.

The Holder hereof, by its acceptance of this Initial Series Note, agrees that each payment received by it hereunder shall be applied in the manner set forth in Section 3.11 of the Indenture. The Holder of this Initial Series Note agrees, by its acceptance hereof, that it will duly note by appropriate means all payments of principal or interest made hereon and that it will not in any event transfer or otherwise dispose of this Initial Series Note unless and until all such notations have been duly made.

This Initial Series Note is one of the Initial Series Notes referred to in the Indenture. The Indenture permits the issuance of additional series of Notes, as provided in Section 3.5 of the Indenture, and the several series may be for varying aggregate principal amounts and may have different maturity dates, interest rates, redemption provisions and other terms. The properties of the Owner Trustee included in the Lease Indenture Estate are pledged to the Indenture Trustee to the extent provided in the Indenture as security for the payment of the principal of and premium, if any, and interest on this Initial Series Note and all other Notes issued and outstanding from time to time under the Indenture. Reference is hereby made to the Indenture for a statement of the rights of the Holders of, and the nature and extent of the security for, this Initial Series Note and of the rights of and the nature and extent of the security for, the Holders of the other Notes and of certain rights of the Owner Trustee, as well as for a statement of the terms and conditions of the trust created by the Indenture, to all of which terms and conditions the Holder hereof agrees by its acceptance of this Initial Series Note.

This Initial Series Note is subject to purchase by the Owner Trustee as provided in Section 6.8(b) of the Indenture and to mandatory prepayment in full as provided in Section 5.2 of the Indenture, such prepayment being without premium but including accrued interest to the date of prepayment. In addition, this Initial Series Note may be prepaid in whole or in part at any time on and after January 2, 1992 by the Owner Trustee as follows: upon the giving of not less than 30 days' notice as provided in the Indenture and at the following prepayment prices (expressed as a percentage of the unpaid principal amount hereof), together with interest accrued to the date fixed for prepayment:

Twelve Month Period Beginning January 2,	Prepayment Price	Twelve Month Period Beginning January 2,	Prepayment Price
1992	107.78%	2000	103.63%
1993	107.26	2001	103.11
1994	106.74	2002	102.59
1995	106.23	2003	102.08
1996	105.71	2004	101.56
1997	105.19	2005	101.04
1998	104.67	2006	100.52
1999	104.15		

and thereafter at the principal amount thereof, together with interest accrued to the prepayment date. This Initial Series Note is not otherwise subject to prepayment in whole or in part.

In case an Indenture Event of Default shall occur and be continuing, the unpaid balance of the principal of this Initial Series Note and any other Notes, together with all accrued but unpaid interest thereon, may, subject to certain rights of the Owner Trustee or the Owner Participant contained or referred to in the Indenture, be declared or may become due and payable in the manner and with the effect provided in the Indenture.

The lien upon the Lease Indenture Estate is subject to being legally discharged prior to the maturity of this Initial Series Note upon the deposit with the Indenture Trustee of cash or certain securities sufficient to pay this Initial Series Note when due or an assumption by the Lessee of the obligation of the Owner Trustee under this Initial Series Note and the Indenture, in each case in accordance with the terms of the Indenture.

There shall be maintained at the Indenture Trustee's Office a register for the purpose of registering transfers and exchanges of Notes in the manner provided in the Indenture. The transfer of this Initial Series Note is registrable, as provided in the Indenture, upon surrender of this Initial Series Note for registration of transfer duly accompanied by a written instrument of transfer duly executed by or on behalf of the registered Holder hereof with signature guaranteed, together with the amount of any applicable transfer taxes. Prior to due presentment for registration of transfer of this Initial Series Note, the Owner Trustee and the Indenture Trustee may treat the person in whose name this Initial Series Note is registered as the owner hereof for the purpose of receiving payments of principal of and premium, if any, and interest on this Initial Series Note and for all other purposes whatsoever, whether or not this Initial Series Note be overdue, and neither the Owner Trustee nor the Indenture Trustee shall be affected by notice to the contrary.

This Initial Series Note shall be governed by, and construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, the Owner Trustee has caused this Initial Series Note to be duly executed as of the date hereof.

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as *Owner Trustee* under a Trust Agreement, dated as of December 1, 1986, with COMMERCIAL FEDERAL INVESTMENT CORPORATION

By: _____
Assistant Vice President

ASSIGNMENT

Date: December 18, 1986

For value received, EL PASO FUNDING CORPORATION hereby sells, assigns and transfers to FI[redacted] CITY NATIONAL BANK OF HOUSTON as Collateral Trust Trustee pursuant to the Collateral Tr[redacted] Indenture dated as of August 1, 1986, as amended and supplemented, among EL PASO FUNDING CORPORATION, El Paso Electric Company and said Collateral Trust Trustee, without recourse, the Initial Series Note to which this Assignment is annexed and all rights thereunder.

EL PASO FUNDING CORPORATION

By: _____
Vice President

SCHEDULE 1
TO THE INITIAL SERIES NOTE
(DUE JANUARY 2, 2011)
SCHEDULE OF PRINCIPAL AMORTIZATION

Payment Date (month/day/year)	Principal Amount Payable	Principal Amount Paid
7/2/1987	$ 0.0000000	
1/2/1988	0.0000000	
7/2/1988	0.0000000	
1/2/1989	0.0000000	
7/2/1989	0.0000000	
1/2/1990	0.0000000	
7/2/1990	0.0000000	
1/2/1991	0.0000000	
7/2/1991	0.0000000	
1/2/1992	0.0000000	
7/2/1992	0.0000000	
1/2/1993	0.0000000	
7/2/1993	0.0000000	
1/2/1994	0.0000000	
7/2/1994	0.0000000	
1/2/1995	0.0000000	
7/2/1995	0.0000000	
1/2/1996	0.0000000	
7/2/1996	0.0000000	
1/2/1997	0.0000000	
7/2/1997	0.0000000	
1/2/1998	964000.00	
7/2/1998	1088000.00	
1/2/1999	1008000.00	
7/2/1999	1163000.00	
1/2/2000	1077000.00	
7/2/2000	1243000.00	
1/2/2001	1151000.00	
7/2/2001	1329000.00	
1/2/2002	1231000.00	
7/2/2002	1421000.00	
1/2/2003	1316000.00	
7/2/2003	1519000.00	
1/2/2004	1406000.00	
7/2/2004	1624000.00	
1/2/2005	1503000.00	
7/2/2005	1736000.00	
1/2/2006	1607000.00	
7/2/2006	1856000.00	
1/2/2007	1839000.00	
7/2/2007	2856000.00	
1/2/2008	3004000.00	
7/2/2008	3160000.00	
1/2/2009	3324000.00	
7/2/2009	3496000.00	
1/2/2010	3677000.00	
7/2/2010	3868000.00	
1/2/2011	2158000.00	
	$51,624,000	

EXHIBIT B

ASSUMPTION AGREEMENT

: The Holders (as defined below) from time to time of the Notes (as defined below) of The First National Bank of Boston, not in its individual capacity, but solely as owner trustee under a Trust Agreement dated as of December 1, 1986 with Commercial Federal Investment Corporation (in such capacity, the "Issuer") under the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents (the "Indenture") dated as of December 1, 1986 between the Issuer and First City National Bank of Houston, as trustee (the "Trustee").

The undersigned, EL PASO ELECTRIC COMPANY, a Texas corporation (the "Obligor "), for the purpose of satisfying in part its obligation to make certain payments under that certain Facility Lease dated as of December 1, 1986 between the Issuer and the Obligor (the "Facility Lease"), does hereby covenant and agree with the Holders (as defined in the Indenture) from time to time of the Notes (as defined in the Indenture) as follows:

SECTION 1. The Obligor does hereby agree to, and does hereby, assume unconditionally the payment of the principal of the Notes and of the interest and premium, if any, thereon, at the rates provided in the Notes, when and as the same shall become due and payable, whether at maturity or upon mandatory prepayment or upon declaration or otherwise, according to the terms of the Notes and of the Indenture.

SECTION 2. The assumption herein contained shall be binding upon the Obligor, its successors and assigns, and shall remain in full force and effect irrespective of the power or authority of the Issuer to issue the Notes or to execute, acknowledge and deliver the Indenture or the validity of the Notes, or the Indenture, or of any defense whatsoever that the Issuer may or might have to the payment of the Notes (principal, interest or premium), or to the performance or observance of any of the provisions or conditions of the Indenture or any Note, or of the existence or continuance of the Issuer as a legal ity; nor shall said assumption be affected by the merger, consolidation, or other dissolution of the er or the sale or other transfer of the property of the Issuer as an entirety, or substantially so, to any other person; nor shall the assumption be discharged or impaired by any act, failure or omission whatsoever on the part of any Holder of any Notes or the Trustee, including, among other such acts, failures and omissions, the following:

(a) any failure to present any Note for payment or to demand payment thereof, or to give to the Obligor notice of dishonor and non-payment of any Note when and as the same may become due and payable, or notice of any failure on the part of the Issuer to do any act or thing or to perform or keep any covenant or agreement by it to be done, kept or performed under the terms of the Notes or the Indenture;

(b) any extension of the obligation of any Note, either indefinitely or for any period of time, or any other modification in the obligations under any Note or the Indenture or of the Issuer thereon or in connection therewith;

(c) any act or failure to act with regard to any Note or the Indenture or anything which might vary the risk of the Obligor; and

(d) any action taken under the Indenture and the Notes in the exercise of any right or power thereby conferred or any failure or omission on the part of the Trustee or the Holder of any Note to enforce any right or security given under the Indenture or any Note, or any waiver of any right or any failure or omission on the part of the Trustee or any Holder of any Note to enforce any right of any Holder of any Note against the Issuer;

provided, always, that the specific enumeration of the above mentioned acts, failures, waivers or omissions shall not be deemed to exclude any other acts, failures, waivers or omissions though not specifically mentioned herein, it being the purpose and intent of this Assumption Agreement that the gation of the Obligor shall be absolute and unconditional to the extent herein specified and shall

not be discharged, impaired or varied except by the payment of the principal of and interest on any Note and any premium thereon in case of prepayment, and then only to the extent of such payments.

SECTION 3. (a) Subject to the requirements of Sections 10(b)(3)(iii) and 10(b)(3)(iv) of t Participation Agreement and to the provisions of paragraph (b) of this Section, nothing contained i this Assumption Agreement shall prevent any consolidation or merger of the Obligor with or into any other corporation or corporations (whether or not affiliated with the Obligor), or successive consolidations or mergers in which the Obligor or its successor or successors shall be a party or parties, or shall prevent any sale, conveyance or lease of all or substantially all the property of the Obligor, to any other corporation authorized to acquire and operate the same; *provided, however*, and the Obligor hereby covenants and agrees, that upon any such consolidation, merger, sale, conveyance or lease, all obligations of the Obligor under this Assumption Agreement on or in respect of any Note, and the due and punctual performance and observance of all of the covenants and conditions of this Assumption Agreement to be performed by the Obligor, shall be expressly and duly assumed, by an agreement reasonably satisfactory in form and substance to the Trustee, executed and delivered by the corporation (if other than the Obligor) formed by such consolidation, or into which the Obligor shall have been merged, or by the corporation which shall have acquired such property.

(b) The Trustee, subject to applicable provisions of the Indenture, may rely upon an opinion of counsel to the Obligor as conclusive evidence that any such merger, consolidation, sale or conveyance complies with the provisions of this Section.

SECTION 4. The Obligor does hereby consent to all of the terms and conditions of each series of Notes and of the Indenture, and hereby waives any and all rights of notice of any fact or facts or circumstance or circumstances whatsoever and consents to any extension or extensions of time of any payment or payments, or of any other act or thing which any Holder or Holders of any Note or the Issuer may agree to consent to, either expressly, by acquiescence or otherwise, and hereby agrees not to claim or enforce any rights of subrogation or any other right or privilege which might otherwise arise on account of any payment made by it or act or thing done by it on account of or in accordan with its assumption herein contained, unless and until all of the Notes have been fully paid a discharged.

SECTION 5. The assumption herein expressed may be transferred or assigned at any time or from time to time and shall be considered to be transferred and assigned upon the transfer of any Note, whether with or without the consent of or notice to the Obligor or the Issuer. The Obligor hereby agrees to execute and deliver such instruments and to do such acts and things requested by the Trustee as shall be reasonably necessary to carry out and effectuate the purposes and intents of this Assumption Agreement. This Assumption Agreement may not be amended or modified in any respect without the prior written consent (evidenced as provided in the Indenture) of the Holders of not less than a majority in principal amount of the Notes Outstanding (as defined in the Indenture); provided, however, that without the written consent of the Holders of all of the Notes Outstanding, no such amendment or modification shall be effective which will change any of the provisions of Sections 1, 2, 4 or 5 of this Assumption Agreement. The Obligor agrees to file with the Indenture Trustee a duplicate original of each such consent.

SECTION 6. Capitalized terms used herein, but which are not defined herein, shall have the meanings set forth in Appendix A to the Indenture.

EL PASO ELECTRIC COMPANY

By: _____
Title:

ATTEST:

_____
Title:

EXHIBIT C

UNDIVIDED INTEREST SUPPLEMENTAL INDENTURE

SUPPLEMENTAL INDENTURE NO. dated as of , , to the TRUST INDENTURE, MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS (hereinafter, together with supplements thereto, the *Indenture*) dated as of December 1, 1986, between THE FIRST NATIONAL BANK OF BOSTON (FNB), not in its individual capacity, but solely as trustee (the *Owner Trustee*) under a Trust Agreement, dated as of December 1, 1986, between FNB, whose address is 100 Federal Street, Boston, Massachusetts 02110, and Commercial Federal Investment Corporation, and FIRST CITY NATIONAL BANK OF HOUSTON, a national banking association (the *Indenture Trustee*), whose address is First City Financial Center, 1301 Fannin Street, 21st Floor, Houston, Texas 77002.

WITNESSETH:

WHEREAS, in accordance with Section 9(j) of the Facility Lease, the Owner Trustee is obligated, in certain cases, to cause the Undivided Interest and the Real Property Interest to be subjected to the lien of the Indenture; and

WHEREAS, in order to further secure the obligations referred to in the Indenture, the Owner Trustee desires to grant to the Indenture Trustee the security interest and realty mortgage herein provided and the parties hereto desire that the Indenture be regarded (i) to the extent that the Undivided Interest constitutes personal property, as a "security agreement" and as a "financing statement" under the Uniform Commercial Code and (ii) to the extent that the Undivided Interest and the Real Property Interest constitute fixtures or real property, as a realty mortgage;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1.1. *The Indenture.* This Supplemental Indenture shall be construed as supplemental to and amendatory of the Indenture and shall form a part thereof, and the Indenture is hereby incorporated by reference herein and is hereby ratified, approved and confirmed.

SECTION 1.2. *Definitions.* Capitalized terms used herein, but which are not otherwise defined herein, shall have the meanings set forth in Appendix A to the Indenture.

SECTION 1.3. *Recording Information.* The Indenture was recorded on December , 1986, in Maricopa County, Arizona [describe] [specify other recorded documents] [specify other places of recordation].

SECTION 1.4. *Governing Law.* This Supplemental Indenture and the Indenture shall, for all purposes, be construed in accordance with and governed by the laws of the State of New York except to the extent that the laws of the State of Arizona shall be mandatorily applicable thereto.

SECTION 1.5. *Security Interest and Realty Mortgage.* As further security for the due and punctual payment of the principal of and premium, if any, and interest on the Notes according to their respective terms and effect and the performance and observance by the Owner Trustee of all the covenants and agreements made by it or on its behalf in the Notes, the Participation Agreement and the Indenture, the Owner Trustee does, by its execution and delivery hereof, hereby grant a security interest in, bargain, convey, warrant, assign, transfer, mortgage, pledge and set over unto the Indenture Trustee, and to its successors and assigns in trust, the following (which shall be a part of the Lease Indenture Estate for all purposes of the Indenture and the other Transaction Documents):

(1) the Undivided Interest and the Real Property Interest, including, without limitation, the Owner Trustee's interest in all Capital Improvements (including any which constitute fixtures under Applicable Law) now existing or which hereafter may become part of the Undivided Interest;

(2) all right, title and interest of the Owner Trustee in, to and under (a) the Bill of Sale, (b) the ANPP Participation Agreement and (c) [the Deed and the Assignment of Beneficial Interest] [the ground lease described in Section 10(b)(3)(xiv) of the Participation Agreement), including without limitation, all amounts of Rent, insurance proceeds and condemnation, requisition and other awards and payments of any kind for or with respect to any part of the Lease Indenture Estate as contemplated in such documents;

(3) all other property of every kind and description, real, personal and mixed, and interests therein now held or hereafter acquired by the Owner Trustee pursuant to any term of any Transaction Document, whether or not subjected to the lien of the Indenture by an indenture supplemental hereto; and

(4) all proceeds of the foregoing;

but excluding, however, from the Lease Indenture Estate any and all Excepted Payments; and *subject, however*, to (i) the terms and provisions of the Indenture and (ii) the rights of the Lessee under the Facility Lease.

TO HAVE AND TO HOLD all the aforesaid properties, rights and interests unto the Indenture Trustee, its successors and assigns, forever, but in trust, nevertheless, for the use and purposes and with the power and authority and subject to the terms and conditions mentioned and set forth in the Indenture.

UPON CONDITION that, unless and until an Indenture Event of Default shall have occurred and be continuing, the Owner Trustee shall be permitted, to the exclusion of the Indenture Trustee, to possess and use the Lease Indenture Estate and exercise all rights with respect thereto and, without limitation of the foregoing, the Owner Trustee may exercise all of its rights under the documents specified in clause (2) above to the same extent as if its right, title and interest therein had not been assigned to the Indenture Trustee to the extent set forth above, except that the Indenture Trustee shall receive payments of Assigned Payments and all moneys and securities required to be held by or deposited with the Indenture Trustee hereunder.

The Owner Trustee hereby warrants and represents that it has not assigned or pledged any of its right, title or interest in and to the Lease Indenture Estate to anyone other than the Indenture Trustee.

SECTION 1.6. *Real Estate Remedies.* In addition to the remedies specified in the Indenture (including but without limitation Section 6.4 thereof) or otherwise available pursuant to Applicable Law, to the extent that any portion of the Lease Indenture Estate constitutes fixtures or real property, the Indenture and this Supplemental Indenture shall be, and shall be deemed to be, a realty mortgage and assignment of rents with respect to all items of real property and fixtures and the Indenture Trustee shall have, to the extent not inconsistent with the Indenture, all the rights, remedies and benefits of a mortgagee of real property under Applicable Law (including, but without limitation, rights and remedies pursuant to Arizona Revised Statutes Section 33-702.B, or any comparable successor provision) and the Owner Trustee shall be and be deemed to be a mortgagor with respect to such fixtures and real property.

SECTION 1.7. *Certain Releases.* In case a release from the security and other interests created by Section 1.5 hereof by the Indenture Trustee of a portion of the Undivided Interest shall be necessary in order to enable the Owner Trustee or the Lessee to perform its covenants and agreements set forth in the Transaction Documents or in the ANPP Participation Agreement or the Owner Trustee or the Lessee to carry out any action required by Section 8 of the Facility Lease, the Indenture Trustee shall execute and deliver to, or as directed by, the Owner Trustee or the Lessee an appropriate instrument or instruments provided to the Indenture Trustee by the Owner Trustee or the Lessee (in due form for filing or recording), so releasing a portion of the Undivided Interest, *provided, however*, that the Indenture Trustee shall have first received an Officer's Certificate, executed by the Lessee, accompanied by an opinion of counsel, each of which shall be to the effect that all necessary actions have be

or are being taken simultaneously with such release in connection with the proposed action to comply with the terms of the Indenture and Section 8 of the Facility Lease.

SECTION 1.8. *Severance.* The parties hereto understand and agree that Unit 2 and the Common ilities (including the Undivided Interest), each Capital Improvement and each part thereof is or ll be severed, and shall be and remain severed, from the real estate constituting the PVNGS Site and even if physically attached thereto, shall retain the character of personal property, shall be treated as personal property with respect to the rights of all persons whomsoever, shall not be or become fixtures or otherwise part of the real estate constituting the PVNGS Site, and, by virtue of its nature as personal property, shall not be affected in any way by any instrument dealing with the real estate constituting the PVNGS Site.

SECTION 1.9. *Appointment of Co-Trustees or Separate Trustees.*

(a) At any time or times, when necessary or prudent or for the purpose of meeting the legal requirements of any jurisdiction in which any part of the Lease Indenture Estate may, at any time, be located, the Indenture Trustee, except as set forth in subsection (b)(6) of this Section 1.9, may, and upon receipt of a Directive shall, appoint one or more Persons to act as co-trustee of all or any such part of the Lease Indenture Estate or to act as separate trustee of any property constituting part thereof, in either case with such powers as may be provided in the instrument of appointment, and to vest in such Person or Persons any property, title, right or power deemed necessary or desirable, subject to the remaining provisions of this Section 1.9. Except as set forth in subsection (b)(6) of this Section 1.9 the Owner Trustee shall join in any such appointment upon the request of the Indenture Trustee, but such joining will not be necessary for the effectiveness of such appointment.

(b) Every separate trustee or co-trustee shall be appointed subject to the following terms:

(1) The rights, powers, duties and obligations conferred or imposed upon any such separate trustee or co-trustee shall not be greater than those conferred or imposed upon the Indenture Trustee, and such rights and powers shall be exercisable only jointly with the Indenture Trustee, except to the extent that, under any law of any jurisdiction in which any particular act or acts are to be performed, the Indenture Trustee shall be incompetent or unqualified to perform such act or acts, in which event, except as set forth in subsection (b)(6) of this Section 1.9, such rights and powers shall be exercised by such separate trustee or co-trustee subject to the provisions of subsection (b)(4) of this Section 1.9.

(2) The Indenture Trustee may at any time, by an instrument in writing executed by it, accept the resignation of, and may (and upon the receipt of a Directive, shall) remove any separate trustee or co-trustee appointed under this Section 1.9.

(3) No trustee under the Indenture and this Supplemental Indenture shall be liable by reason of any act or omission of any other trustee or co-trustee under this Indenture.

(4) Except as set forth in subsection (b)(6) of this Section 1.9, no power given to such separate trustee or co-trustee shall be separately exercised hereunder by such separate trustee or co-trustee except with the consent in writing of the Indenture Trustee.

(5) The Indenture Trustee shall maintain custody of all money and securities.

(6) Notwithstanding anything contained to the contrary in this Section 1.9, to the extent the laws of any jurisdiction preclude the Indenture Trustee from taking any action hereunder either alone, jointly or through a separate trustee under the direction and control of the Indenture Trustee, the Owner Trustee, at the instruction of the Indenture Trustee, shall appoint a separate trustee for such jurisdiction, which separate trustee shall have full power and authority to take all action hereunder as to matters relating to such jurisdiction without the consent of the Indenture Trustee, but subject to the same limitations in any exercise of his power and authority as those to which the Indenture Trustee is subject.

(c) Upon the acceptance in writing of such appointment by any such separate trustee or co-trustee, it shall be vested with the estates or property to which its appointment relates as specified in the instrument of appointment, subject to all the terms of the Indenture and this Supplemental Indenture.

(d) Any separate trustee or co-trustee may, at any time, constitute the Indenture Trustee, its agent or attorney-in-fact, with full power and authority, to the extent not prohibited by law, to do any lawful act under or in respect of the Indenture and this Supplemental Indenture on its behalf and in its name. If a separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Indenture Trustee, to the extent permitted by law, without the appointment of a new or successor trustee.

SECTION 1.10. *Separability of Provisions.* In case any one or more of the provisions of this Supplemental Indenture or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof and the Indenture and any other application hereof and thereof shall not in any way be affected or impaired.

SECTION 1.11. *Counterpart Execution.* This Supplemental Indenture may be executed in any number of counterparts and by the different parties hereto and thereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Owner Trustee and the Indenture Trustee have each caused this Indenture to be duly executed by their respective officers thereunto duly authorized, all as of the date first set forth above.

THE FIRST NATIONAL BANK OF BOSTON,
not in its individual capacity,
but solely as Owner Trustee under the
Trust Agreement dated as of December 1,
1986, with Commercial Federal
Investment Corporation

By: _____
Title:

FIRST CITY NATIONAL BANK OF HOUSTON

By: _____
Title:

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED, SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT

NONRECOURSE PROMISSORY NOTE, INITIAL SERIES
(DUE JULY 2, 1992)

Issue Date: December 18, 1986

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as Owner Trustee (the Owner Trustee) under a Trust Agreement dated as of December 1, 1986 with Commercial Federal Investment Corporation (the *Owner Participant*), hereby promises to pay to EL PASO FUNDING CORPORATION, or registered assigns, the principal sum of six million four hundred forty-seven thousand Dollars ($6,447,000) on July 2, 1992 together with interest (computed on the basis of a 360-day year of twelve 30-day months) on the aggregate amount of such principal sum remaining unpaid from time to time from the date of this Initial Series Note until due and payable, in arrears, at the rate of 8.10% per annum. Payments of principal installments of this Initial Series Note shall be made in the "Principal Amount Payable" and on the "Payment Dates" specified in Schedule 1 hereto. Payments of accrued interest on this Initial Series Note shall be made on each January 2 and July 2, commencing July 2, 1987, until the principal amount of this Initial Series Note shall have been paid in full.

Capitalized terms used in this Initial Series Note which are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture (as hereinafter defined).

Interest on any overdue principal and premium, if any, and (to the extent permitted by applicable law) any overdue interest shall be paid, on demand, from the due date thereof at the rate of interest per annum (computed on the basis of a 360-day year of twelve 30-day months) equal to 1% above the interest rate stated above for this Initial Series Note for the period during which any such principal, premium or interest shall be overdue.

In the event any date on which a payment is due under this Initial Series Note is not a Business Day, then payment thereof may be made on the next succeeding Business Day with the same force and effect as if made on the date on which such payment was due.

All payments of principal, premium, if any, and interest to be made by the Owner Trustee hereunder and under the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents dated as of December 1, 1986, as at any time amended or supplemented in accordance with the provisions thereof (the *Indenture*), between the Owner Trustee and First City National Bank of Houston, as Trustee (the *Indenture Trustee*), shall be made only from the Lease Indenture Estate and the Trust Estate and the Indenture Trustee shall have no obligation for the payment thereof except to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Lease Indenture Estate to make such payments in accordance with the terms of Article V of the Indenture. The Holder hereof, by its acceptance of this Initial Series Note, agrees that such Holder will look solely to the Trust Estate and the income and proceeds from the Lease Indenture Estate to the extent available for distribution to the Holder hereof as above provided, and that neither the Owner Participant nor, except as expressly provided in the Indenture, the Owner Trustee nor the Indenture Trustee is or shall be personally liable to the Holder hereof for any amounts payable under this Initial Series Note or for any performance to be rendered under the Indenture or any other Transaction Document or for any liability thereunder; *provided, however*, that in the event the Lessee shall assume all the obligations of the Owner Trustee hereunder and under the Indenture pursuant to Section 3.9(b) of the Indenture, then all payments to be made under this Initial Series Note shall be made only from payments made by the Lessee under this Initial Series Note in accordance with the

SECURITY

Assumption Agreement referred to in said Section 3.9(b) and the Holder of this Initial Series Note agrees that in such event it will look solely to the Lessee for such payment.

Principal, premium, if any, and interest shall be payable, in the manner provided in the Indenture, on presentment of this Initial Series Note at the Indenture Trustee's Office, or as otherwise provided in the Indenture.

In the manner and to the extent provided in the Indenture, Schedule 1 hereto may be adjusted once at the discretion of the Owner Trustee prior to June 30, 1990, in connection with an adjustment to Basic Rent under Section 3(d) of the Facility Lease.

The Holder hereof, by its acceptance of this Initial Series Note, agrees that each payment received by it hereunder shall be applied in the manner set forth in Section 3.11 of the Indenture. The Holder of this Initial Series Note agrees, by its acceptance hereof, that it will duly note by appropriate means all payments of principal or interest made hereon and that it will not in any event transfer or otherwise dispose of this Initial Series Note unless and until all such notations have been duly made.

This Initial Series Note is one of the Initial Series Notes referred to in the Indenture. The Indenture permits the issuance of additional series of Notes, as provided in Section 3.5 of the Indenture, and the several series may be for varying aggregate principal amounts and may have different maturity dates, interest rates, redemption provisions and other terms. The properties of the Owner Trustee included in the Lease Indenture Estate are pledged to the Indenture Trustee to the extent provided in the Indenture as security for the payment of the principal of and premium, if any, and interest on this Initial Series Note and all other Notes issued and outstanding from time to time under the Indenture. Reference is hereby made to the Indenture for a statement of the rights of the Holders of, and the nature and extent of the security for this Initial Series Note and of the rights of, and the nature and extent of the security for, the Holders of the other Notes and of certain rights of the Owner Trustee, as well as for a statement of the terms and conditions of the trust created by the Indenture, to all of which terms and conditions the Holder hereof agrees by its acceptance of this Initial Series Note.

This Initial Series Note is subject to purchase by the Owner Trustee as provided in Section 6.8 of the Indenture. This Initial Series Note is not subject to prepayment in whole or in part.

In case an Indenture Event of Default shall occur and be continuing, the unpaid balance of the principal of this Initial Series Note and any other Notes, together with all accrued but unpaid interest thereon, may, subject to certain rights of the Owner Trustee or the Owner Participant contained or referred to in the Indenture, be declared or may become due and payable in the manner and with the effect provided in the Indenture.

The lien upon the Lease Indenture Estate is subject to being legally discharged prior to the maturity of this Initial Series Note upon the deposit with the Indenture Trustee of cash or certain securities sufficient to pay this Initial Series Note when due or an assumption by the Lessee of the obligation of the Owner Trustee under this Initial Series Note and the Indenture, in each case in accordance with the terms of the Indenture.

There shall be maintained at the Indenture Trustee's Office a register for the purpose of registering transfers and exchanges of Notes in the manner provided in the Indenture. The transfer of this Initial Series Note is registrable, as provided in the Indenture, upon surrender of this Initial Series Note for registration of transfer duly accompanied by a written instrument of transfer duly executed by or on behalf of the registered Holder hereof with signature guaranteed, together with the amount of any applicable transfer taxes. Prior to due presentment for registration of transfer of this Initial Series Note, the Owner Trustee and the Indenture Trustee may treat the person in whose name this Initial Series Note is registered as the owner hereof for the purpose of receiving payments of principal of and premium, if any, and interest on this Initial Series Note and for all other purposes whatsoever, whether or not this Initial Series Note be overdue, and neither the Owner Trustee nor the Indenture Trustee shall be affected by notice to the contrary.

EXECUTED COPY

This Initial Series Note shall be governed by, and construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, the Owner Trustee has caused this Initial Series Note to be duly executed as of the date hereof.

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as *Owner Trustee* under a Trust Agreement dated as of December 1, 1986, with COMMERCIAL FEDERAL INVESTMENT CORPORATION

By: _____
Assistant Vice President

SPECIMEN

ASSIGNMENT

Date: December 18, 1986

For value received, EL PASO FUNDING CORPORATION hereby sells, assigns and transfers to CITY NATIONAL BANK OF HOUSTON as Collateral Trust Trustee pursuant to the Collateral Trust Indenture dated as of August 1, 1986, as amended and supplemented, among EL PASO FUNDING CORPORATION, El Paso Electric Company and said Collateral Trust Trustee, without recourse, the Initial Series Note to which this Assignment is annexed and all rights thereunder.

EL PASO FUNDING CORPORATION

By: _____
Vice President

SPECIMEN

SCHEDULE 1

To The Initial Series Note
(Due July 2, 1992)

Schedule of Principal Amortization

Payment Date (month/day/year)	Principal Amount Payable	Principal Amount Paid
7/2/1987	$0.0000000	
1/2/1988	0.0000000	
7/2/1988	7000.00	
1/2/1989	698000.00	
7/2/1989	726000.00	
1/2/1990	755000.00	
7/2/1990	786000.00	
1/2/1991	818000.00	
7/2/1991	851000.00	
1/2/1992	885000.00	
7/2/1992	921000.00	
	$6.47.000	

SPECIMEN

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED, SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT

NONRECOURSE PROMISSORY NOTE, INITIAL SERIES
(DUE JULY 2, 1997)

Issue date: December 18, 1986

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as Owner Trustee *(the Owner Trustee)* under a Trust Agreement dated as of December 1, 1986 with Commercial Federal Financial Corporation (the *Owner Participant*), hereby promises to pay to EL PASO FUNDING CORPORATION, or registered assigns, the principal sum of eleven million eight hundred thirty-four thousand dollars ($11,834,000) on July 2, 1997 together with interest (computed on the basis of a 360-day year of twelve 30-day months) on the aggregate amount of such principal sum remaining unpaid from time to time from the date of this Initial Series Note until due and payable in arrears, at the rate of 9.20% per annum. Payments of principal installments of this Initial Series Note shall be made in the "Principal Amount Payable" and on the "Payment Dates" specified in Schedule 1 hereto. Payments of accrued interest on this Initial Series Note shall be made on each January 2 and July 2 commencing July 2, 1987, until the principal amount of this Initial Series Note shall have been paid in full.

Capitalized terms used in this Initial Series Note which are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture (as hereinafter defined).

Interest on any overdue principal and premium, if any, and (to the extent permitted by applicable law) any overdue interest shall be paid, on demand, from the due date thereof at the rate of interest per annum (computed on the basis of a 360-day year of twelve 30-day months) equal to 1% above the interest rate stated above for this Initial Series Note for the period during which any such principal, premium or interest shall be overdue.

In the event any date on which a payment is due under this Initial Series Note is not a Business Day, then payment thereof may be made on the next succeeding Business Day with the same force and effect as if made on the date on which such payment was due.

All payments of principal, premium, if any, and interest to be made by the Owner Trustee hereunder and under the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents dated as of December 1, 1986, as at any time amended or supplemented in accordance with the provisions thereof (the *Indenture*), between the Owner Trustee and First City National Bank of Houston, as Trustee (the *Indenture Trustee*), shall be made only from the Lease Indenture Estate and the Trust Estate and the Indenture Trustee shall have no obligation for the payment thereof except to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Lease Indenture Estate to make such payments in accordance with the terms of Article V of the Indenture. The Holder hereof, by its acceptance of this Initial Series Note, agrees that such Holder will look solely to the Trust Estate and the income and proceeds from the Lease Indenture Estate to the extent available for distribution to the Holder hereof as above provided, and that neither the Owner Participant nor, except as expressly provided in the Indenture, the Owner Trustee nor the Indenture Trustee is or shall be personally liable to the Holder hereof for any amounts payable under this Initial Series Note or for any performance to be rendered under the Indenture or any other Transaction Document or for any liability thereunder; *provided, however*, that in the event the Lessee shall assume all the obligations of the Owner Trustee hereunder and under the Indenture pursuant to Sec-

tion 3.9(b) of the Indenture, then all payments to be made under this Note shall be made only from payments made by the Lessee under this Initial Series Note in accordance with the Assumption Agreement referred to in said Section 3.9(b) and the Holder of this Initial Series Note agrees that in such event it will look solely to the Lessee for such payment.

Principal, premium, if any, and interest shall be payable, in the manner provided in the Indenture, on presentment of this Initial Series Note at the Indenture Trustee's Office, or as otherwise provided in the Indenture.

In the manner and to the extent provided in the Indenture, Schedule 1 hereto may be adjusted once at the discretion of the Owner Trustee prior to June 30, 1990, in connection with an adjustment to Basic Rent under Section 3(d) of the Facility Lease.

The Holder hereof, by its acceptance of this Initial Series Note, agrees that each payment received by it hereunder shall be applied in the manner set forth in Section 3.11 of the Indenture. The Holder of this Initial Series Note agrees, by its acceptance hereof, that it will duly note by appropriate means all payments of principal or interest made hereon and that it will not in any event transfer or otherwise dispose of this Initial Series Note unless and until all such notations have been duly made.

This Initial Series Note is one of the Initial Series Notes referred to in the Indenture. The Indenture permits the issuance of additional series of Notes as provided in Section 3.5 of the Indenture, and the several series may be for varying aggregate principal amounts and may have different maturity dates, interest rates, redemption provisions and other terms. The properties of the Owner Trustee included in the Lease Indenture Estate are pledged to the Indenture Trustee to the extent provided in the Indenture as security for the payment of the principal of and premium, if any, and interest on this Initial Series Note and all other Notes issued and outstanding from time to time under the Indenture. Reference is hereby made to the Indenture for a statement of the rights of the Holders of, and the nature and extent of the security for, this Initial Series Note and of the rights of, and the nature and extent of the security for, the Holders of the other Notes and of certain rights of the Owner Trustee, as well as for a statement of the terms and conditions of the trust created by the Indenture, to all of which terms and conditions the Holder hereof agrees by its acceptance of this Initial Series Note.

This Initial Series Note is subject to purchase by the Owner Trustee as provided in Section 6.8(b) of the Indenture. This Initial Series Note may be prepaid in whole or in part at any time on and after January 2, 1992 by the Owner Trustee as follows: upon the giving of not less than 30 days' notice as provided in the Indenture and at the following prepayment prices (expressed as a percentage of the unpaid principal amount hereof), together with interest accrued to the date fixed for prepayment:

Twelve Month Period Beginning January 2,	Prepayment Price
1992	102.63%
1993	101.31

and thereafter at the principal amount thereof, together with interest accrued to the prepayment date. This Initial Series Note is not otherwise subject to prepayment in whole or in part.

In case an Indenture Event of Default shall occur and be continuing, the unpaid balance of the principal of this Initial Series Note and any other Notes, together with all accrued by unpaid interest thereon, may, subject to certain rights of the Owner Trustee or the Owner Participant contained or referred to in the Indenture, be declared or may become due and payable in the manner and with the effect provided in the Indenture.

The lien upon the Lease Indenture Estate is subject to being legally discharged prior to the maturity of this Initial Series Note upon the deposit with the Indenture Trustee of cash or cert

securities sufficient to pay this Initial Series Note when due or an assumption by the Lessee of the obligation of the Owner Trustee under this Initial Series Note and the Indenture, in each case in accordance with the terms of the Indenture.

There shall be maintained at the Indenture Trustee's Office a register for the purpose of registering transfers and exchanges of Notes in the manner provided in the Indenture. The transfer of this Initial Series Note is registrable, as provided in the Indenture, upon surrender of this Initial Series Note for registration of transfer duly accompanied by a written instrument of transfer duly executed by or on behalf of the registered Holder hereof with signature guaranteed, together with the amount of any applicable transfer taxes. Prior to due presentment for registration of transfer of this Initial Series Note, the Owner Trustee and the Indenture Trustee may treat the person in whose name this Initial Series Note is registered as the owner hereof for the purpose of receiving payments of principal of and premium, if any, and interest on this Initial Series Note and for all other purposes whatsoever, whether or not this Initial Series Note be overdue, and neither the Owner Trustee nor the Indenture Trustee shall be affected by notice to the contrary.

This Initial Series Note shall be governed by, and construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, the Owner Trustee has caused this Initial Series Note to be duly executed as of the date hereof.

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as *Owner Trustee* under a Trust Agreement, dated as of December 1, 1986, with COMMERCIAL FEDERAL INVESTMENT CORPORATION

By: _____
Assistant Vice President

SPECIMEN

ASSIGNMENT

Date: December 18,1986

For value received, EL PASO FUNDING CORPORATION hereby sells, assigns and transfers to [redacted] CITY NATIONAL BANK OF HOUSTON as Collateral Trust Trustee pursuant to the Collateral [redacted] Indenture dated as of August 1, 1986, as amended and supplemented, among EL PASO FUNDING CORPORATION, El Paso Electric Company and said Collateral Trust Trustee, without recourse, the Initial Series Note to which this Assignment is annexed and all rights thereunder.

EL PASO FUNDING CORPORATION

By: _____
Vice President

SPECIMEN

SCHEDULE 1

TO THE INITIAL SERIES NOTE
(DUE JULY 2, 1997)

SCHEDULE OF PRINCIPAL AMORTIZATION

Payment Date (month/day/year)	Principal Amount Payable	Principal Amount Paid
7/2/1987	$ 0.0000000	
1/2/1988	0.0000000	
7/2/1988	0.0000000	
1/2/1989	0.0000000	
7/2/1989	0.0000000	
1/2/1990	0.0000000	
7/2/1990	0.0000000	
1/2/1991	0.0000000	
7/2/1991	0.0000000	
1/2/1992	0.0000000	
7/2/1992	0.0000000	
1/2/1993	959000.00	
7/2/1993	1003000.00	
1/2/1994	1049000.00	
7/2/1994	1097000.00	
1/2/1995	1147000.00	
7/2/1995	1200000.00	
1/2/1996	1255000.00	
7/2/1996	1313000.00	
1/2/1997	1374000.00	
7/2/1997	1437000.00	
	$11,834,000	

SPECIMEN

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED, SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT

NONRECOURSE PROMISSORY NOTE, INITIAL SERIES
(DUE JANUARY 2, 2011)

Issue date: December 18, 1986

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as Owner Trustee (the *Owner Trustee)* under a Trust Agreement dated as of December 1, 1986 with Commercial Federal Investment Corporation (the *Owner Participant*), hereby promises to pay to EL PASO FUNDING CORPORATION, or registered assigns, the principal sum of fifty-one million six hundred twenty four thousand dollars ($51,624,000) on January 2, 2011, together with interest (computed on the basis of a 360-day year of twelve 30-day months) on the aggregate amount of such principal sum remaining unpaid from time to time from the date of this Initial Series Note until due and payable, in arrears, at the rate of 10.375% per annum. Payments of principal installments of this Initial Series Note shall be made in the "Principal Amount Payable" and on the "Payment Dates" specified in Schedule 1 hereto. Payments of accrued interest on this Initial Series Note shall be made on each January 2 and July 2, commencing July 2, 1987, until the principal amount of this Initial Series Note shall have been paid in full.

Capitalized terms used in this Initial Series Note which are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture (as hereinafter defined).

Interest on any overdue principal and premium, if any, and (to the extent permitted by applicable) any overdue interest shall be paid, on demand, from the due date thereof at the rate of interest per annum (computed on the basis of a 360-day year of twelve 30-day months) equal to 1% above the interest rate stated above for this Initial Series Note for the period during which any such principal, premium or interest shall be overdue.

In the event any date on which a payment is due under this Initial Series Note is not a Business Day, then payment thereof may be made on the next succeeding Business Day with the same force and effect as if made on the date on which such payment was due.

All payments of principal, premium, if any, and interest to be made by the Owner Trustee hereunder and under the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents dated as of December 1, 1986, as at any time amended or supplemented in accordance with the provisions thereof (the *Indenture*), between the Owner Trustee and First City National Bank of Houston, as Trustee (the *Indenture Trustee*), shall be made only from the Lease Indenture Estate and the Trust Estate and the Indenture Trustee shall have no obligation for the payment thereof except to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Lease Indenture Estate to make such payments in accordance with the terms of Article V of the Indenture. The Holder hereof, by its acceptance of this Initial Series Note, agrees that such Holder will look solely to the Trust Estate and the income and proceeds from the Lease Indenture Estate to the extent available for distribution to the Holder hereof as above provided, and that neither the Owner Participant nor, except as expressly provided in the Indenture, the Owner Trustee nor the Indenture Trustee is or shall be personally liable to the Holder hereof for any amounts payable under this Initial Series Note or for any performance to be rendered under the Indenture or any other Transaction Document or for any liability thereunder; *provided, however*, that in the event the Lessee shall assume all the obligations of the Owner Trustee hereunder and under the Indenture pursuant to Sec-

tion 3.9(b) of the Indenture, then all payments to be made under this Note shall be made only from payments made by the Lessee under this Initial Series Note in accordance with the Assumption Agreement referred to in said Section 3.9(b) and the Holder of this Initial Series Note agrees that in such event it will look solely to the Lessee for such payment.

Principal, premium, if any, and interest shall be payable, in the manner provided in the Indenture, on presentment of this Initial Series Note at the Indenture Trustee's Office, or as otherwise provided in the Indenture.

In the manner and to the extent provided in the Indenture, Schedule 1 hereto may be adjusted once at the discretion of the Owner Trustee prior to June 30, 1990, in connection with an adjustment to Basic Rent under Section 3(d) of the Facility Lease.

The Holder hereof, by its acceptance of this Initial Series Note, agrees that each payment received by it hereunder shall be applied in the manner set forth in Section 3.11 of the Indenture. The Holder of this Initial Series Note agrees, by its acceptance hereof, that it will duly note by appropriate means all payments of principal or interest made hereon and that it will not in any event transfer or otherwise dispose of this Initial Series Note unless and until all such notations have been duly made.

This Initial Series Note is one of the Initial Series Notes referred to in the Indenture. The Indenture permits the issuance of additional series of Notes, as provided in Section 3.5 of the Indenture, and the several series may be for varying aggregate principal amounts and may have different maturity dates, interest rates, redemption provisions and other terms. The properties of the Owner Trustee included in the Lease Indenture Estate are pledged to the Indenture Trustee to the extent provided in the Indenture as security for the payment of the principal of and premium, if any, and interest on this Initial Series Note and all other Notes issued and outstanding from time to time under the Indenture. Reference is hereby made to the Indenture for a statement of the rights of the Holders of, and the nature and extent of the security for, this Initial Series Note and of the rights of, and the nature and extent of the security for, the Holders of the other Notes and of certain rights of the Owner Trustee, as well as for a statement of the terms and conditions of the trust created by the Indenture, to all of which terms and conditions the Holder hereof agrees by its acceptance of this Initial Series Note.

This Initial Series Note is subject to purchase by the Owner Trustee as provided in Section 6.8(b) of the Indenture and to mandatory prepayment in full as provided in Section 5.2 of the Indenture, such prepayment being without premium but including accrued interest to the date of prepayment. In addition, this Initial Series Note may be prepaid in whole or in part at any time on and after January 2, 1992 by the Owner Trustee as follows: upon the giving of not less than 30 days' notice as provided in the Indenture and at the following prepayment prices (expressed as a percentage of the unpaid principal amount hereof), together with interest accrued to the date fixed for prepayment:

Twelve Month Period Beginning January 2,	Prepayment Price	Twelve Month Period Beginning January 2,	Prepayment Price
1992	107.78%	2000	103.63%
1993	107.26	2001	103.11
1994	106.74	2002	102.59
1995	106.23	2003	102.08
1996	105.71	2004	101.56
1997	105.19	2005	101.04
1998	104.67	2006	100.52
1999	104.15		

and thereafter at the principal amount thereof, together with interest accrued to the prepayment date. This Initial Series Note is not otherwise subject to prepayment in whole or in part.

In case an Indenture Event of Default shall occur and be continuing, the unpaid balance of the principal of this Initial Series Note and any other Notes, together with all accrued but unpaid interest thereon, may, subject to certain rights of the Owner Trustee or the Owner Participant contained or referred to in the Indenture, be declared or may become due and payable in the manner and with the effect provided in the Indenture.

The lien upon the Lease Indenture Estate is subject to being legally discharged prior to the maturity of this Initial Series Note upon the deposit with the Indenture Trustee of cash or certain securities sufficient to pay this Initial Series Note when due or an assumption by the Lessee of the obligation of the Owner Trustee under this Initial Series Note and the Indenture, in each case in accordance with the terms of the Indenture.

There shall be maintained at the Indenture Trustee's Office a register for the purpose of registering transfers and exchanges of Notes in the manner provided in the Indenture. The transfer of this Initial Series Note is registrable, as provided in the Indenture, upon surrender of this Initial Series Note for registration of transfer duly accompanied by a written instrument of transfer duly executed by or on behalf of the registered Holder hereof with signature guaranteed, together with the amount of any applicable transfer taxes. Prior to due presentment for registration of transfer of this Initial Series Note, the Owner Trustee and the Indenture Trustee may treat the person in whose name this Initial Series Note is registered as the owner hereof for the purpose of receiving payments of principal of and premium, if any, and interest on this Initial Series Note and for all other purposes whatsoever, whether or not this Initial Series Note be overdue, and neither the Owner Trustee nor the Indenture Trustee shall be affected by notice to the contrary.

This Initial Series Note shall be governed by, and construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, the Owner Trustee has caused this Initial Series Note to be duly executed as of the date hereof.

SPECIMEN

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as *Owner Trustee* under a Trust Agreement, dated as of December 1, 1986, with COMMERCIAL FEDERAL INVESTMENT CORPORATION.

By: _____
Assistant Vice President

ASSIGNMENT

Date: December 18, 1986

For value received, EL PASO FUNDING CORPORATION hereby sells, assigns and transfers to FIRST CITY NATIONAL BANK OF HOUSTON as Collateral Trust Trustee pursuant to the Collateral Trust Indenture dated as of August 1, 1986, as amended and supplemented, among EL PASO FUNDING CORPORATION, El Paso Electric Company and said Collateral Trust Trustee, without recourse, the Initial Series Note to which this Assignment is annexed and all rights thereunder.

EL PASO FUNDING CORPORATION

By: _____
Vice President

SPECIMEN

SCHEDULE I
TO THE INITIAL SERIES NOTE
(DUE JANUARY 2, 2011)
SCHEDULE OF PRINCIPAL AMORTIZATION

Payment Date (month/day/year)	Principal Amount Payable	Principal Amount Paid
7/2/1987	$ 0.0000000	
1/2/1988	0.0000000	
7/2/1988	0.0000000	
1/2/1989	0.0000000	
7/2/1989	0.0000000	
1/2/1990	0.0000000	
7/2/1990	0.0000000	
1/2/1991	0.0000000	
7/2/1991	0.0000000	
1/2/1992	0.0000000	
7/2/1992	0.0000000	
1/2/1993	0.0000000	
7/2/1993	0.0000000	
1/2/1994	0.0000000	
7/2/1994	0.0000000	
1/2/1995	0.0000000	
7/2/1995	0.0000000	
1/2/1996	0.0000000	
7/2/1996	0.0000000	
1/2/1997	0.0000000	
7/2/1997	0.0000000	
1/2/1998	964000.00	
7/2/1998	1088000.00	
1/2/1999	1008000.00	
7/2/1999	1163000.00	
1/2/2000	1077000.00	
7/2/2000	1243000.00	
1/2/2001	1151000.00	
7/2/2001	1329000.00	
1/2/2002	1231000.00	
7/2/2002	1421000.00	
1/2/2003	1316000.00	
7/2/2003	1519000.00	
1/2/2004	1406000.00	
7/2/2004	1624000.00	
1/2/2005	1503000.00	
7/2/2005	1736000.00	
1/2/2006	1607000.00	
7/2/2006	1856000.00	
1/2/2007	1839000.00	
7/2/2007	2856000.00	
1/2/2008	3004000.00	
7/2/2008	3160000.00	
1/2/2009	3324000.00	
7/2/2009	3496000.00	
1/2/2010	3677000.00	
7/2/2010	3868000.00	
1/2/2011	2158000.00	
	$51,624,000	

SPECIMEN

COLLATERAL TRUST INDENTURE

dated as of August 1, 1986

Among

EL PASO FUNDING CORPORATION,

EL PASO ELECTRIC COMPANY

and

FIRST CITY NATIONAL BANK OF HOUSTON,

as Trustee

Providing for the Issuance from Time to Time of
Securities To Be Issued in
One or More Series

PALO VERDE NUCLEAR GENERATING STATION

EL PASO FUNDING CORPORATION

EL PASO ELECTRIC COMPANY

Reconciliation and tie between Indenture dated as of August 1, 1986

and

Trust Indenture Act of 1939

Section of Act	Section of Indenture
310(a)(1)	9.09
(2)	9.09
(3)	Inapplicable
(4)	Inapplicable
(b)	9.08, 9.10(a), 9.10(d), 9.10(e), 9.11
(c)	Inapplicable
311(a)(b)	9.13
(c)	Inapplicable
312(a)	10.01 10.02(a)
(b)	10.02(b)
(c)	10.02(c)
313(a)	10.03(a)
313(b)(1)	10.03(b)(1)
(2)	10.03(b)
(c)	10.03(a) & (b)
(d)	10.03(c)
314(a)	10.04
(b)	5.06
(c)(1)	1.02
(2)	1.02
(3)	Inapplicable
(d)(1)	Inapplicable
(2)	Inapplicable
(3)	Inapplicable
(e)	1.02
315(a)(1)	9.01(a)(1)
(2)	9.01(a)(2)

Section of Act	Section of Indenture
315(a)(last clause)	9.01(a)(2)
(b)	9.02
(c)	9.01(b)
(d)(1)	9.01(c)(1)
(2)	9.01(c)(2)
(3)	9.01(c)(3)
(e)	8.10
316(a)(1)(A)	8.07
(B)	8.08
(2)	Inapplicable
(a)(last sentence)	1.01 ("Outstanding")
(b)	8.11
317(a)(1)	8.05(a)
(2)	8.05(d)
(b)	5.03 9.14(c)(2)
318(a)	1.07

NOTE: This reconciliation and tie shall not, for any purp[illegible], be deemed to constitute a part of the Indenture.

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COLLATERAL TRUST INDENTURE, dated as of August 1, 1986, among **EL PASO FUNDING CORPORATION**, a Delaware corporation (hereinafter called the Company), having its principal office and mailing address at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, **EL PASO ELECTRIC COMPANY**, a Texas corporation, having its principal office and mailing address at 303 North Oregon Street, El Paso, Texas 79901 (hereinafter called El Paso), and **FIRST CITY NATIONAL BANK OF HOUSTON**, a national banking association, as Trustee (hereinafter called the Trustee), having its corporate trust office at First City Financial Center, 1301 Fannin Street, 21st Floor, Houston, Texas 77002.

RECITALS

WHEREAS, the Company has duly authorized the creation of an issue of its debentures, notes or other evidences of indebtedness to be issued in one or more series (the **Securities**) up to such principal amount or amounts as may from time to time be authorized in accordance with the terms of this Indenture; and to secure the Securities and to provide for the authentication and delivery thereof by the Trustee, the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, all acts necessary to make this Indenture a valid instrument for the security of the Securities, in accordance with its and their terms, have been done;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that, to secure the payment of the principal of, premium (if any) and interest on all the Securities authenticated and delivered hereunder and issued by the Company and outstanding, and the performance of the covenants therein and herein contained, and in consideration of the premises and of the covenants herein contained and of the purchase of the Securities by the holders thereof, and of the sum of one dollar ($1.00) paid to the Company by the Trustee at or before the delivery hereof, the receipt whereof is hereby acknowledged, the Company by these presents does grant, bargain, sell, release, convey, assign, pledge, transfer, mortgage, hypothecate, and confirm unto the Trustee all and singular the following (which collectively are hereinafter called the **Pledged Property**), excluding, in any event, any moneys which are specifically stated herein not to constitute part of the Pledged Property, to wit:

CLAUSE FIRST

All Pledged Lessor Notes (as hereinafter defined) as shall be actually pledged and assigned by the Company to the Trustee, together with the interest of the Company (if any) in the Lease Indentures (as hereinafter defined) securing said Lessor Notes, pursuant to the Series Supplemental Indentures or other supplemental

indentures to be executed and delivered as provided in this Indenture.

CLAUSE SECOND

All right, title and interest of the Company in, to and under any agreements with respect to commitment fees or other amounts payable by El Paso entered into between El Paso and the Company in connection with the issuance and sale of any series of Securities, if actually assigned by the Company to the Trustee pursuant to a Series Supplemental Indenture or other supplemental indentures to be executed and delivered as provided in this Indenture.

CLAUSE THIRD

All the proceeds received by the Company from the sale of the Securities, all the tolls, rents, issues, profits, products, revenues and other income of the property subjected or required to be subjected to the lien of this Indenture, and all the estate, right, title and interest of every nature whatsoever of the Company in and to the same and every part thereof.

CLAUSE FOURTH

Any property, including cash, that may, from time to time hereafter be subjected to the lien and/or pledge hereof by the Company or which pursuant to any provision of this Indenture or any Series Supplemental Indenture or other supplemental indentures to be executed and delivered as provided in this Indenture may become subjected to the lien and/or pledge hereof; and the Trustee is hereby authorized to receive the same at any time as additional security hereunder. Such subjection to the lien hereof of any such property as additional security may be made subject to any reservations, limitations or conditions which shall be set forth in a written instrument executed by the Company and/or by the Trustee respecting the scope or priority of such lien and/or pledge or the use and disposition of such property or the proceeds thereof.

TO HAVE AND TO HOLD the Pledged Property unto the Trustee and its successors and assigns forever subject to the terms of this Indenture, including, without limitation, Section 12.01.

BUT IN TRUST, NEVERTHELESS, for the equal and proportionate benefit and security of the holders from time to time of all the Securities authenticated and delivered hereunder and issued by the Company and outstanding, without any priority of any one Security over any other.

AND UPON THE TRUSTS and subject to the covenants and conditions hereinafter set forth.

ARTICLE ONE

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION.

SECTION 1.01. Definitions.

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

(1) the terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;

(2) all other terms used herein which are defined in the Trust Indenture Act (as hereinafter defined), either directly or by reference therein, have the meanings assigned to them therein;

(3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles;

(4) all reference in this Indenture to designated "Articles", "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this Indenture; and

(5) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

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

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

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control," when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the

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

"Authorized Agent" means any Paying Agent or Security Registrar.

"Authorized Officer" shall mean any officer of the Trustee or any other individual who shall be duly authorized by appropriate corporate action on the part of the Trustee to authenticate Securities.

"Board of Directors" means the board of directors of the Company, when used with respect to the Company, and either the board of directors, or any committee of that board duly authorized to act for it hereunder, when used with respect to El Paso.

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

"Business Day" means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in The City of New York, New York, the City of Boston, Massachusetts, the City of El Paso, Texas or the City of Houston, Texas are authorized by law to remain closed.

"Change" with respect to any instrument means any consent, amendment, waiver, approval, notice or direction or the execution, grant or giving of any thereof.

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

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

"Company Request" and "Company Order" mean, respectively, a written request or order signed in the name of the Company by its President or one of its Vice Presidents, and by its Treasurer, Secretary, or one of its Assistant Treasurers or Assistant Secretaries, and delivered to the Trustee.

"**Corporate Trust Office**" means the principal office of the Trustee at which at any particular time corporate trust business of the Trustee shall be administered, which at the date of this Indenture is First City Financial Center, 1301 Fannin Street, 21st Floor, Houston, Texas 77002: Attention of Corporate Trust Department.

"El Paso" means El Paso Electric Company, a Texas corporation, and, subject to the provisions hereof, its successors and assigns.

"**Equity Investor**" means any Equity Investor identified in a Schedule to a Series Supplemental Indenture, until a successor or assignees thereof shall have become such pursuant to the applicable provisions of the Participation Agreement to which such Equity Investor is a party, and thereafter "**Equity Investor**" means such successor or assignees; "**Equity Investors**" means each and every Equity Investor.

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

"**Extension Letter**" means the Extension Letter, to be dated the date of issue of a Pledged Lessor Note and addressed to the Trustee by the parties to the Participation Agreement, extending to the Trustee the representations, warranties and covenants of such parties set forth in the Participation Agreement.

"**Holder**" or "**Securityholder**" means a Person in whose name a Security is registered in the Security Register.

"**Indenture**" means this instrument as originally executed and as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof.

"**Initial Interest Date**" with respect to any series of Securities means the date of the Stated Maturity for the initial installment of interest on Securities of such series.

"**Lease Indenture**" means any Lease Indenture and any Lease Indenture Supplement identified in a Schedule to a Series Supplemental Indenture, as such Lease Indenture and Lease Indenture Supplement may be amended or supplemented from time to time pursuant to the applicable provisions thereof and of this Indenture; "Lease Indentures" means each and every Lease Indenture.

"**Leases**" means any Lease and any Lease Supplement identified in a Schedule to a Series Supplemental Indenture, as such Lease and Lease Supplement may be amended from time to time pursuant

to the applicable provisions thereof and of this Indenture; "Leases" means each and every Lease.

"Lease Indenture Trustee" means the Lease Indenture Trustee identified in a Schedule to a Series Supplemental Indenture, until a successor Lease Indenture Trustee shall have become such pursuant to the applicable provisions of the Lease Indenture to which such Lease Indenture Trustee is a party, and thereafter "Lease Indenture Trustee" means the successor Lease Indenture Trustee; "Lease Indenture Trustees" means each and every Lease Indenture Trustee.

"Lease Payments" with respect to any Lease shall mean amounts payable by El Paso under such lease in respect of (i) interim rent (if any), (ii) basic rent, (iii) casualty value, (iv) special casualty value, (v) termination value or (vi) any other amounts payable in connection with termination of the Lease, in each case as more fully described in and assigned pursuant to the related Lease Indenture; "Lease Payments" with respect to all Leases means the aggregate of Lease Payments under any and all Leases.

"Lessee Request" and "Lessee Order" mean, respectively, a written request and a written order signed in the name of El Paso by its President or one of its Vice Presidents or Assistant Vice Presidents and by its Treasurer or Secretary or one of its Assistant Treasurers or Assistant Secretaries, or by any authorized agent of El Paso, and delivered to the Trustee.

"Lessor" or "Owner Trustee" means any Lessor or Owner Trustee identified in a Schedule to a Series Supplemental Indenture until a successor shall have become such pursuant to the applicable provisions of the related Trust Agreement identified in said Schedule, and thereafter "Lessor" or "Owner Trustee" means such successor; "Lessors" or "Owner Trustees" means each and every Lessor or Owner Trustee.

"Lien of this Indenture" or "lien hereof" means the lien and security interest created by these presents, or created by any concurrent or subsequent conveyance to the Trustee (whether made by the Company or any other Person and whether pursuant to a Series Supplemental Indenture or otherwise), or otherwise created, constituting any property a part of the Pledged Property held by the Trustee for the benefit of the Securities Outstanding hereunder.

"Obligor", when used with reference to the Securities or this Indenture, means El Paso and any successor to the obligations of El Paso under a Lease, and does not include the Trustee, the Lease Indenture Trustee, an Owner Trustee or an Equity Investor so long as they have not assumed such obligations; provided, however, that no reference to El Paso as an Obligor herein shall be construed as implying any guaranty by El Paso of the Securities.

"Officers' Certificate" means a certificate signed by the President or a Vice President, and by the Treasurer, the Secretary, or one of the Assistant Treasurers or Assistant Secretaries, of El Paso, any Lessor or the Company, as the case may be, and delivered to the Trustee.

"Opinion of Counsel" means a written opinion of counsel for any Person either expressly referred to herein or otherwise satisfactory to the Trustee which may include, without limitation, counsel to the Company, any Lessor, the Lease Indenture Trustee, any Equity Investor or El Paso, whether or not such counsel is an employee of any of them.

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

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

(ii) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee in trust for the Holders of such Securities as provided in Section 12.01, provided that, if such Securities are to be redeemed (otherwise than through the operation of the Sinking Fund), notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(iii) Securities paid in full or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture unless held by a Holder in whose hands such Securities constitute valid obligations of the Company;

provided, however, that in determining whether the Holders of the requisite principal amount of Securities Outstanding have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or owned by El Paso, any Lessor or any Equity Investor, or any Affiliate of El Paso, of any Lessor or of any Equity Investor, shall be disregarded and deemed not to be Outstanding, unless such Persons own 100% of the Securities owned by all Persons, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which the Trustee knows to be so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or El Paso, any Lessor or any

Equity Investor or any Affiliate of the Company, of El Paso, of any Lessor or of any Equity Investor.

"Participation Agreement" means any Participation Agreement or other similar Lessor Note purchase document to which the Company is a party identified in a Schedule to a Series Supplemental Indenture, as such Participation Agreement or other purchase document may be amended from time to time pursuant to the applicable provisions thereof and of this Indenture; "Participation Agreements" means each and every Participation Agreement.

"Paying Agent" means any Person acting as Paying Agent hereunder pursuant to Section 9.14.

"Paying Agent's Office" means the principal office of the Paying Agent at which at any particular time corporate trust business of the Paying Agent shall be administered, which at the date of this Indenture is 120 Broadway, New York, New York.

"Permitted Investment" means (i) direct obligations of the United States of America, or (ii) obligations fully guaranteed by the United States of America, or (iii) certificates of deposit issued by, or bankers' acceptances of, or time deposits with, any bank, trust company or national banking association incorporated or doing business under the laws of the United States of America or one of the States thereof (but not exceeding $15,000,000 in principal amount of all certificates of deposit and time deposits at any given time for any one bank, trust company or national banking association) having a combined capital and surplus of at least $300,000,000 (including the Trustee, any Lease Indenture Trustee, any Lessor and any Paying Agent if such conditions are met), or (iv) commercial paper of companies incorporated or doing business under the laws of the United States of America or one of the States thereof (but not exceeding $15,000,000 in principal amount at any given time for any one company) and in each case having a rating assigned to such commercial paper by Standard & Poor's Corporation or Moody's Investors Service, Inc. (or, if neither such organization shall rate such commercial paper at any time, by any nationally recognized rating organization in the United States of America) equal to the highest rating assigned by such organization, or (v) repurchase agreements fully collateralized by an obligation of the type described in clause (i) or (iv) above, pursuant to which a bank, trust company or national banking association referred to in clause (iii) above or another financial institution having a net worth of at least $200,000,000 is obligated to repurchase any such obligation not later than 90 days after the purchase of any such obligation.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust,

unincorporated organization or government or any agency or political subdivision thereof.

"Place of Payment", when used with respect to the Securities of any series, means the office or agency maintained pursuant to Section 5.02 hereof and such other place or places, if any, where the principal of (and premium, if any) and interest on the Securities of that series are payable as specified in the Series Supplemental Indenture setting forth the terms of the Securities of such series.

"Pledged Lessor Note" means any Lessor Note identified in a Schedule to a Series Supplemental Indenture, as such Lessor Note may be amended or supplemented from time to time pursuant to the applicable provisions thereof, of the related Lease Indenture and of this Indenture; "Pledged Lessor Notes" means each and every Pledged Lessor Note.

"Pledged Property" has the meaning set forth in the Granting Clauses.

"Predecessor Securities" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 2.09 in lieu of a lost, destroyed or stolen Security shall be deemed to evidence the same debt as the lost, destroyed or stolen Security.

"Principal Instruments" means the Pledged Lessor Notes, the Lease Indentures, the Participation Agreements and the Leases.

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

"Redemption Price" when used with respect to any Security to be redeemed means the price (inclusive of accrued interest) at which it is to be redeemed pursuant to this Indenture and the terms of such Security.

"Regular Record Date" for the Stated Maturity of any installment of interest means the 15th day (whether or not a Business Day) next preceding such Stated Maturity.

"Responsible Officer" when used with respect to the Trustee means any officer of the Trustee customarily performing corporate trust functions.

"Security Register" has the meaning specified in Section 2.08.

"Security Registrar" means any Person acting as Security Registrar hereunder pursuant to Section 9.14.

"Series Supplemental Indenture" means an indenture supplemental to this Indenture, for the purpose of specifying, in accordance with Article Two hereof, the form of the Securities of any series, and/or for the purpose of subjecting to the Lien of this Indenture the Pledged Lessor Notes related to such series; "Series Supplemental Indentures" means each and every Series Supplemental Indenture.

"Sinking Fund" has the meaning specified in Section 7.01.

"Special Record Date" for the payment of any defaulted interest means a date fixed by the Trustee pursuant to Section 2.10.

"Stated Maturity" when used with respect to any Security or any installment of interest thereon means the date specified in such Security as the fixed date on which the principal of such Security or such installment of interest is due and payable.

"Trust Indenture Act" or "TIA" means the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed, except as provided in Section 11.06.

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

SECTION 1.02. Compliance Certificates and Opinions.

Upon any application or request by the Company, any Lessor or El Paso to the Trustee to take any action under any provision of this Indenture, the Company, such Lessor or El Paso, as the case may be, shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished; provided that any action which may be taken under any provision of this Indenture by a Lessor may be taken by El Paso on behalf of such

Lessor pursuant to the agency granted to El Paso pursuant to the Participation Agreement unless and until the Trustee has been notified of the revocation of such agency.

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

(1) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

SECTION 1.03. Form of Documents Delivered to Trustee.

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company, of any Lessor or of El Paso may be based, in so far as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, in so far as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company, of any Lessor or of El Paso, as the case may be, stating that the information with respect to such factual matters is in the possession of the Company, such Lessor or El Paso, respectively, unless such counsel knows that the

certificate or opinion or representations with respect to such matters are erroneous.

Any Opinion of Counsel stated to be based on the opinio[illegible] other counsel shall be accompanied by a copy of such other opin[illegible]

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

SECTION 1.04. Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company and to El Paso. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 9.01) conclusive in favor of the Trustee, the Company and El Paso, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction authorized to take acknowledgments of deeds or administer oaths that the Person executing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or other such officer and where such execution is by an officer of a corporation or association or a member of a partnership, on behalf of such corporation, association or partnership, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

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

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Security shall

bind the Holder of every Security issued upon the transfer thereof or in exchange therefor or in lieu thereof, whether or not notation of such action is made upon such Security.

SECTION 1.05. Notices, etc., to Trustee, El Paso and Company.

Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

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

(2) the Company by the Trustee, by any Holder, by El Paso or by an Authorized Agent shall be sufficient for every purpose hereunder if in writing and mailed, first-class postage prepaid, to the Company addressed to it at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee and El Paso by the Company for such purpose, or

(3) El Paso by the Trustee, by any Holder, by the Company or by an Authorized Agent shall be sufficient for every purpose hereunder if in writing and mailed, first-class postage prepaid, to El Paso addressed to it at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee and the Company by El Paso for such purpose.

SECTION 1.06. Notices to Holders; Waiver.

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder, at his address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. 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 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, and any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given.

SECTION 1.07. Conflict with Trust Indenture Act.

If any provision hereof limits, qualifies or conflicts with another provision hereof which is required to be included in this Indenture by any of the provisions of the TIA, such required provision shall control. Notwithstanding the foregoing, the provisions of the TIA contained in Sections 9.08, 9.13 and 10.03 shall not become operative under this Indenture until this Indenture shall have been qualified under the TIA.

SECTION 1.08. Effect of Heading and Table of Contents.

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

SECTION 1.09. Successors and Assigns.

All covenants, agreements, representations and warranties in this Indenture by the Trustee, El Paso and the Company shall bind and, to the extent permitted hereby, shall inure to the benefit of and be enforceable by their respective successors and assigns, whether so expressed or not.

SECTION 1.10. Separability Clause.

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

SECTION 1.11. Benefits of Indenture.

Nothing in this Indenture or in the Securities, expressed or implied, shall give to any Person, other than the parties hereto and their successors hereunder, the Holders of Securities, and the Lessors and the Equity Investors as expressly provided herein, any benefit or any legal or equitable right, remedy or claim under this Indenture.

SECTION 1.12. Governing Law.

This Indenture and each Security are being executed and delivered in the State of New York, shall be deemed to be contracts made in such State and for all purposes shall be construed in accordance with and governed by the laws of the State of New York.

SECTION 1.13. Legal Holidays.

In any case where the Redemption Date or the Stated Maturity of any Security or of any installment of interest, or any date on which any defaulted interest is proposed to be paid, shall not be a Business Day, then (notwithstanding any other provision of this Indenture) payment of interest and/or principal (and premium, if any) need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the Redemption Date or at the Stated Maturity, or on the date on which the defaulted interest is proposed to be paid, and no interest shall accrue for the period from and after such Redemption Date or Stated Maturity, or date for the payment of defaulted interest, as the case may be.

ARTICLE TWO

THE SECURITIES

SECTION 2.01. Forms Generally.

The Securities of each series shall be in the form (not inconsistent with this Indenture) as shall be established in one or more Series Supplemental Indentures, in each case with such appropriate insertions, omissions, substitutions and other variations in and to such form as are required or permitted by this Indenture and may have imprinted or otherwise reproduced thereon such legend or legends, not inconsistent with the provisions of this Indenture, as may be required to comply with any law or with any rules or regulations pursuant thereto, or with any rules of any securities exchange or to conform to general usage, all as may be determined by the officers executing such Securities, as evidenced by their execution thereof.

SECTION 2.02. Form of Trustee's Authentication.

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

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

FIRST CITY NATIONAL BANK OF HOUS
as Trustee

By_____
Authorized Officer

SECTION 2.03. Amount Unlimited; Issuable in Series; Limitations on Issuance.

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited. Securities may be issued hereunder up to the aggregate principal amount which may be authorized from time to time by the Board of Directors of the Company.

The terms of any series of Securities relative to payment of principal thereof, and premium (if any) and interest thereon, need not correspond exactly to the schedule for such payments under the related Pledged Lessor Notes.

The Securities may be issued in one or more series. There shall be established in one or more Series Supplemental Indentures, prior to the issuance of Securities of any series,

(1) the title of the Securities of the series (which shall distinguish the Securities of the series from all other Securities) and the form or forms of Securities of such series;

(2) any limit upon the aggregate principal amount of the Securities of such series that may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of, other Securities of such series pursuant to Section 2.07, 2.08, 2.09, 6.06 or 11.07);

(3) the date or dates on which the principal of the Securities of such series is payable;

(4) the rate or rates at which the Securities of such series shall bear interest, or the method by which such rate shall be determined, the date or dates from which such interest shall accrue, the interest payment dates on which such interest shall be payable and the record dates

for the determination of Holders to whom interest is payable;

(5) the place or places where the principal and interest on Securities of such series shall be payable (if other than as provided in Section 5.02);

(6) the price or prices at which, the period or periods within which and the terms and conditions upon which Securities of such series may be redeemed, in whole or in part, at the option of the Company, pursuant to any sinking fund or otherwise;

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

(8) if other than denominations of $1,000 and any multiple thereof, the denominations in which Securities of such series shall be issuable;

(9) any other terms of such series (which terms shall not be inconsistent with the provisions of this Indenture); and

(10) any trustees, authenticating or paying agents, warrant agents, transfer agents or registrars with respect to the Securities of such series;

provided, however, that, after giving effect to the issuance of a new series of the Securities and the subjection to the Lien of this Indenture of the related Pledged Lessor Notes, the average of the daily balance of Excess Funds for each fiscal year of the Company shall not exceed 10% of the average of the aggregate principal amount of Securities Outstanding on each day in such fiscal year. For purposes of the foregoing proviso, "Excess Funds" shall mean, for any day, amounts actually paid to the Trustee under the Pledged Lessor Notes in excess of amounts then due and payable in respect of Securities.

SECTION 2.04. Authentication and Delivery of Securities.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee shall thereupon authenticate and deliver such Securities in accordance with such Company Order, without any further action by the Company. In authenticating such Securities and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and (subject to Section 9.01) shall be fully protected in relying upon:

(1) an executed Series Supplemental Indenture;

(2) an Officers' Certificate of the Company (a) certifying as to resolutions of the Board of Directors of the Company by or pursuant to which the terms of the Securities of such series were established, (b) certifying that all conditions precedent under this Indenture to the Trustee's authentication and delivery of such Securities have been complied with and (c) certifying that (x) the terms of the documents referred to in clauses (3) and (4) below are not inconsistent with the terms of this Indenture as then and theretofore supplemented and (y) such documents comply with Exhibit A hereto (if applicable);

(3) fully executed counterparts (but not the original thereof) of (a) the Lease Indentures under which were issued the Pledged Lessor Notes relating to such series of Securities and (b) the Leases relating to such Pledged Lessor Notes;

(4) the original of the Pledged Lessor Notes relating to such series of Securities;

(5) signed copies, either addressed to the Trustee or accompanied by statements that the Trustee may rely on such documents, of all certificates and opinions of counsel delivered to the Company in connection with its purchase pursuant to the applicable Participation Agreements of the Pledged Lessor Notes relating to such series of Securities and, to the extent not covered by such opinions, Opinions of Counsel (x) to the effect that: (a) the form or forms and the terms of such Securities have been established by a Series Supplemental Indenture as permitted by Sections 2.01 and 2.03 in conformity with the provisions of this Indenture; (b) such Securities, when authenticated and delivered by the Trustee and issued by the Company in the

manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Company; and (c) all laws and requirements in respect of the execution and delivery by the Company of the Securities have been complied with; and (y) covering such other matters as the Trustee may reasonably request; and

(6) duly executed Extension Letters relating to the Pledged Lessor Notes;

provided, however, that if a series of Securities is to be authenticated by the Trustee in advance of the actual delivery to the Trustee of the Pledged Lessor Notes relating thereto, (X) the documents described in the foregoing clauses (2)(c), (3), (4), (5) (other than the opinion described in subclauses (x) and (y)) and (6) need not be delivered in connection with such authentication, but shall be delivered in connection with the release of the proceeds of the sale of such series of Securities in accordance with Sections 2.15 and 13.01 hereof and (Y) the form of the Series Supplemental Indenture shall be appropriately modified to reflect the later delivery and pledge of the related Pledged Lessor Notes.

Receipt by the Trustee of the Officer's Certificate referred to in clause (2) above shall be conclusively presumed for all purposes of this Indenture to establish that the Lease Indentures, the Leases and the Pledged Lessor Notes referred to in such certification comply with the requirements of Exhibit A hereto.

The Trustee shall have the right to decline to authenticate and deliver any Securities under this Section if the Trustee, being advised by counsel, determines that such action may not lawfully be taken by the Company or if the Trustee in good faith by its board of directors or board of trustees, executive committee, or a trust committee of directors or trustees and/or responsible officers shall determine that such action would expose the Trustee to personal liability.

SECTION 2.05. Form and Denominations.

The Securities of each series shall be in registered form and may have such letters, numbers or other marks of identification and such legends or endorsements printed, lithographed or engraved thereon, as may be required to comply with the rules of any securities exchange or to conform to any usage in respect thereof, or as may, consistently herewith, be prescribed by the Board of Directors of the Company or by the officers executing such Securities, such determination by said officers to be evidenced by their signing the Securities.

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

All Securities of any one series shall be substantially identical except as to denomination and Stated Maturity and except as may otherwise be provided herein or in the Series Supplemental Indenture setting forth the terms of the Securities of such series.

SECTION 2.06. Execution of Securities.

The Securities shall be executed on behalf of the Company by its President or one of its Vice Presidents under its corporate seal reproduced thereon and attested by its Secretary or one of its Assistant Secretaries. The signature of any such officers on the Securities may be manual or facsimile.

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

SECTION 2.07. Temporary Securities.

Pending the preparation of definitive Securities of any series, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities of such series which are printed, lithographed, typewritten, photocopied or otherwise produced, in any denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

If temporary Securities of any series are issued, the Company will cause definitive Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company, for such purpose, in the Place of Payment, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like aggregate principal amount of definitive

Securities of such series of authorized denominations. Until so exchanged such temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

SECTION 2.08. Registration, Transfer and Exchange.

The Trustee shall cause to be kept at the Corporate Trust Office a register in which, subject to such reasonable regulations as the Company may prescribe, the Company shall provide for the registration of Securities and of registration of transfers and exchanges of Securities. This register and, if there shall be more than one Security Registrar, the combined registers maintained by all such Security Registrars, are herein sometimes referred to as the "Security Register".

Upon surrender for registration of transfer of any Security of any series at the Corporate Trust Office, or at any office or agency maintained for such purpose pursuant to Section 9.14(a), the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of the same series and of the same Stated Maturity for principal and interest and of a like aggregate principal amount.

At the option of the Holders, Securities of any series may be exchanged for an equal aggregate principal amount of Securities of the same series and of the same Stated Maturity for principal and interest and of any authorized denominations, upon surrender of the Securities to be exchanged at the Corporate Trust Office, or at any office or agency maintained for such purpose pursuant to Section 9.14(a). Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee or any other Authenticating Agent shall authenticate and deliver, the Securities which the Securityholder making the exchange is entitled to receive.

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

Every Security presented or surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Security Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be required of any Securityholders participating in any transfer or exchange of Securities in respect of

such transfer or exchange, but the Security Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Securities, other than exchanges pursuant to Sections 2.07, 6.06 or 11.07 not involving any transfer.

The Security Registrar shall not be required (i) to issue, transfer or exchange any Security of any series during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Securities of such series selected for redemption under Section 6.02 or 7.02 and ending at the close of business on the day of such mailing, or (ii) to transfer or exchange any Security so selected for redemption in whole or in part except the unredeemed portion of any Security selected for redemption in part.

SECTION 2.09. Mutilated, Destroyed, Lost and Stolen Securities.

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

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company may, upon satisfaction of the conditions set forth in clauses (i) and (ii) of the preceding paragraph, instead of issuing a new Security, pay such Security.

Upon the issuance of any new Security under this Section, the Security Registrar 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.

Every new Security issued pursuant to this Section in lieu of any destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the security and

benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

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

SECTION 2.10. Payment of Interest; Interest Rights Preserved.

Interest on any Security which is payable, and is punctually paid or duly provided for, at any Stated Maturity of an installment of interest shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest. At the option of the Company, payment of interest on any Security may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register.

Any interest on any Security of any series which is payable, but is not punctually paid or duly provided for, at any Stated Maturity of an installment of interest shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder; and such defaulted interest may be paid by the Company, at its election in each case, as provided in paragraph (1) or paragraph (2) below:

(1) The Company may elect, which election shall be at the direction of any Lessor whose Pledged Lessor Note is in default in respect of the payment of interest and who is proposing to make payment of all or part of such defaulted interest, to make payment of any defaulted interest to the Persons in whose names the Securities of such series in respect of which interest is in default (or their respective Predecessor 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. Such Lessor shall notify the Trustee and the Paying Agent in writing of the amount of defaulted interest proposed to be paid on each such Security and the date of the proposed payment, and at the same time there shall be deposited with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such defaulted interest or there shall be made 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 paragraph provided. Thereupon the Trustee shall fix a Special Record Date for

the payment of such defaulted interest which shall be not more than 15 nor 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 and the Security Registrar of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such defaulted interest and the Special Record Date therefor to be mailed, first class postage prepaid, to each holder of a Security of such series at his address as it appears in the Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such defaulted interest and the Special Record Date therefor having been mailed as aforesaid, such defaulted interest shall be paid to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered on such Special Record Date and shall no longer be payable pursuant to the following paragraph (2).

(2) The Company may make, or cause to be made, payment of any defaulted interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities in respect of which interest is in default 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 paragraph, such payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section, each Security delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security, and each such Security shall bear interest from whatever date shall be necessary so that neither gain nor loss in interest shall result from such transfer, exchange or replacement.

SECTION 2.11. Persons Deemed Owners.

Prior to due presentment for registration of transfer, the Person in whose name any Security is registered shall be deemed to be the owner of such Security for the purpose of receiving payment of principal of (and premium, if any), and (subject to Section 2.10) interest on, such Security and for all other purposes whatsoever, whether or not such Security be overdue, regardless of any notice to anyone to the contrary.

SECTION 2.12. Cancellation.

All Securities surrendered for payment, redemption, credit against any Sinking Fund payment or redemption payment, transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee for cancellation. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly cancelled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by this Indenture. All cancelled Securities held by the Trustee shall be destroyed and certification of their destruction delivered to the Company unless, by Company Request, the Company otherwise directs.

SECTION 2.13. Dating of Securities; Authentication.

Each Security of any series shall be dated the date of the original issuance of the Securities of such series by the Company, which date shall be specified by the Company in the Company Order delivered to the Trustee pursuant to Section 2:04 in connection with the original authentication and delivery of the Securities of such series. No Security shall be secured by or entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication, in the form provided for herein, executed by the Trustee by the manual signature of one of its Responsible Officers or any Authorized Officer, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder.

SECTION 2.14. Source of Payments: Rights and Liabilities of Lessors and Equity Investors.

All payments of principal and premium (if any) and interest to be made under the Securities and this Indenture (other than payments made in connection with an optional redemption by a Lessor) shall be made only from assets subject to the lien of this Indenture or the income and proceeds received by the Trustee therefrom. Each Holder, by its acceptance of a Security, agrees that (x) it will look solely to the assets subject to the lien of this Indenture or the income and proceeds received by the Trustee therefrom to the extent available for distribution to such Holder as herein provided and (y) none of any Equity Investor, any Lessor, any Lease Indenture Trustee or the Trustee is liable to any Holder or, in the case of any Equity Investor, Lessor and Lease Indenture Trustee, to the Trustee for any amounts payable under any Security or, except as provided herein with respect to the Trustee, for any liability under this Indenture. An Equity Investor, Lessor or Lease Indenture Trustee shall not have any

duty or responsibility under this Indenture or the Securities to any Holder or to the Trustee.

SECTION 2.15. Sale of Securities; and Application of Proceeds from the Sale of Securities.

(a) Promptly upon receipt by the Company of the proceeds from any sale of a series of the Securities, the Company shall deposit such proceeds with the Trustee. The funds so deposited shall be held by the Trustee in a separate account as part of the Pledged Property and shall be invested, applied and distributed by the Trustee as provided herein.

(b) Subject to the provisions of Section 13.01, upon the issuance of the Pledged Lessor Notes related to any series of Securities and the delivery thereof to the Trustee to be subjected to the Lien of this Indenture pursuant to a Series Supplemental Indenture, the Trustee shall pay to the Lessor obligated in respect of any such Pledged Lessor Note, out of funds held by the Trustee in such separate account as Pledged Property, an amount equal to the principal amount of such Pledged Lessor Note in respect of which such Lessor is obligated. All payments to be made by the Trustee to any Lessor shall be made in immediately available funds at the respective offices designated by such Lessor.

ARTICLE THREE

PROVISIONS AS TO PLEDGED PROPERTY

SECTION 3.01. Holding of Pledged Securities.

The Trustee is authorized in its discretion to cause to be registered in its name, as Trustee, or in the name of its nominee, any and all coupon bonds which it may receive as part of the Pledged Property, or it may cause the same to be exchanged for registered bonds without coupons of any denomination. The Trustee may cause to be transferred into its name, as Trustee, or into the name of its nominee, any and all registered bonds which it may receive as part of the Pledged Property, or may cause such registered bonds to be exchanged for coupon bonds. All Pledged Lessor Notes assigned to and pledged with the Trustee pursuant to any provision of this Indenture or any Series Supplemental Indenture shall be endorsed in blank for transfer or be accompanied by proper instruments of assignment satisfactory to the Trustee, duly executed by the Company. The Company will deliver promptly to the Trustee such documents, certificates and opinions as the Trustee may reasonably request in connection with subjection of any securities to the Lien of this Indenture to the extent contemplated hereby.

SECTION 3.02. Disposition of Payments on Pledged Property.

Unless and until all Outstanding Securities have been paid in full or provision for the payment of such Securities has been made in accordance with this Indenture, the Trustee shall be entitled to receive all principal, premium (if any) and interest paid in respect of any Pledged Lessor Notes and interest paid on bonds or other obligations or indebtedness which may be subject to the lien of this Indenture and shall apply the same to the payment of the principal of, and premium (if any) and interest on, the Securities when and as they become due and payable pursuant to, and in accordance with, this Indenture. The Trustee shall duly note on the Schedules attached to the Pledged Lessor Notes or by other appropriate means all payments of principal, premium, if any, and interest made on the Pledged Lessor Notes.

SECTION 3.03. Exercise of Rights and Powers Under Pledged Lessor Notes and Lease Indentures.

The Trustee shall not take any action as the holder of the Pledged Lessor Notes to direct any Lease Indenture Trustee in any respect or to vote any Pledged Lessor Note or any portion thereof except as specified in this Section. The Trustee shall give notice to the Securityholders of the occurrence of any Indenture Event of Default or Indenture Default under any Lease Indenture (as defined therein), and of every Event of Loss, Deemed Loss Event, or Special Loss Event occurring under a Lease, but only to the extent the same shall actually be known by an officer in the corporate trust department of the Trustee. The Trustee may, at any time, and shall, upon the request of any Lease Indenture Trustee made to the Trustee to give any direction or to vote its interest in the Pledged Lessor Notes, request from Securityholders directions as to (i) whether or not to direct such Lease Indenture Trustee to take or refrain from taking any action which holders of a Pledged Lessor Note have the option to direct and (ii) how to vote any Pledged Lessor Note if a vote has been called for with respect thereto. In addition, any Securityholder may at any time request the Trustee to direct, or to participate in the direction of, any action under any Lease Indenture to the extent that the Trustee may do so under such Lease Indenture. In directing any action or casting any vote as the holder of a Pledged Lessor Note, the Trustee shall specify to the Lease Indenture Trustee the principal amount of the Pledged Lessor Note which is in favor of the action or vote, the principal amount of the Pledged Lessor Note which is opposed to the action or vote, and the principal amount of the Pledged Lessor Note which is not taking any position for the action or vote. Such principal amounts shall be determined by allocating the total principal amount of the Pledged Lessor Note with respect to which direction was requested in accordance with the principal amount of Securities taking corresponding positions or not taking any position. In addition, the Trustee shall certify to the

Lease Indenture Trustee that the principal amounts of Securities taking such corresponding positions or not taking any position was determined in accordance with the provisions of this Indentu[illegible]

SECTION 3.04. Certain Actions in Case of Judici[illegible] Proceedings.

In case all or any part of the property of any Lessor or any other Person which may be deemed an obligor in respect of the Pledged Lessor Notes shall be sold at any judicial or other involuntary sale, the Trustee shall receive any portion of the proceeds of such sale accruing on the Pledged Property held hereunder, and such proceeds shall be held as provided in Section 3.05.

SECTION 3.05. Cash Held by Trustee Treated as a Deposit.

Any and all cash held by the Trustee under any provision of this Indenture may be treated by the Trustee, until required to be paid out hereunder, as a deposit, in trust, without any liability for interest.

ARTICLE FOUR

WITHDRAWAL OF COLLATERAL.

SECTION 4.01. Withdrawal of Collateral.

Except as provided in Section 4.02 and Article Thirt[illegible] none of the Pledged Property shall be subject to withdrawal unless and until all Outstanding Securities have been paid in full or provision for such payment has been made in accordance with the terms of this Indenture and the Trustee shall have received the documents and opinions required by Article Twelve.

SECTION 4.02. Reassignment of Pledged Lessor Notes upon Payment.

Upon receipt of payment in full of the principal of, and premium (if any) and interest on, any Pledged Lessor Note held by the Trustee, the Trustee shall deliver to the Company said Pledged Lessor Note and any instrument of transfer or assignment necessary to reassign to the Company said Pledged Lessor Note and the interest of the Company (if any) in the Lease Indenture relating thereto; provided that nothing herein contained shall prevent the Trustee from presenting any Pledged Lessor Note to a Lease Indenture Trustee for final payment in accordance with the applicable provisions of the related Lease Indenture.

ARTICLE FIVE

COVENANTS

SECTION 5.01. Payment of Principal, Premium (if any) and Interest.

The Company will duly and punctually pay, or cause to be paid, the principal of, and premium, if any, and interest on, the Securities in accordance with the terms of the Securities and this Indenture.

SECTION 5.02. Maintenance of Office or Agency.

The Company will maintain in the Borough of Manhattan, The City of New York, an office or agency where Securities may be presented or surrendered for payment, where Securities may be surrendered for transfer or exchange and where notices and demands to or upon the Company in respect of Securities and this Indenture may be served. The Paying Agent's Office is hereby designated as such office or agency. El Paso will give prompt written notice to the Trustee of the location, and of any change in the location, of each such office or agency. If at any time the Company shall fail to maintain any such office or agency or the Company or El Paso shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee its agent to receive all such presentations, surrenders, notices and demands.

SECTION 5.03. Money for Security Payments to be Held in Trust.

All moneys deposited with the Trustee or with any Paying Agent for the purpose of paying the principal of or premium, if any, or interest on Securities shall be deposited and held in trust for the benefit of the Holders of the Securities entitled to such principal, premium, if any, or interest, subject to the provisions of this Section. Moneys so deposited and held in trust shall not be a part of the Pledged Property but shall constitute a separate trust fund for the benefit of the Holders of the relevant Securities.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or direct any Paying Agent to pay, to the Trustee all sums held in trust by such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent in trust for the payment of the principal of or premium, if any, or interest on any Security and remaining unclaimed for three years (or such lesser period as may be required by law to give effect to this provision) after such principal, premium or interest has become due and payable shall be paid to the Company on Company Request (to the extent such monies shall have been deposited by the Company) or to any other Person on its request (to the extent such monies shall have been deposited by such other Person); and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company or such other Person, to the extent such monies shall have been paid to the Company or such other Person, as the case may be, for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company or, to the extent such monies are to be paid to another Person, such other Person cause to be mailed to each such Holder notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such mailing, any unclaimed balance of such money then remaining will be repaid to the Company or such other Person.

SECTION 5.04. Maintenance of Corporate Existence.

The Company, at its own cost and expense, will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights and franchises, except as otherwise specifically permitted in this Indenture; provided, however, that the Company shall not be required to preserve any right or franchise if the Board of Directors of the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not disadvantageous in any material respect to the Securityholders.

SECTION 5.05. Protection of Pledged Property.

The Company and El Paso will from time to time execute and deliver all such supplements and amendments hereto and all such financing statements, continuation statements, instruments of further assurance, and other instruments necessary to

(i) grant more effectively all or any portion of the Pledged Property,

(ii) maintain or preserve the lien of this Indenture or carry out more effectively the purposes hereof,

(iii) perfect, publish notice of, or protect the validity of, any grant made or to be made by this Indenture,

(iv) enforce any of the Securities, or

(v) preserve and defend title to any Securities or other instrument included in the Pledged Property and the rights of the Trustee, and of the Securityholders, in such Securities or other instrument against the claims of all persons and parties.

The Company hereby designates the Trustee its agent and attorney-in-fact to execute any financing statement, continuation statement or other instrument required pursuant to this Section.

SECTION 5.06. Opinions as to Pledged Property.

Promptly after the execution and delivery of this Indenture and of each Series Supplemental Indenture or other supplemental indenture or other instrument of further assurance, the Company shall furnish to the Trustee an Opinion of Counsel stating that, in the opinion of such Counsel, this Indenture and all such Series Supplemental Indentures, other supplemental indentures and other instruments of further assurance have been properly recorded, registered and filed to the extent necessary to make effective the lien intended to be created by this Indenture, and reciting the details of such action or referring to prior Opinions of Counsel in which such details are given, and stating that all financing statements and continuation statements have been executed and filed that are necessary fully to preserve and protect the rights of the Securityholders and the Trustee, or stating that, in the opinion of such Counsel, no such action is necessary to make such lien effective.

On or before May 1, in each calendar year, beginning with the first calendar year commencing more than three months after the date of authentication and delivery of any Securities, the Company shall furnish to the Trustee an Opinion of Counsel either stating that, in the opinion of such counsel, such action has been taken with respect to the recording, filing, re-recording and re-filing of this Indenture, any Series Supplemental Indenture and any other requisite documents and with respect to the execution and filing of any financing statements and continuation statements as is necessary to maintain the lien and security interest created by this Indenture with respect to the Pledged Property and reciting the details of such action or stating that in the opinion of such counsel no such action is necessary to maintain such lien and security interest. Such Opinion of Counsel shall also describe the recording, filing, re-recording and re-filing of this Indenture, any Series Supplemental Indenture and any other requisite documents and the execution and

filing of any financing statements and continuation statements that will, in the opinion of such counsel, be required to maintain the lien and security interest of this Indenture with respect to the Pledged Property until May 1 in the following calendar year.

SECTION 5.07. Performance of Obligations

(a) Neither the Company nor El Paso will take any action or permit any action to be taken by others which would release any Person from any of such Person's covenants or obligations under any instrument included in the Pledged Property, or which would result in the amendment, hypothecation, subordination, termination or discharge of, or impair the validity or effectiveness of, any such instrument, except as expressly provided in this Indenture.

(b) El Paso will fully perform all of its obligations under the Leases.

SECTION 5.08. Negative Covenants

During such time as any Security issued hereunder is Outstanding, the Company will not:

(i) sell, transfer, exchange or otherwise dispose of any portion of the Pledged Property except as expressly permitted by this Indenture;

(ii) engage in any business or activity other than in connection with, or relating to, the issuance of Securities pursuant to this Indenture or amend Article Third, Fourth or Sixth of its Certificate of Incorporation as in effect on the date of execution and delivery of this Indenture, without, in each case, the consent of the Holders of not less than 66 2/3% of the aggregate principal amount of the Securities then Outstanding; notwithstanding the foregoing, however, the Company may, with respect to one or more series of Securities (or one or more Stated Maturities within any series), enter into credit or liquidity support facilities (including, but without limitation, bank letters of credit, bank lines of credit and bonds of insurance) and may engage in interest rate swaps;

(iii) issue bonds, notes or other evidences of indebtedness other than (i) Securities issued hereunder or (ii) bonds, notes or other evidences of indebtedness secured by a pledge of Securities issued hereunder or evidencing indebtedness permitted by clause (ii) above;

(iv) incur, assume or guaranty any indebtedness of any Person;

(v) dissolve or liquidate in whole or in part;

(vi) take any action which would (1) permit the validity or effectiveness of this Indenture or any grant of any of the Pledged Property to be impaired, or permit the Lien of this Indenture to be amended, hypothecated, subordinated, terminated or discharged, or permit any Person to be released from any covenant or obligation under this Indenture, (2) permit any Lien, charge, security, mortgage or other encumbrance (other than the lien of this Indenture) to be created on or extend to or otherwise arise upon or burden the Pledged Property or any part thereof or any interest therein or the proceeds thereof, or (3) permit the Lien of this Indenture not to constitute a valid first priority security interest in the Pledged Property; or

(vii) institute any proceedings to be adjudicated a bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against it, or file a petition or answer or consent seeking reorganization or relief under the Federal Bankruptcy Act or any other applicable federal or state law or law of the District of Columbia, or consent to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or any substantial part of its property, or make an assignment for the benefit of its creditors, or admit in writing its inability to pay its debts generally as they become due, or take any corporate action in furtherance of the foregoing.

SECTION 5.09. Administration of Principal Instruments.

(a) Without the consent of the Holders of a majority in principal amount of Outstanding Securities (or, in the case of Changes to a Support Facility, the series (or the Stated Maturity Dates within a series) of outstanding Securities benefiting from such Support Facility), the Trustee shall not consent to any Change in any Principal Instrument; provided, however, that the Trustee may consent to any Change in any Principal Instrument if such Change is permitted by subsection (b) of this Section 5.09.

(b) Subject to the provisions of subsection (c) of this Section 5.09, the Trustee may consent to any Change in any Principal Instrument if such Change is:

(1) to cure any ambiguity, to correct or supplement any provision in such Principal Instrument which may be defective or inconsistent with any other provision in such Principal Instrument or any related Principal Instrument,

or to make any other provisions with respect to matters arising under any such Principal Instrument, provided, in each instance, that such action shall not materially adversely affect the interests of Holders of Securities; or

(2) to add to the covenants and agreements of the parties to such Principal Instrument other covenants and agreements thereafter to be observed by any such party, or to surrender any right or power therein reserved to or conferred upon the Company; or

(3) to amend or supplement such Principal Instrument, or to give any consent or grant any waiver thereunder, so long as thereafter such Principal Instrument will comply with the requirements (if any) of Exhibit A hereto; provided that such action does not materially adversely affect the interests of Holders of Securities; or

(4) in any other manner not inconsistent with Exhibit A hereto; provided that such action does not materially adversely affect the interests of Holders of Securities; or

(5) a Change in the Lease permitted by applicable provisions of the related Lease Indenture; or

(6) to describe more fully and to amplify or correct the description of any property or rights assigned or pledged by such Principal Instrument or intended so to be, or to assign, pledge, mortgage or grant a security interest in any additional property, rights and interests, subject to such liens, restrictions or other encumbrances, if any, as shall be therein specifically described; or

(7) in the case of a Lease Indenture, to enable the Lease Indenture Trustee thereunder to confer upon holders of Pledged Lessor Notes any additional rights, remedies, powers or authorities that may lawfully be granted or conferred upon such holders; or

(8) to evidence the appointment of a separate or co-Lease Indenture Trustee or the succession of a new Lease Indenture Trustee; or

(9) to evidence the succession of or assumption by a successor or assignee Lessee under the Leases and the Participation Agreements or to evidence the succession of a new Lessor or Owner Trustee under any Principal Document to which it is a party; or

(10) permitted by the terms of such Principal Instrument to be made without the consent of or notice to the holders of the related Pledged Lessor Notes; or

(11) to provide for the issuance of Lessor Notes in addition to the Pledged Lessor Notes relating to such Principal Instruments in accordance with the applicable provisions of the related Principal Instruments.

(c) No Change with respect to a Principal Instrument, whether effected pursuant to subsection (a) or pursuant to subsection (b) of this Section 5.09, and anything in such subsections or elsewhere in this Indenture to the contrary notwithstanding, shall, without the consent of the Holder of each Outstanding Security affected thereby:

(1) except as provided in any Lease, change such Lease in such a way as to change the timing or reduce the amount of any Lease Payment, or otherwise to release, except as provided in such Lease, El Paso from its obligation under such Lease in respect of payment of Lease Payments; or

(2) modify, amend or supplement the Participation Agreements in such a way as to, or give any consent, waiver, authorization or approval which would, release any Equity Investor from its payment obligations contained in said Participation Agreements.

(d) Except during the continuance of an Event of Default hereunder, upon request of the Company or El Paso, the Trustee shall consent to any Change described in this Section 5.09, and shall execute any instrument requested by the Company or El Paso, as the case may be, for the purpose of confirming such consent, but only upon receipt by the Trustee of an Officers' Certificate and an Opinion of Counsel of the Company or El Paso, as the case may be, each stating that such Change is authorized by this Indenture and that execution of such instrument is appropriate to confirm such consent, unless such Change adversely affects the Trustee's rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may, in its discretion, but shall not be obligated to, give such consent and the Trustee shall be fully protected in relying on such Officers' Certificate and Opinion of Counsel.

SECTION 5.10. Annual Statement as to Compliance.

(a) El Paso and the Company each will deliver to the Trustee, on or before 120 days after the end of each of its fiscal years, a written statement (which need not comply with Section 1.02) signed by its President or one of its Vice Presidents and by its

Treasurer or one of its Assistance Treasurers or its Comptroller or one of its Assistant Comptrollers, stating, as to each signer thereof, that

(1) a review of the activities of El Paso or the Company, as the case may be, required during such year of El Paso or the Company, as the case may be, under this Indenture has been made under his supervision; and

(2) to the best of his knowledge, based on such review, El Paso or the Company, as the case may be, has fulfilled all its obligations under this Indenture throughout such year, or, if there has been a default in the fulfillment of any such obligation, specifying each such default known to such officer and the nature and status thereof.

(b) El Paso and the Company each will deliver to the Trustee, promptly after having obtained knowledge thereof, but in no event later than five days thereafter, written notice of any event which with the giving of notice or lapse of time, or both, would become an Event of Default under Section 8.01.

ARTICLE SIX

REDEMPTION OF SECURITIES

The provisions of this Article Six shall be applicable to the Securities of any series which are redeemable before their Stated Maturity of principal except as otherwise provided in such Securities or the Series Supplemental Indenture with respect thereto as contemplated by Section 2.03.

SECTION 6.01. Notice to Trustee of Redemption.

In case of any redemption of any Securities of any series otherwise than through the operation of an applicable Sinking Fund, the Company shall, at least 45 days prior to the scheduled Redemption Date (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee in writing of such Redemption Date and of the principal amount of Securities of such series to be redeemed.

SECTION 6.02. Selection by Trustee of Securities to be Redeemed.

If fewer than all the Securities of any series are to be redeemed, other than through the operation of an applicable Sinking Fund, the particular Securities of such series to be redeemed shall be selected following receipt by the Trustee of the notice required

by Section 6.01, but not more than 60 days prior to the Redemption Date, by the Trustee, from the Outstanding Securities of such series not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions of the principal of Securities of any denomination larger than $1,000; provided, however, that for purposes of selecting Securities of any series for redemption pursuant to this Section, Securities of such series shall be redeemed from each Stated Maturity of principal of Securities of such series as nearly as practicable in the proportion that the aggregate principal amount of Securities of such series of such Stated Maturity of principal Outstanding immediately prior to the Redemption Date shall bear to the aggregate principal amount of Securities of such series of all Stated Maturities of principal then Outstanding, in each case taking into account in the determination of Securities Outstanding the Securities of such series subject to such redemption; provided further, however, that when Securities are being redeemed pursuant to any applicable optional (rather than mandatory) redemption provisions, the Securities to be redeemed shall be selected solely from the Securities of the series and of the Stated Maturity of principal in respect of which a Company Order has been received. If Securities are to be selected for any redemption pursuant to this Section, the Trustee may make such adjustments as it shall deem necessary so that the principal amount of Securities redeemed shall be $1,000 or an integral multiple thereof, such adjustments to be made by the Trustee in such manner as the Trustee in its sole discretion deems appropriate.

The Trustee shall promptly notify the Company, El Paso, the Security Registrar and the Paying Agent in writing of the Securities selected for redemption and, in the case of any Security selected for partial redemption, the principal amount thereof to be redeemed.

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

SECTION 6.03. Notice of Redemption.

Notice of redemption (including redemption through the operation of any applicable Sinking Fund) shall be given by first-class mail, postage prepaid, mailed not less than 20 nor more than 60 days prior to the Redemption Date, to each Holder of Securities to be redeemed, at his address appearing in the Security Register.

All notices of redemption shall state:

(1) the Redemption Date,

(2) the Redemption Price,

(3) if fewer than all Outstanding Securities of any series are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the particular Securities, including the series and the Stated Maturity of principal of such Securities, to be redeemed,

(4) that on the Redemption Date the Redemption Price will become due and payable upon each such Security, and that interest thereon shall cease to accrue from and after said date,

(5) the place where such Securities are to be surrendered for payment of the Redemption Price, and

(6) that the redemption is through the operation of a Sinking Fund, if such is the case.

Notice of redemption of Securities to be redeemed shall be given by the Trustee in the name of the Company.

SECTION 6.04. Deposit of Redemption Price.

Prior to any Redemption Date, the Company shall deposit, or cause to be deposited, with the Trustee or the Paying Agent an amount of money sufficient to pay the Redemption Price of all the Securities which are to be redeemed on that date.

SECTION 6.05. Securities Payable on Redemption Date.

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Paying Agent's Office (or, if such office is not in the Borough of Manhattan, the City of New York, at either such office or an office to be maintained in such Borough) at the Redemption Price therein specified and from and after such date (unless there shall be a default in the payment of the Redemption Price) such Securities shall cease to bear interest. Upon surrender of such Securities for redemption in accordance with said notice, such Securities shall be paid at the Redemption Price, exclusive, however, of installments of interest maturing on or prior to the Redemption Date, payment of which shall have been made or duly provided for to the Holders of such Securities registered as such on the relevant Record Dates, or otherwise, according to their terms and the provisions of Section 2.10.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, continue to bear interest from the Redemption Date at the rate borne by the Security in respect of overdue payments.

SECTION 6.06. Securities Redeemed in Part.

Any Security which is to be redeemed only in part shall be surrendered at the Paying Agent's Office (or, if such office is not in the Borough of Manhattan, the City of New York, at either such office or an office to be maintained in such Borough) (with due endorsement by, or a written instrument of transfer in form satisfactory to the Security Registrar duly executed by, the Holder thereof or his attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Paying Agent for delivery to the Holder of such Security a new Security or Securities of the same series and the same Stated Maturity of principal, of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

ARTICLE SEVEN

SINKING FUNDS

SECTION 7.01. Sinking Funds for Securities.

The amount of any sinking fund payment provided for by the terms of Securities of any series (and any Stated Maturity of principal within a series) is herein referred to as a "Sinking Fund", and the date on which a Sinking Fund payment is to be made is herein referred to as a "Sinking Fund Date." Each such Sinking Fund payment shall be applied to the redemption of Securities of the appropriate series and the appropriate Stated Maturity of principal on the appropriate Sinking Fund Date.

In the event that there shall have been any partial redemption of a series of Securities (other than pursuant to an applicable Sinking Fund), the amount of each applicable Sinking Fund payment of a particular Stated Maturity of principal within such series subsequent to such redemption shall be reduced by an amount equal to the amount obtained by (i) multiplying the amount of such Sinking Fund payment with respect to such Stated Maturity of principal as in effect prior to such redemption by a fraction of which the numerator shall be the aggregate principal amount of Securities of such Stated Maturity of such series redeemed pursuant to such partial redemption, and the denominator shall be the aggregate principal amount of Securities of such Stated Maturity of such series Outstanding

immediately prior to such redemption, and (ii) rounding the amount indicated in (i) to the nearest $1,000, subject to necessary adjustment so that the total amount of such reduction is equal to the total principal amount of Securities redeemed pursuant to such partial redemption, such adjustment to be made by the Trustee in such manner as the Trustee in its sole discretion deems appropriate.

SECTION 7.02. Selection by Trustee of Securities to be Redeemed Through Operation of Sinking Fund.

In the case of Securities to be redeemed through operation of the Sinking Fund, the particular Securities to be redeemed shall be selected no more than 60 days nor less than 30 days prior to the Redemption Date by the Trustee from the outstanding Securities of the same series and of the same Stated Maturity of principal not previously called for redemption by prorating, as nearly as may be, the principal amount of Securities to be redeemed among the Holders of Securities of the same series and of the same Stated Maturity of principal registered in their respective names. In any proration pursuant to this Section, the Trustee shall make such adjustments, reallocations and eliminations as it shall deem proper so that the principal amount of Securities so prorated shall be $1,000 or an integral multiple thereof, by increasing or decreasing or eliminating the amount which would be allocable to any Holder on the basis of exact proportion by an amount not exceeding $1,000. The Trustee in its discretion may determine the particular Securities of a Stated Maturity of principal registered in the name of any Holder which are to be redeemed, in whole or in part.

Notwithstanding the provisions of the preceding paragraph, if, at the time of any such selection, there shall be any Holders of less than $1,000,000 aggregate principal amount of Outstanding Securities of the series and of the Stated Maturity of principal to be so redeemed, the selection of the particular Securities to be so redeemed shall be made in the following manner:

(a) the Trustee shall first prorate the principal amount of Securities of such series and of such Stated Maturity to be so redeemed between (i) Holders of Securities in aggregate principal amounts of $1,000,000 or more and (ii) Holders of Securities in aggregate principal amounts of less than $1,000,000; such proration to be effected in accordance with the respective aggregate principal amounts of such Securities held by the Holders referred to in the foregoing items (i) and (ii), respectively;

(b) the Trustee shall then select for redemption in the manner hereinabove in the first paragraph of this Section 7.02 provided, from the Securities of such series

and Stated Maturity held by the Holders referred to in item (i) of clause (a) above, particular Securities (or portions thereof) in the principal amount prorated to such Holders pursuant to said clause (a); and

(c) the Trustee shall then select for redemption in the manner provided in Section 6.02 hereof, from the Securities of such series and Stated Maturity held by the Holders referred to in item (ii) of said clause (a), particular Securities (or portions thereof) in the principal amount prorated to such Holders pursuant to said clause (a);

provided, however, in any such prorating pursuant to this paragraph the Trustee may, according to such method as it shall deem proper in its discretion, make such adjustments by increasing or decreasing by not more than $1,000 the amount which would be allocable on the basis of an exact proportion, as may be necessary to the end that the principal amount so prorated shall be in each instance an integral multiple of $1,000.

ARTICLE EIGHT

EVENTS OF DEFAULT; REMEDIES

SECTION 8.01. Events of Default.

"Events of Default", 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 a judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(1) default in the payment of any interest upon any Security when it becomes due and payable, and continuance of such default for a period of ten (10) days; or

(2) default in the payment of the principal of (or premium, if any, on) any Security at its Stated Maturity, or upon call for redemption or otherwise, and continuance of such default for a period of ten (10) days; or

(3) default in the making of any Sinking Fund payment, and continuance of such default for a period of ten (10) days; or

(4) default in the performance, or breach, of any covenant of El Paso or the Company contained herein and

continuance of such default or breach for a period of 30 days after there has been given, by registered or certified mail, to El Paso and the Company by the Trustee, or to El Paso, the Company and the Trustee by the Holders of at least 25% in principal amount of Outstanding Securities, a written notice specifying such failure and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(5) the occurrence of an "Indenture Event of Default" under any Lease Indenture and the declaration as a result thereof that any Pledged Lessor Note is due and payable; or

(6) the entry of a decree or order by a court having jurisdiction in the premises adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under the Federal Bankruptcy Act or any other applicable federal or state law or law of the District of Columbia, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; or

(7) the institution by the Company of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the Federal Bankruptcy Act or any other applicable federal or state law or law of the District of Columbia, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company in furtherance of any such action.

SECTION 8.02. Acceleration of Maturity; Rescission and Annulment.

Upon the occurrence of an Event of Default, (i) if such Event of Default is one referred to in clause (1), (2), (3), (4), (6) or (7) of Section 8.01, the Trustee may, and upon the direction of the Holders of not less than 25% in principal amount of the Securities Outstanding shall, and (ii) if such Event of Default is the one referred to in clause (5) of Section 8.01 (including without limitation an event of default under any Lease which has resulted in an Event of Default referred to in clause (1), (2), or (3) of Section 8.01), the Trustee shall, declare the principal of all the Securities to be due and payable immediately, by a notice in writing to El Paso and the Company, and upon any such declaration such principal shall become immediately due and payable; provided that no such declaration shall be made (and no action under Section 8.03 or 8.05 shall be taken) in cases in which the Event of Default is one referred to in clause (1), (2), or (3) of Section 8.01 which resulted directly from a failure of El Paso to make any payment of rent under any Lease until such time as the Lessor under such Lease has been given the opportunity to exercise its rights, if any, under provisions of the related Lease Indenture analogous to Section 6.8 of the Lease Indentures dated as of August 1, 1986.

At any time after such a declaration of acceleration has been made and before any sale of the Pledged Property, or any part thereof, shall have been made pursuant to any power of sale as hereinafter in this Article provided, the Holders of a majority in principal amount of the Securities Outstanding, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if

(1) there shall have been paid to or deposited with the Trustee a sum sufficient to pay

(A) all overdue installments of interest on all Securities,

(B) the principal of (and premium, if any, on) any Securities which have become due otherwise than by such declaration of acceleration and interest thereon at the respective rates provided in the Securities for late payments of principal or premium,

(C) to the extent that payment of such interest is lawful, interest upon overdue installments of interest at the respective rates provided in the Securities for late payments of interest, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and

(2) all Events of Default, other than the non-payment of the principal of Securities which have become due solely by such acceleration, have been cured or waived as provided in Section 8.08.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

SECTION 8.03. Trustee's Power of Sale of Pledged Property; Notice Required; Power to Bring Suit.

If an Event of Default shall have occurred and be continuing, subject to the provisions of Sections 8.06 and 8.07 and the proviso to the first paragraph of Section 8.02, the Trustee, by such officer or agent as it may appoint, may:

(1) sell, to the extent permitted by law, without recourse, for cash, or credit or for other property, for immediate or future delivery, and for such price or prices and on such terms as the Trustee in its discretion may determine, the Pledged Property as an entirety, or in any such portions as the Holders of a majority in aggregate principal amount of the Securities then Outstanding shall request by an Act of Securityholders, or, in the absence of such request, as the Trustee in its discretion shall deem expedient in the interest of the Securityholders, at public or private sale; and/or

(2) proceed by one or more suits, actions or proceedings at law or in equity or otherwise or by any other appropriate remedy, to enforce payment of the Securities or Pledged Lessor Notes, or to foreclose this Indenture or to sell the Pledged Property under a judgment or decree of a court or courts of competent jurisdiction, or by the enforcement of any such other appropriate legal or equitable remedy, as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce any of its rights or powers or any of the rights or powers of the Securityholders.

In the event that the Trustee shall deem it advisable to sell any of or all the Pledged Property in accordance with the provisions of this Section, El Paso and the Company agree that if registration of any such Pledged Property shall be required, in the opinion of counsel for the Trustee, under the Securities Act of 1933

or other applicable law, and regulations promulgated thereunder, and if El Paso shall not effect, or cause to be effected, such registration promptly, the Trustee may sell any such Pledged Property at a private sale, and no Person shall attempt to maintain that the prices at which such Pledged Property is sold are inadequate by reason of the failure to sell at public sale, or hold the Trustee liable therefor.

SECTION 8.04. Incidents of Sale of Pledged Property.

Upon any sale of all or any part of the Pledged Property made either under the power of sale given under this Indenture or under judgment or decree in any judicial proceedings for foreclosure or otherwise for the enforcement of this Indenture, the following shall be applicable:

(1) **Securities Due and Payable.** The principal of, and premium, if any, and accrued interest on, the Securities, if not previously due, shall immediately become and be due and payable.

(2) **Trustee Appointed Attorney of Company to Make Conveyances.** The Trustee is hereby irrevocably appointed the true and lawful attorney of the Company, in its name and stead, to make all necessary deeds, bills of sale and instruments of assignment, transfer or conveyance of the property thus sold; and for that purpose the Trustee may execute all such documents and instruments and may substitute one or more persons with like power; and the Company hereby ratifies and confirms all that its said attorneys, or such substitute or substitutes, shall lawfully do by virtue hereof.

(3) **Company to Confirm Sales and Conveyances.** If so requested by the Trustee or by any purchaser, the Company shall ratify and confirm any such sale or transfer by executing and delivering to the Trustee or to such purchaser or purchasers all proper deeds, bills of sale, instruments of assignment, conveyance or transfer and releases as may be designated in any such request.

(4) **Securityholders and Trustee May Purchase Pledged Property.** Any Securityholder or the Trustee may bid for and purchase any of the Pledged Property, and upon compliance with the terms of sale, may hold, retain, possess and dispose of such Pledged Property in his or its own absolute right without further accountability.

(5) **Purchaser at Sale May Apply Securities to Purchase Price.** Any purchaser at any such sale may, in

paying the purchase price, deliver any of the Securities then Outstanding in lieu of cash and apply to the purchase price the amount which shall, upon distribution of the net proceeds of such sale, after application to the costs of the action and any other sums which the Trustee is authorized to deduct under this Indenture, be payable on such Securities so delivered in respect of principal, premium, if any, and interest. In case the amount so payable on such Securities shall be less than the amount due thereon, duly executed and authenticated Securities shall be delivered in exchange therefor to the Holder thereof for the balance of the amount due on such Securities so delivered by such Holder.

(6) **Receipt of Trustee Shall Discharge Purchaser.** The receipt of the Trustee or of the officer making such sale under judicial proceedings shall be a sufficient discharge to any purchaser for his purchase money, and, after paying such purchase money and receiving such receipt, such purchaser or his personal representative or assigns shall not be obliged to see to the application of such purchase money, or be in any way answerable for any loss, misapplication or non-application thereof.

(7) **Sale To Divest Rights of Company in Property Sold.** Any such sale shall operate to divest the Company of all right, title, interest, claim and demand whatsoever, either at law or in equity or otherwise, in and to the Pledged Property so sold, and shall be a perpetual bar both at law and in equity or otherwise against the Company, and its successors and assigns, and any and all persons claiming or who may claim the Pledged Property sold or any part thereof from, through or under the Company, or its successors and assigns.

(8) **Application of Moneys Received upon Sale.** Any moneys collected by the Trustee upon any sale made either under the power of sale given by this Indenture or under judgment or decree in any judicial proceedings for foreclosure or otherwise for the enforcement of this Indenture, shall be applied as provided in Section 8.12.

SECTION 8.05. Judicial Proceedings Instituted by Trustee

(a) **Trustee May Bring Suit.** If there shall be a failure to make payment of the principal of any Security at its Stated Maturity or upon declaration of acceleration, call for redemption or otherwise, or of any Sinking Fund payment when due and payable by the terms hereof or of such Security, or if there shall be a failure to pay the premium, if any, or interest on any Security when the same

becomes due and payable, then the Trustee, if any such failure shall continue for 15 days, in its own name, and as trustee of an express trust, shall be entitled, and empowered subject to the proviso to the first paragraph of Section 8.02 to institute any suits, actions or proceedings at law, in equity or otherwise, for the collection of the sums so due and unpaid on the Securities, and may prosecute any such claim, or proceeding to judgment or final decree, and may enforce any such judgment or final decree and collect the moneys adjudged or decreed to be payable in any manner provided by law, whether before or after or during the pendency of any proceedings for the enforcement of the Lien of this Indenture, or of any of the Trustee's rights or the rights of the Securityholders under this Indenture, and such power of the Trustee shall not be affected by any sale hereunder or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Indenture or for the foreclosure of the lien hereof.

(b) **Trustee May Recover Unpaid Indebtedness after Sale of Pledged Property.** In the case of a sale of the Pledged Property and of the application of the proceeds of such sale to the payment of the indebtedness secured by this Indenture, the Trustee in its own name, and as trustee of an express trust, shall be entitled and empowered, by any appropriate means, legal, equitable or otherwise, to enforce payment of, and to receive all amounts then remaining due and unpaid upon, all or any of the Securities, for the benefit of the Holders thereof, and upon any other portion of the indebtedness remaining unpaid, with interest at the rates specified in the respective Securities on the overdue principal of and premium, if any, and (to the extent that payment of such interest is legally enforceable) on the overdue installments of interest.

(c) **Recovery of Judgment Does Not Affect Lien of this Indenture or Other Rights.** No recovery of any such judgment or final decree by the Trustee and no levy of any execution under any such judgment upon any of the Pledged Property, or upon any other property, shall in any manner or to any extent affect the Lien of this Indenture upon any of the Pledged Property, or any rights, powers or remedies of the Trustee, or any liens, rights, powers or remedies of the Securityholders, but all such liens, rights, powers and remedies shall continue unimpaired as before.

(d) **Trustee May File Proofs of Claim; Appointment of Trustee as Attorney-in-Fact in Judicial Proceedings.** The Trustee in its own name, or as trustee of an express trust, or as attorney-in-fact for the Securityholders, or in any one or more of such capacities (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand for the payment of overdue principal, premium (if any) or interest), shall be entitled and empowered to

file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and of the Securityholders (whether such claims be based upon the provisions of the Securities or of this Indenture) allowed in any equ[redacted] receivership, insolvency, bankruptcy, liquidation, readjustm[redacted], reorganization or any other judicial proceedings relative to the Company or any obligor on the Securities (within the meaning of the TIA), the creditors of the Company or any such obligor, the Pledged Property or any other property of the Company or any such obligor and any receiver, assignee, trustee, liquidator, sequestrator (or other similar official) in any such judicial proceeding is hereby authorized by each Securityholder to make such payments to the Trustee and in the event that the Trustee shall consent to the making of such payments directly to the Securityholders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel. The Trustee is hereby irrevocably appointed (and the successive respective Holders of the Securities, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee) the true and lawful attorney-in-fact of the respective Securityholders, with authority to (i) make and file in the respective names of the Securityholders (subject to deduction from any such claims of the amounts of any claims filed by any of the Securityholders themselves), any claim, proof of claim or amendment thereof, debt, proof of debt or amendment thereof, petition or other document in any such proceedings and to receive payment of any amounts distributable on account thereof, (ii) execute any such other papers and documents and to do and perform any and all such acts and things for and on behalf of such Securityholders, as may be necessary or advisable in order to have the respective claims of the Trustee and of the Securityholders against the Company or any such obligor, the Pledged Property or any other property of the Company or any such obligor allowed in any such proceeding and (iii) receive payment of or on account of such claims and debt; **provided, however**, that nothing contained in this Indenture shall be deemed to give to the Trustee any right to accept or consent to any plan of reorganization or otherwise by action of any character in any such proceeding to waive or change in any way any right of any Securityholder. Any moneys collected by the Trustee under this Section shall be applied as provided in Section 8.12.

(e) **Trustee Need Not Have Possession of Securities.** All rights of action and of asserting claims under this Indenture or under any of the Securities enforceable by the Trustee may be enforced by the Trustee without possession of any of such Securities or the production thereof at the trial or other proceedings relative thereto.

(f) **Suit To Be Brought for Ratable Benefit of Securityholders.** Any suit, action or other proceeding at law, in

equity or otherwise which shall be instituted by the Trustee under any of the provisions of this Indenture shall be for the equal, ratable and common benefit of all the Securityholders, subject to the provisions of this Indenture.

(g) **Trustee May Be Restored to Former Position and Rights in Certain Circumstances.** In case the Trustee shall have proceeded to enforce any right under this Indenture by suit, foreclosure or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then in every such case, El Paso, the Company and the Trustee shall be restored without further act to their respective former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as though no such proceedings had been taken.

SECTION 8.06. Securityholders May Demand Enforcement of Rights by Trustee.

If an Event of Default shall have occurred and shall be continuing, the Trustee shall, upon the written request of the Holders of a majority in aggregate principal amount of the Securities then Outstanding and upon the offering of indemnity as provided in Section 9.03(e), but subject in all cases to the provisions of Section 3.03 and the proviso to the first paragraph of Section 8.02, proceed to institute one or more suits, actions or proceedings at law, in equity or otherwise, or take any other appropriate remedy, to enforce payment of the principal of, or premium, if any, or interest on, the Securities or Pledged Lessor Notes or to foreclose this Indenture or to sell the Pledged Property under a judgment or decree of a court or courts of competent jurisdiction or under the power of sale herein granted, or take such other appropriate legal, equitable or other remedy, as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce any of the rights or powers of the Trustee or the Securityholders, or, in case such Securityholders shall have requested a specific method of enforcement permitted hereunder, in the manner requested, provided that such action shall not be otherwise than in accordance with law and the provisions of this Indenture, and the Trustee, subject to such indemnity provisions, shall have the right to decline to follow any such request if the Trustee in good faith shall determine that the suit, proceeding or exercise of the remedy so requested would involve the Trustee in personal liability or expense.

SECTION 8.07. Control by Securityholders.

The Holders of a majority in principal amount of the Outstanding Securities shall have the right to direct the time, method and place of conducting any proceeding for any remedy

available to the Trustee or exercising any trust or power conferred on the Trustee, provided that

(1) such direction shall not be in conflict with any rule of law or with this Indenture, and

(2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

SECTION 8.08. Waiver of Past Defaults.

The Holders of not less than a majority in principal amount of the Outstanding Securities may on behalf of the Holders of all the Securities waive any past default hereunder and its consequences, except that only the Holders of all Securities affected thereby may waive a default

(1) in the payment of the principal of (or premium, if any) or interest on such Securities, or

(2) in respect of a covenant or provision hereof which under Article Eleven cannot be modified or amended without the consent of the Holder of each Outstanding Security affected.

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

SECTION 8.09. Securityholder May Not Bring Suit Except under Certain Conditions.

A Securityholder shall not have the right to institute any suit, action or proceeding at law or in equity or otherwise for the foreclosure of this Indenture, for the appointment of a receiver or for the enforcement of any other remedy under or upon this Indenture, unless:

(1) such Securityholder previously shall have given written notice to the Trustee of a continuing Event of Default;

(2) the Holders of at least 25% in aggregate principal amount of the Securities then Outstanding shall have requested the Trustee in writing to institute such action, suit or proceeding and shall have offered to the Trustee indemnity as provided in Section 9.03(e);

(3) the Trustee shall have refused or neglected to institute any such action, suit or proceeding for 60 days after receipt of such notice, request and offer of indemnity; and

(4) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of outstanding Securities.

It is understood and intended that no one or more of the Securityholders shall have any right in any manner whatever hereunder or under the Securities to (i) surrender, impair, waive, affect, disturb or prejudice the Lien of this Indenture on any property subject thereto or the rights of the Holders of any other Securities, (ii) obtain or seek to obtain priority or preference over any other such Holder or (iii) enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all the Securityholders subject to the provisions of this Indenture.

SECTION 8.10. Undertaking To Pay Court Costs.

All parties to this Indenture, and each Securityholder by his acceptance of a Security, shall be deemed to have agreed that any court may in its discretion require, in any suit, action or proceeding for the enforcement of any right or remedy under this Indenture, or in any suit, action or proceeding against the Trustee for any action taken or omitted by it as Trustee hereunder, the filing by any party litigant in such suit, action or proceeding of an undertaking to pay the costs of such suit, action or proceeding, and that such court may, in its discretion, assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, action or proceeding, having due regard to the merits and good faith of the claims or defenses made by such party litigant; **provided, however,** that the provisions of this Section shall not apply to (a) any suit, action or proceeding instituted by the Trustee, (b) any suit, action or proceeding instituted by any Securityholder or group of Securityholders holding in the aggregate more than 10% in aggregate principal amount of the Securities then Outstanding or (c) any suit, action or proceeding instituted by any Securityholder for the enforcement of the payment of the principal of, or premium, if any, or interest on, any of the Securities, on or after the respective due dates expressed therein.

SECTION 8.11. Right of Securityholders To Receive Payment Not To Be Impaired.

Anything in this Indenture to the contrary notwithstanding, the right of any Holder of any Security to receive payment of the principal of, and premium, if any, and interest on, such Security, on or after the respective due dates expressed in such Security (or, in case of redemption, on the Redemption Date fixed for such Security), or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

SECTION 8.12. Application of Moneys Collected by Trustee.

Any moneys collected or to be applied by the Trustee pursuant to this Article, together with any other moneys which may then be held by the Trustee under any of the provisions of this Indenture as security for the Securities (other than moneys at the time required to be held for the payment of specific Securities at their Stated Maturities or at a time fixed for the redemption thereof) shall be applied in the following order from time to time, on the date or dates fixed by the Trustee and, in the case of a distribution of such moneys on account of principal, premium, if any, or interest, upon presentation of the several Outstanding Securities, and stamping thereon of payment, if only partially paid, and upon surrender thereof, if fully paid:

FIRST: to the payment of all taxes, assessments or liens prior to the Lien of this Indenture, except those subject to which any sale shall have been made, all reasonable costs and expenses of collection, including the reasonable costs and expenses of handling the Pledged Property and of any sale thereof pursuant to the provisions of this Article and of the enforcement of any remedies hereunder or under any Lease Indenture, and to the payment of all amounts due the Trustee or any predecessor Trustee under Section 9.07, or through the Trustee by any Securityholder or Securityholders;

SECOND: in case the principal of the Securities or any of them shall not have become due, to the payment of any interest in default, in the order of the maturity of the installments of such interest, with interest at the rates specified in the respective Securities in respect of overdue payments (to the extent that payment of such interest shall be legally enforceable) on the overdue installments thereof;

THIRD: in case the principal of any of but not all the Securities shall have become due at their Stated

Maturities, upon redemption or otherwise, first to the payment of accrued interest in the order of the maturity of the installments thereof with interest at the respective rates specified in the Securities in respect of payments on overdue principal, premium, if any, and (to the extent that payment of such interest shall be legally enforceable) on overdue installments of interest, and next to the payment of the principal of all Securities then due;

FOURTH: in case the principal of all the Securities shall have become due at their Stated Maturities, by declaration, upon redemption or otherwise, to the payment of the whole amount then due and unpaid upon the Securities then Outstanding for principal, premium, if any, and interest, together with interest at the respective rates specified in the Securities in respect of overdue payments on principal, premium, if any, and (to the extent that payment of such interest shall be legally enforceable) on overdue installments of interest, and, in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid, then to the payment of such principal, premium, if any, and interest ratably, without discrimination or preference; and

FIFTH: in case the principal of all the Securities shall have become due at their Stated Maturities, by declaration, upon redemption or otherwise, and all of such Securities shall have been fully paid, together with all interest (including any interest on overdue payments) and premium, if any, thereon, any surplus then remaining shall be paid to the Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct;

provided, however, that all payments to be made pursuant to this Section shall be made ratably to the persons entitled thereto, without discrimination or preference.

SECTION 8.13. Securities Held by Certain Persons Not To Share in Distribution.

Any Securities known to the Trustee to be owned or held by, or for the account or benefit of, El Paso, the Company or any Affiliate of any thereof shall not be entitled to share in any payment or distribution provided for in this Article until all Securities held by other Persons have been paid in full.

SECTION 8.14. Waiver of Appraisement, Valuation, Stay, Right to Marshalling.

To the extent it may lawfully do so, each of El Paso and the Company, for itself and for any Person who may claim through or under it, hereby:

(1) agrees that neither it nor any such Person will set up, plead, claim or in any manner whatsoever take advantage of, any appraisement, valuation, stay, extension or redemption laws, now or hereafter in force in any jurisdiction, which may delay, prevent or otherwise hinder (i) the performance or enforcement or foreclosure of this Indenture, (ii) the sale of any of the Pledged Property, or (iii) the putting of the purchaser or purchasers thereof into possession of such property immediately after the sale thereof;

(2) waives all benefit or advantage of any such laws;

(3) waives and releases all rights to have the Pledged Property marshalled upon any foreclosure, sale or other enforcement of this Indenture; and

(4) consents and agrees that all the Pledged Property may at any such sale be sold by the Trustee as an entirety.

SECTION 8.15. Remedies Cumulative; Delay or Omission Not a Waiver.

Every remedy given hereunder to the Trustee or to any of the Securityholders shall not be exclusive of any other remedy or remedies, and every such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter given by statute, law, equity or otherwise. The Trustee may exercise all or any of the powers, rights or remedies given to it hereunder or which may now or hereafter be given by statute, law or equity or otherwise, in its absolute discretion. No course of dealing between El Paso or the Company and the Trustee or the Securityholders or any delay or omission of the Trustee or of any Securityholder to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver of any such Event of Default or of any right of the Trustee or of the Securityholders or acquiescence therein, and, subject to the provisions of Section 8.07, every right, remedy and power given by this Article to the Trustee or to the Securityholders may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the Securityholders.

ARTICLE NINE

THE TRUSTEE

SECTION 9.01. Certain Duties and Responsibilities.

(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 provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

(b) 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 man would exercise or use under the circumstances in the conduct of his 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 shall not be construed to limit the effect of Subsection (a) of this Section;

(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 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; 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 herein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

SECTION 9.02. Notice of Defaults.

In addition to its obligation to give notice to Securityholders as provided in **Section 3.03**, as promptly as practicable after, and in any event within 90 days after, the occurrence of any default hereunder, the Trustee shall transmit by mail to all Securityholders, as their names and addresses appear in the 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 Security or in the payment of any Sinking Fund installment, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Securityholders; and **provided, further,** that in the case of any default of the character specified in **Section 8.01(4)** no such notice to Securityholders shall be given until at least 30 days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.

SECTION 9.03. Certain Rights of Trustee.

Except as otherwise provided in **Section 9.01:**

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

(b) any request or direction of El Paso or the Company mentioned herein shall be sufficiently evidenced by a El Paso or Company Request or Order, in the case of a request or direction of El Paso, the Company, as the case may be and any resolution of the Board of Directors of El Paso or the Company may be sufficiently evidenced by a Board Resolution of El Paso or the Company, as the case may be;

(c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate of El Paso or the Company;

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

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

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of El Paso or the Company, personally or by agent or attorney; and

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

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

The recitals contained herein and in the Securities, except the certificates of authentication, shall not be taken as the statements of the Trustee, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to

the validity or sufficiency of this Indenture, the Pledged Property or the Securities, except that the Trustee hereby represents and warrants that this Indenture has been executed and delivered by one of its officers who is duly authorized to execute and deliver such document on its behalf. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

SECTION 9.05. May Hold Securities.

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

SECTION 9.06. Funds May Be Held by Trustee or Paying Agent; Investments.

(a) Subject to subsection (b) of this Section 9.06, any monies held by the Trustee or the Paying Agent hereunder as part of the Pledged Property may, until paid out by the Trustee or the Paying Agent as herein provided, be carried by the Trustee or the Paying Agent on deposit with itself, and neither the Trustee nor the Paying Agent shall have any liability for interest upon any such monies.

(b) At any time and from time to time prior to payment in full of any amounts to be paid by the Trustee pursuant to Section 2.15(b) in respect of any series of Securities, if at the time an Event of Default has occurred and is continuing, the Trustee shall, on Company Request, invest and reinvest in Permitted Investments as specified in such Company Request any monies from the sale of the Securities of such series at the time on deposit with the Trustee as part of the Pledged Property, together with any income and gains from the investment and reinvestment thereof, and sell any Permitted Investments, in either case, at such prices, including accrued interest, as are set forth in such Company Request, and such Permitted Investments shall be held by the Trustee until so sold in trust as part of the Pledged Property. The Trustee shall, on Company Request, sell such Permitted Investments as may be specified therein, and the Trustee shall, without Company Request, in the event monies are required for payment of any amounts to be paid by the Trustee pursuant to Section 2.15(b) in respect of any series of Securities and for any payment of principal, premium, if any, or interest on any series of Securities sell such Permitted Investments as are required to restore to cash as part of the Pledged Property such amounts as are needed for any such payment. The Trustee shall not be responsible for any losses on any investments or sales of Permitted Investments made pursuant to the procedure specified in this subsection (b).

SECTION 9.07. Compensation and Reimbursement.

The Company agrees

(1) to pay, or cause to be paid, to each of the Trustee and any Authorized Agent from time to time reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(2) to reimburse, or cause to be reimbursed, each of the Trustee and any Authorized Agent upon its request for all expenses, disbursements and advances incurred or made by it in accordance with any provision of this Indenture (including the compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its own negligence, willful misconduct or bad faith; and

(3) to indemnify, or cause to be indemnified, each of the Trustee, any predecessor Trustee and any Authorized Agent for, and to hold it harmless against, any loss, liability or expense incurred without negligence, willful misconduct or bad faith on its part, arising out of or in connection with the acceptance or administration of this trust or the performance of its duties hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

As security for the performance of the obligations of the Company under this Section the Trustee shall have a lien prior to the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of (and premium, if any) or interest on particular Securities.

SECTION 9.08. Disqualification; Conflicting Interests.

(a) If the Trustee has or shall acquire any conflicting interest, as defined in this Section, it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign in the manner and with the effect hereinafter specified in this Article.

(b) In the event that the Trustee shall fail to comply with the provisions of Subsection (a) of this Section the Trustee shall, within 10 days after the expiration of such 90-day period, transmit by mail to all Securityholders, as their names and addresses appear in the Security Register, notice of such failure.

(c) For the purposes of this Section, the Trustee shall be deemed to have a conflicting interest if

(1) the Trustee is trustee under another Indenture under which any other securities, or certificates of interest or participation in any other securities, of any obligor on the Securities are outstanding, unless (A) the Securities are collateral trust bonds under which the only collateral consists of securities issued under such other indenture, or (B) such other indenture is a collateral trust indenture under which the only collateral consists of Securities issued under this Indenture, provided that there shall be excluded from the operation of this paragraph any indenture or indentures under which other securities, or certificates of interest or participation in other securities, of such obligor are outstanding, if such obligor shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under this Indenture and such other indenture or indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under one of such indentures;

(2) the Trustee or any of its directors or executive officers is an obligor upon the Securities or an underwriter for such obligor;

(3) the Trustee directly or indirectly controls or is directly or indirectly controlled by or is under direct or indirect common control with any obligor on the Securities or an underwriter for such obligor;

(4) the Trustee or any of its directors or executive officers is a director, officer, partner, employee, appointee or representative of any obligor on the Securities, or of an underwriter (other than the Trustee itself) for such obligor who is currently engaged in the business of underwriting, except that (i) one individual may be a director or an executive officer, or both, of the Trustee and a director or an executive officer, or both, of an obligor on the Securities but may not be at the same time an executive officer of both the Trustee and such obligor; (ii) if and so long as the number of directors of the Trustee in office is more than nine, one additional individual may be director or an executive officer, or both, of the Trustee and a director of an obligor on the Securities; and (iii) the Trustee may be designated by an obligor on the Securities or by any underwriter for such obligor to act in the

capacity of transfer agent, registrar, custodian, paying agent, fiscal agent, escrow agent, or depositary, or in any other similar capacity, or, subject to the provisions of paragraph (1) of this Subsection, to act as trustee, whether under an indenture or otherwise;

(5) 10% or more of the voting securities of the Trustee is beneficially owned either by any director, partner, or executive officer thereof, or 20% or more of such voting securities is beneficially owned, collectively, by any two or more of such persons; or 10% or more of the voting securities of the Trustee is beneficially owned either by an underwriter for any obligor on the Securities or by any director, partner or executive officer thereof, or is beneficially owned collectively by any two or more such persons;

(6) the Trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default (as hereinafter in this Subsection defined), (i) 5% or more of the voting securities, or 10% or more of any other class of security, of any obligor on the Securities not including the Securities issued under this Indenture and securities issued under any other indenture under which the Trustee is also trustee, or (ii) 10% or more of any class of security of an underwriter for any obligor on the Securities;

(7) the Trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default (as hereinafter in this Subsection defined), 5% or more of the voting securities of any person who, to the knowledge of the Trustee, owns 10% or more of the voting securities of, or controls directly or indirectly or is under direct or indirect common control with, any obligor on the Securities;

(8) the Trustee is the beneficial owner of, or holds collateral security for an obligation which is in default (as hereinafter in this Subsection defined), 10% or more of any class of security of any person who, to the knowledge of the Trustee, owns 50% or more of the voting securities of any obligor on the Securities; or

(9) the Trustee owns, on May 15 in any calendar year, in the capacity of executor, administrator, testamentary or inter vivos trustee, guardian, committee or conservator, or in any other similar capacity, an aggregate of 25% or more of the voting securities, or of any class of security, of any person, the beneficial ownership of a

specified percentage of which would have constituted a conflicting interest under paragraphs (6), (7) or (8) of this Subsection. As to any such securities of which the Trustee acquired ownership through becoming executor, administrator, or testamentary trustee of an estate which included them, the provisions of the preceding sentence shall not apply, for a period of two years from the date of such acquisition to the extent that such securities included in such estate do not exceed 25% of such voting securities or 25% of any such class of security. Promptly after May 15 in each calendar year, the Trustee shall make a check of its holdings of such securities in any of the above mentioned capacities as of such May 15. If any obligor upon the Securities fails to make payment in full of the principal of, or the premium, if any, or interest on, any of the Securities when and as the same becomes due and payable, and such failure continues for 30 days thereafter, the Trustee shall make a prompt check of its holdings of such securities in any of the above mentioned capacities as of the date of the expiration of such 30 day period, and after such date, notwithstanding the foregoing provisions of this paragraph, all such securities so held by the Trustee, with sole or joint control over such securities vested in it, shall, but only so long as such failure shall continue, be considered as though beneficially owned by the Trustee for the purposes of paragraphs (6), (7) and (8) of this Subsection.

The specification of percentages in paragraphs (5) to inclusive, of this Subsection, shall not be construed as indicating that the ownership of such percentages of the securities of a person is or is not necessary or sufficient to constitute direct or indirect control for the purposes of paragraph (3) or (7) of this Subsection.

For the purposes of paragraphs (6), (7), (8) and (9) of this Subsection only, (i) the terms "security" and "securities" shall include only such securities as are generally known as corporate securities, but shall not include any note or other evidence of indebtedness issued to evidence an obligation to repay moneys loaned to a person by one or more banks, trust companies or banking firms, or any certificate of interest or participation in any such note or evidence or indebtedness; (ii) an obligation shall be deemed to be "in default" when a default in payment of principal shall have continued for 30 days or more and shall not have been cured; and (iii) the Trustee shall not be deemed to be the owner or holder of (A) any security which it holds as collateral security, as trustee or otherwise, for an obligation which is not in default as defined in clause (ii) above, or (B) any security which it holds as collateral security under this Indenture, irrespective of any default hereunder, or (C) any security which it holds as agent for collection, or as custodian,

escrow agent, or depositary, or in any similar representative capacity.

Except as provided in the next preceding paragraph, the word "security" or "securities" as used in this Indenture shall mean any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit sharing agreement, collateral trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to purchase, any of the foregoing.

(d) For the purposes of this Section:

(1) The term "underwriter" when used with reference to any obligor on the Securities means every person who, within three years prior to the time as of which the determination is made, has purchased from such obligor with a view to, or has offered or sold for such obligor in connection with, the distribution of any security of such obligor outstanding at such time, or has participated or has had a direct or indirect participation in any such undertaking, or has participated or has had a participation in the direct or indirect underwriting of any such undertaking, but such term shall not include a person whose interest was limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission.

(2) The term "director" means any director of a corporation, or any individual performing similar functions with respect to any organization whether incorporated or unincorporated.

(3) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, or a government or political subdivision thereof. As used in this paragraph, the term "trust" shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.

(4) The term "voting security" means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a person, or any security issued under or pursuant to any trust,

agreement or arrangement whereby a trustee or trustees or agent or agents for the owner or holder of such security are presently entitled to vote in the direction or management of the affairs of a person.

(5) The term "obligor" means any obligor upon the Securities within the meaning of TIA.

(6) The term "executive officer" means the president, every vice president, every trust officer, the cashier, the secretary, and the treasurer of a corporation, and any individual customarily performing similar functions with respect to any organization whether incorporated or unincorporated, but shall not include the chairman of the board of directors.

(e) The percentages of the voting securities and other securities specified in this Section shall be calculated in accordance with the following provisions:

(1) A specified percentage of the voting securities of the Trustee, any obligor or any other person referred to in this Section (each of whom is referred to as a "person" in this paragraph) means such amount of the outstanding voting securities of such person as entitles the holder or holders thereof to cast such specified percentage of the aggregate votes which the holders of all the outstanding voting securities of such person are entitled to cast in the direction or management of the affairs of such person.

(2) A specified percentage of a class of securities of a person means such percentage of the aggregate amount of securities of the class outstanding.

(3) The term "amount", when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to capital shares and the number of units if relating to any other kind of security.

(4) The term "outstanding" means issued and not held by or for the account of the issuer. The following securities shall not be deemed outstanding within the meaning of this definition:

(i) securities of an issuer held in a sinking fund relating to securities of the issuer of the same class;

(ii) securities of an issuer held in a sinking fund relating to another class of securities of the issuer, if the obligation evidenced by such other class of securities is not in default as to principal or interest or otherwise;

(iii) securities pledged by the issuer thereof as security for an obligation of the issuer not in default as to principal or interest or otherwise; and

(iv) securities held in escrow if placed in escrow by the issuer thereof;

provided, however, that any voting securities of an issuer shall be deemed outstanding if any person other than the issuer is entitled to exercise the voting rights thereof.

(5) A security shall be deemed to be of the same class as another security if both securities confer upon the holder or holders substantially the same rights and privileges; provided, however, that in the case of secured evidences of indebtedness, all of which are issued under a single indenture, differences in the interest rates or maturity dates of various series thereof shall not be deemed sufficient to constitute such series different classes; and provided, further, that, in the case of unsecured evidences of indebtedness, differences in the interest rates or maturity dates thereof shall not be deemed sufficient to constitute them securities of different classes, whether or not they are issued under a single indenture.

SECTION 9.09. Corporate Trustee Required; Eligibility.

There shall at all times be a Trustee hereunder which shall be a corporation organized and doing business under the laws of the United States of America or of any State, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least $50,000,000, and subject to supervision or examination by Federal or State authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

SECTION 9.10. Resignation and Removal; Appointment of Successor.

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

(b) The Trustee may resign at any time by giving written notice thereof to El Paso and the Company. If an instrument of acceptance by a successor Trustee shall not have been delivered to El Paso, the Company and the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time by Act of the Holders of a majority in principal amount of the Outstanding Securities, delivered to the Trustee, El Paso and to the Company.

(d) If at any time:

(i) the Trustee shall fail to comply with Section 9.08(a) after written request therefor by any Lessor or by any Securityholder who has been a bona fide Holder of a Security for at least 6 months, or

(ii) the Trustee shall cease to be eligible under Section 9.09 and shall fail to resign after written request therefor by any Lessor or by any such Securityholder, or

(iii) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (i) El Paso, acting after consultation with the Company, may remove the Trustee by Board Resolution or (ii) subject to Section 8.10, any Securityholder who has been a bona fide Holder of a Security for at least 6 months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, El Paso, acting after consultation with the Company, shall promptly appoint by Board Resolution a successor

Trustee. If, within 1 year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities delivered to El Paso, the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee and supersede the successor Trustee appointed by El Paso. If no successor Trustee shall have been so appointed by El Paso, acting after consultation with the Company, or by the Securityholders, and accepted appointment in the manner hereinafter provided, any Securityholder who has been a bona fide Holder of a Security for at least 6 months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Company shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing written notice of such event by first-class mail, postage prepaid, to the Holders of Securities as their names and addresses appear in the Security Register. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

SECTION 9.11. Acceptance of Appointment by Successor.

Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to El Paso, the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on request of any Lessor, the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder, subject nevertheless to its lien, if any, provided for in Section 9.07. Upon request of any such successor Trustee, El Paso and the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article.

SECTION 9.12. Merger, Conversion, Consolidation or Succession to Business.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

SECTION 9.13. Preferential Collection of Claims against any Obligor.

(a) Subject to Subsection (b) of this Section, if the Trustee shall be or shall become a creditor, directly or indirectly, secured or unsecured, of any obligor on the Securities (as defined in Subsection (c) of this Section) within 4 months prior to a default, as defined in Subsection (c) of this Section, or subsequent to such a default, then, unless and until such default shall be cured, the Trustee shall set apart and hold in a special account for the benefit of the Trustee individually, the Holders of the Securities and the holders of other indenture securities (as defined in Subsection (c) of this Section):

(i) an amount equal to any and all reductions in the amount due and owing upon any claim as such creditor in respect of principal or interest, effected after the beginning of such 4 month period and valid as against any obligor on the Securities and its other creditors, except any such reduction resulting from the receipt or disposition of any property described in paragraph (ii) of this Subsection, or from the exercise of any right of set-off which the Trustee could have exercised if a petition in bankruptcy had been filed by or against any such obligor upon the date of such default; and

(ii) all property received by the Trustee in respect of any claim as such creditor, either as security therefor, or in satisfaction or composition thereof, or otherwise, after the beginning of such 4 month period, or an amount equal to the proceeds of any such property, if disposed of, subject, however, to the rights, if any, of any obligor on

the Securities and its other creditors in such property or such proceeds.

Nothing herein contained, however, shall affect the right of the Trustee

(A) to retain for its own account (i) payments made on account of any such claim by any Person (other than an obligor on the Securities) who is liable thereon, and (ii) the proceeds of the bona fide sale of any such claim by the Trustee to a third person, and (iii) distributions made in cash, securities or other property in respect of claims filed against such obligor in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law;

(B) to realize, for its own account, upon any property held by it as security for any such claim, if such property was so held prior to the beginning of such 4 month period;

(C) to realize, for its own account, but only to the extent of the claim hereinafter mentioned, upon any property held by it as security for any such claim, if such claim was created after the beginning of such 4 month period and such property was received as security therefor simultaneously with the creation thereof, and if the Trustee shall sustain the burden of proving that at the time such property was so received the Trustee had no reasonable cause to believe that a default as defined in Subsection (c) of this Section would occur within 4 months; or

(D) to receive payment on any claim referred to in paragraph (B) or (C), against the release of any property held as security for such claim as provided in paragraph (B) or (C), as the case may be, to the extent of the fair value of such property.

For the purposes of paragraphs (B), (C) and (D), property substituted after the beginning of such 4 month period for property held as security at the time of such substitution shall, to the extent of the fair value of the property released, have the same status as the property released, and, to the extent that any claim referred to in any of such paragraphs is created in renewal of or in substitution for or for the purpose of repaying or refunding any pre-existing claim of the Trustee as such creditor, such claim shall have the same status as such pre-existing claim.

If the Trustee shall be required to account, the funds and property held in such special account and the proceeds thereof shall be apportioned between the Trustee, the Securityholders and the holders of other indenture securities in such manner that the Trustee, the Securityholders and the holders of other indenture securities realize, as a result of payments from such special account and payments of dividends on claims filed against the obligor on the Securities in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law, the same percentage of their respective claims, figured before crediting to the claim of the Trustee anything on account of the receipt by it from such obligor of the funds and property in such special account and before crediting to the respective claims of the Trustee and the Securityholders and the holders of other indenture securities dividends on claims filed against such obligor in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law, but after crediting thereon receipts on account of the indebtedness represented by their respective claims from all sources other than from such dividends and from the funds and property so held in such special account. As used in this paragraph, with respect to any claim, the term "dividends" shall include any distribution with respect to such claim, in bankruptcy or receivership or proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law, whether such distribution is made in cash, securities, or other property, but shall not include any such distribution with respect to the secured portion, if any, of such claim. The court in which such bankruptcy, receivership or proceedings for reorganization is pending shall have jurisdiction (i) to apportion between the Trustee and the Securityholders and the holders of other indenture securities, in accordance with the provisions of this paragraph, the funds and property held in such special account and proceeds thereof, or (ii) in lieu of such apportionment, in whole or in part, to give to the provisions of this paragraph due consideration in determining the fairness of the distributions to be made to the Trustee and the Securityholders and the holders of other indenture securities with respect to their respective claims, in which event it shall not be necessary to liquidate or to appraise the value of any securities or other property held in such special account or as security for any such claim, or to make a specific allocation of such distributions as between the secured and unsecured portions of such claims, or otherwise to apply the provisions of this paragraph as a mathematical formula.

Any Trustee which has resigned or been removed after the beginning of such 4 month period shall be subject to the provisions of this Subsection as though such resignation or removal had not occurred. If any Trustee has resigned or been removed prior to the beginning of such 4 month period, it shall be subject to the

provisions of this Subsection if and only if the following conditions exist:

(i) the receipt of property or reduction of claim, which would have given rise to the obligation to account if such Trustee had continued as Trustee, occurred after the beginning of such 4 month period; and

(ii) such receipt of property or reduction of claim occurred within 4 months after such resignation or removal.

(b) There shall be excluded from the operation of Subsection (a) of this Section a creditor relationship arising from

(1) the ownership or acquisition of securities issued under any indenture, or any security or securities having a maturity of one year or more at the time of acquisition by the Trustee;

(2) advances authorized by a receivership or bankruptcy court of competent jurisdiction, or by this Indenture, for the purpose of preserving any property which shall at any time be subject to the lien of this Indenture or of discharging tax liens or other prior liens or encumbrances thereon, if notice of such advances and of the circumstances surrounding the making thereof is given to the Securityholders at the time and in the manner provided in this Indenture;

(3) disbursements made in the ordinary course of business in the capacity of trustee under an indenture, transfer agent, registrar, custodian, paying agent, fiscal agent or depositary, or other similar capacity;

(4) an indebtedness created as a result of services rendered or premises rented; or an indebtedness created as a result of goods or securities sold in a cash transaction as defined in Subsection (c) of this Section;

(5) the ownership of stock or of other securities of a corporation organized under the provisions of Section 25(a) of the Federal Reserve Act, as amended, which is directly or indirectly a creditor of El Paso; or

(6) the acquisition, ownership, acceptance or negotiation of any drafts, bills of exchange, acceptances or obligations which fall within the classification of self-liquidating paper as defined in Subsection (c) of this Section.

(c) For the purposes of this Section only:

(1) The term "default" means any failure to make payment in full of the principal of or interest on any of the Securities or upon the other indenture securities when and as such principal or interest becomes due and payable.

(2) The term "other indenture securities" means securities upon which the Person obligated thereunder is an obligor (as defined in the Trust Indenture Act) outstanding under any other indenture (i) under which the Trustee is also trustee, (ii) which contains provisions substantially similar to the provisions of this Section, and (iii) under which a default exists at the time of the apportionment of the funds and property held in a special account as provided in Subsection (a) of this Section.

(3) The term "cash transaction" means any transaction in which full payment for goods or securities sold is made within 7 days after delivery of the goods or securities in currency or in checks or other orders drawn upon banks or bankers and payable upon demand.

(4) The term "self-liquidating paper" means any draft, bill of exchange, acceptance or obligation which is made, drawn, negotiated or incurred by any obligor on the Securities for the purpose of financing the purchase, processing, manufacturing, shipment, storage or sale of goods, wares or merchandise and which is secured by documents evidencing title to, possession of or a lien upon, the goods, wares or merchandise or the receivables or proceeds arising from the sale of the goods, wares or merchandise previously constituting the security, provided the security is received by the Trustee simultaneously with the creation of the creditor relationship with such obligor arising from the making, drawing, negotiating or incurring of the draft, bill of exchange, acceptance or obligation.

(5) The term "obligor" means any obligor upon the Securities within the meaning of the TIA.

SECTION 9.14. Maintenance of Agencies.

(a) There shall at all times be maintained in the Borough of Manhattan, the City of New York, an office or agency where Securities may be presented or surrendered for transfer or exchange or for the registration thereof, and for payment of principal, premium (if any) and interest and where notices and demands to or upon the Trustee in respect of the Securities or of this Indenture may be served. Such office or agency shall be initially at the Paying

Agent's Office . Written notice of the location of each of such other office or agency and of any change of location thereof shall be given to the Company and to the Trustee. In the event that no such office or agency shall be maintained or no such notice of location or of change of location shall be given, presentations and demands may be made and notices may be served at the Corporate Trust Office.

(b) There shall at all times be a Security Registrar and a Paying Agent hereunder. Each such Authorized Agent shall be a bank or trust company, shall be a corporation organized and doing business under the laws of the United States or any State thereof, with a combined capital and surplus of at least $50,000,000, and shall be authorized under such laws to exercise corporate trust powers, subject to supervision by Federal or State authorities. Mellon Trust Company is hereby appointed as Paying Agent hereunder. The Trustee shall be the Security Registrar hereunder.

(c) Any Paying Agent (other than the Trustee) from time to time appointed hereunder shall execute and deliver to the Trustee an instrument in which said Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will

(1) hold all sums held by it for the payment of principal of, and premium (if any) and interest on Securities in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give the Trustee within five days thereafter notice of any default by any obligor upon the Securities in the making of any such payment of principal, premium (if any) or interest; and

(3) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

Notwithstanding any other provision of this Indenture, any payment required to be made to or received or held by the Trustee may, to the extent authorized by written instructions of the Trustee, be made to or received or held by a Paying Agent in the Borough of Manhattan, the City of New York, for the account of the Trustee.

(d) Any corporation into which any Authorized Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, consolidation or conversion to which any Authorized Agent shall be a party, or any corporation succeeding to the corporate trust business of any Authorized Agent,

shall be the successor of such Authorized Agent hereunder, if such successor corporation is otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the parties hereto or such Authorized Agent or such successor corporation.

(e) Any Authorized Agent may at any time resign by giving written notice of resignation to the Trustee, El Paso and the Company. The Company may, and at the request of the Trustee or any Lessor shall, at any time, terminate the agency of any Authorized Agent by giving written notice of termination to such Authorized Agent and to the Trustee. Upon the resignation or termination of an Authorized Agent or in case at any time any such Authorized Agent shall cease to be eligible under this Section (when, in either case, no other Authorized Agent performing the functions of such Authorized Agent shall have been appointed), the Company shall promptly appoint one or more qualified successor Authorized Agents approved by the Trustee and each Lessor to perform the functions of the Authorized Agent which has resigned or whose agency has been terminated or who shall have ceased to be eligible under this Section. The Company shall give written notice of any such appointment to all Holders as their names and addresses appear on the Security Register.

ARTICLE TEN

SECURITYHOLDERS' LISTS AND REPORTS BY TRUSTEE AND EL PASO

SECTION 10.01. El Paso to Furnish Trustee Names and Addresses of Securityholders.

El Paso will furnish or cause to be furnished to the Trustee semiannually, between January 15 and January 30, inclusive, and between July 15 and July 30, inclusive, in each year, and at such other times as the Trustee may request in writing, within 30 days after receipt by El Paso of any such request, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Securities, in each case as of a date not more than 15 days prior to the time such list is furnished; provided, however, that so long as the Trustee is the sole Security Registrar, no such list need be furnished for so long as a copy of the Security Register is being furnished to the Trustee pursuant to Section 9.14(b).

SECTION 10.02. Preservation of Information; Communications to Securityholders.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders of Securities contained in the most recent list furnished to the Trustee

as provided in Section 9.14(b) or Section 10.01, as the case may be, and the names and addresses of Holders of Securities received by the Trustee in its capacity as Security Registrar, if so acting. The Trustee may destroy any list furnished to it as provided in Section 9.14(b) or Section 10.01, as the case may be, upon receipt of a new list so furnished.

(b) If three or more Holders of Securities (hereinafter referred to as "applicants") apply in writing to the Trustee, and furnish to the Trustee reasonable proof that each such applicant has owned a Security for a period of at least six months preceding the date of such application, and such application states that the applicants desire to communicate with other Holders of Securities with respect to their rights under this Indenture or under the Securities and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Trustee shall, within 5 Business Days after the receipt of such application, at its election, either:

(i) afford such applicants access to the information preserved at the time by the Trustee in accordance with Section 10.02(a), or

(ii) inform such applicants as to the approximate number of Holders of Securities whose names and addresses appear in the information preserved at the time by the Trustee in accordance with Section 10.02(a), and as to the approximate cost of mailing to such Securityholders the form of proxy or other communication, if any, specified in such application.

If the Trustee shall elect to afford such applicants access to such information, the Trustee shall, upon the written request of such applicants, mail to each Securityholder whose name and address appear in the information preserved at the time by the Trustee in accordance with Section 10.02(a), a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless within five days after such tender, the Trustee shall mail to such applicants and file with the Commission, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee, such mailing would be contrary to the best interests of the Holders of Securities or would be in violation of applicable law. Such written statement shall specify the basis of such opinions. If the Commission, after opportunity for a hearing upon the objections specified in the written statement so filed, shall enter an order refusing to sustain any of such objections or if, after the entry of an order sustaining one or more of such objections, the Commission

shall find, after notice and opportunity for hearing, that all the objections so sustained have been met and shall enter an order so declaring, the Trustee shall mail copies of such material to all such Securityholders with reasonable promptness after the entry of such order and the renewal of such tender; otherwise the Trustee shall be relieved of any obligation or duty to such applicants respecting their application.

(c) Every Holder of Securities, by receiving and holding the same, agrees with El Paso and the Trustee that neither El Paso nor the Trustee shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of Securities in accordance with Section 10.02(b), regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 10.02(b).

SECTION 10.03. Reports by Trustee.

(a) Within 60 days after May 15 in each year, commencing with 1987, the Trustee shall transmit by mail to all Securityholders, as their names and addresses appear in the Security Register, a brief report dated as of such May 15 with respect to:

(1) it eligibility under Section 9.09 and its qualifications under Section 9.08, or in lieu thereof, if to the best of its knowledge it has continued to be eligible and qualified under said Sections, a written statement to such effect;

(2) the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) which remain unpaid on the date of such report, and for the reimbursement of which it claims or may claim a lien or charge, prior to that of the Securities, on any property or funds held or collected by it as Trustee, except that the Trustee shall not be required (but may elect) to report such advances if such advances so remaining unpaid aggregate not more than 1/2 of 1% of the principal amount of the Securities Outstanding on the date of such report;

(3) the amount, interest rate and maturity date of all other indebtedness owing by an obligor on the Securities within the meaning of the TIA to the Trustee in its individual capacity, on the date of such report, with a brief description of any property held as collateral security therefor, except an indebtedness based upon a creditor relationship arising in any manner described in Section 9.13(b)(2), (3), (4) or (6);

(4) the property and funds, if any, physically in the possession of the Trustee as such on the date of such report;

(5) any release, or release and substitution, of property subject to the lien of this Indenture (and the consideration therefor, if any) which the Trustee has not previously reported;

(6) any additional issue of Securities which the Trustee has not previously reported; and

(7) any action taken by the Trustee in the performance of its duties hereunder which it has not previously reported and which in its opinion materially affects the Securities, except action in respect of a default, notice of which has been or is to be withheld by the Trustee in accordance with Section 9.02.

(b) The Trustee shall transmit by mail to all Securityholders, as their names and addresses appear in the Security Register, a brief report with respect to:

(1) the release, or release and substitution, of property subject to the Lien of this Indenture (and the consideration therefor, if any), such report to be transmitted within 90 days of such time; and

(2) the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) since the date of the last report transmitted pursuant to Subsection (a) of this Section (or if no such report has yet been so transmitted, since the date of execution of this instrument) for the reimbursement of which it claims or may claim a lien or charge, prior to that of the Securities, on property or funds held or collected by it as Trustee, and which it has not previously reported pursuant to this Subsection, except that the Trustee shall not be required (but may elect) to report such advances if such advances remaining unpaid at any time aggregate 10% or less of the principal amount of the Securities Outstanding at such time, such report to be transmitted within 90 days after such time.

(c) A copy of each such report shall, at the time of such transmission to Securityholders, be filed by the Trustee with each stock exchange upon which the Securities are listed, and also with the Commission. El Paso will notify the Trustee when the Securities are listed on any stock exchange.

SECTION 10.04. Reports by El Paso.

El Paso will

(1) file with the Trustee, within 15 days after El Paso is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which El Paso may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934: or, if El Paso is not required to file information, documents or reports pursuant to either of said Sections, then it will file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Securities Exchange Act of 1934 in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(2) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by El Paso with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(3) transmit by mail to all Securityholders, as their names and addresses appear in the Security Register, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by El Paso pursuant to paragraphs (1) and (2) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

ARTICLE ELEVEN

SUPPLEMENTAL INDENTURES

SECTION 11.01. Supplemental Indentures Without Consent of Securityholders.

Without the consent of the Holders of any Securities, El Paso, when authorized by a Board Resolution, the Company and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto (a "Series Supplemental Indenture" in the case of item 1 below), in form satisfactory to the Trustee, for any of the following purposes:

(1) to establish the form and terms of Securities of any series of Securities permitted by Sections 2.01 and 2.03; or

(2) to evidence the succession of another corporation to El Paso, and the assumption by any such successor of the covenants of El Paso herein contained, or to evidence the succession of another corporation to the Company, and the assumption by any such successor of the covenants of the Company herein and in the Securities contained; or

(3) to add to the covenants of El Paso or the Company, for the benefit of the Holders of the Securities, or to surrender any right or power herein conferred upon El Paso or the Company; or

(4) to convey, transfer and assign to the Trustee, and to subject to the Lien of this Indenture, with the same force and effect as though included in the Granting Clauses hereof, additional Pledged Lessor Notes or additional properties or assets, and to correct or amplify the description of any property at any time subject to the Lien of this Indenture or to assure, convey and confirm unto the Trustee any property subject or required to be subject to the Lien of this Indenture; or

(5) to modify, eliminate or add to the provisions of this Indenture to such extent as shall be necessary to continue the qualification of this Indenture (including any supplemental indenture) under the TIA, or under any similar federal statute hereafter enacted, and to add to this Indenture such other provisions as may be expressly permitted by the TIA, excluding, however, the provisions referred to in Section 316(a)(2) of the TIA as in effect at the date as of which this instrument was executed or any

corresponding provision in any similar federal statute hereafter enacted; or

(6) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture, provided such action shall not adversely affect the interest of the Holders of the Securities.

SECTION 11.02. Supplemental Indenture With Consent of Securityholders.

With the consent of (i) the Holders of not less than a majority in principal amount of the Outstanding Securities, by Act of said Holders delivered to the Company and the Trustee, and (ii) El Paso, when authorized by a Board Resolution, and the Company may and the Trustee, subject to Section 11.03 shall, enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner the rights and obligations of the Holders of the Securities and of El Paso and the Company under this Indenture; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby,

(1) change the Stated Maturity of the principal of, or any installment of interest on, or the dates or circumstances of payment of premium (if any) on, any Security, or reduce the principal amount thereof or the interest thereon or any premium payable upon the redemption thereof, or change the place of payment where, or the coin or currency in which, any Security or the premium (if any) or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment of principal or interest on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date) or such payment of premium (if any) on or after the date such premium becomes due and payable or change the dates or the amounts of payments to be made through the operation of the Sinking Fund in respect of such Securities, or

(2) except with respect to additional series of Securities issued in accordance with the terms of this Indenture, permit the creation of any lien prior to or pari passu with the Lien of this Indenture with respect to any of the Pledged Property, or terminate the Lien of this Indenture on any Pledged Property (except in each case as permitted by, and pursuant to, Article Four) or deprive any

Securityholder of the security afforded by the Lien of this Indenture, or

(3) reduce the percentage in principal amount of the Outstanding Securities, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture, or

(4) modify any of the provisions of this Section or Section 8.08, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Security affected thereby.

Upon receipt by the Trustee of Board Resolutions of El Paso and the Company and such other documentation as the Trustee may reasonably require and upon the filing with the Trustee of evidence of the Act of said Holders, the Trustee shall join in the execution of such supplemental indenture or other instrument, as the case may be, subject to the provisions of Sections 11.03 and 11.04.

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

SECTION 11.03. Documents Affecting Immunity or Indemnity.

If in the opinion of the Company or the Trustee any document required to be executed by it pursuant to the terms of Section 11.02 affects any interest, right, duty, immunity or indemnity in favor of the Company or the Trustee under this Indenture or any of the Participation Agreements, the Company or the Trustee, as the case may be, may in its discretion decline to execute such document.

SECTION 11.04. Execution of Supplemental Indentures.

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 9.01) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture.

SECTION 11.05. Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

SECTION 11.06. Conformity with Trust Indenture Act.

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

SECTION 11.07. Reference in Securities to Supplemental Indentures.

Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by any Lessor or the Company, bear a notation in form approved by such Lessor, the Company and the Trustee as to any matter provided for in such supplemental indenture; and, in such case, suitable notation may be made upon Outstanding Securities after proper presentation and demand. If any Lessor or the Company shall so determine, new Securities so modified as to conform, in the opinion of such Lessor, the Company and the Trustee, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities.

ARTICLE TWELVE

DEFEASANCE

SECTION 12.01. Payment of Indebtedness; Satisfaction and Discharge of this Indenture.

This Indenture shall cease to be of further effect (except as to any rights of registration of transfer or exchange of Securities herein expressly provided for and the rights of the Trustee, any predecessor Trustee and any Authorized Agent under Section 9.07), and the Trustee, on demand and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(1) either

(A) all Securities theretofore authenticated and delivered (other than (i) Securities which have been destroyed, lost or stolen and which have been replaced or redeemed as provided in Section 2.09 and (ii) Securities for the payment of which money held in trust hereunder has been paid to the Company and discharged from such trust, as provided in Section 5.03) have been delivered to the Trustee for cancellation; or

(B) all such Securities not theretofore delivered to the Trustee for cancellation

(i) have become due and payable, or

(ii) will become due and payable at their Stated Maturity of principal within one year, or

(iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name and at the expense of the Company,

and the Company, in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee in trust (subject to Section 9.06 hereof) for the purpose of paying and discharging the entire indebtedness on such Securities not theretofore cancelled by the Trustee or delivered to the Trustee for cancellation, an amount sufficient to discharge such indebtedness, including principal, premium (if any) and interest to the date of such deposit (in the case of Securities which have become due and payable), or to the Stated Maturity of principal or Redemption Date, as the case may be;

(2) All other sums then due and payable hereunder have been paid; and

(3) El Paso or the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

SECTION 12.02. Application of Deposited Money.

All money deposited with the Trustee pursuant to Section 12.01 shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment to the Persons entitled thereto of the principal, premium (if any), and interest for the payment of which such money has been deposited with the Trustee.

ARTICLE THIRTEEN

RELEASE OF FUNDS BY THE TRUSTEE FOR PAYMENT OF THE PLEDGED LESSOR NOTES AND RELEASE AND SUBSTITUTION OF PLEDGED PROPERTY

SECTION 13.01. Conditions Precedent to Release of Funds by the Trustee for Payment of the Pledged Lessor Notes.

The obligation of the Trustee to make payments to the Lessors pursuant to Section 2.15(b) hereof is subject to the receipt by the Trustee of the following:

(a) an executed counterpart of a supplemental indenture appropriate to subject to the Lien of this Indenture the related Pledged Lessor Notes;

(b) the documents, opinions and certificates specified in the proviso to Section 2.04;

(c) a written notice of the Company, dated as of the closing date under the applicable Participation Agreements (the Closing Date), of the Closing Date;

(d) a certificate of each Lessor dated as of the Closing Date under the related Participation Agreement (i) specifying the principal amount of the Pledged Lessor Note to be issued thereby and (ii) stating that (A) such Lessor has received the amount of the Equity Investor's investment pursuant to applicable provisions of such Participation Agreement and that such amount is available for use by such Lessor pursuant to applicable provisions of such Participation Agreement upon receipt of the amount to be paid by the Trustee with respect to such Pledged Lessor Note pursuant to Section 2.15(b) hereof; (B) to the best knowledge of such Lessor no event has occurred and is continuing which constitutes an Indenture Event of Default, or would constitute an Indenture Event of Default after notice or lapse of time or both under the related Lease Indenture and (C) the Pledged Lessor Note of such Lessor has been duly authorized, executed and delivered by such Lessor and is a valid and binding obligation of such Lessor; and

(e) such other documents and evidence with respect to the Lessors and the Company as the Trustee may reasonably request.

ARTICLE FOURTEEN

SUNDRY PROVISIONS

SECTION 14.01. Execution in Counterparts.

This instrument may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

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

EL PASO FUNDING CORPORATION

By _____
Vice President

Attest:

_____
Assistant Secretary

EL PASO ELECTRIC COMPANY

By _____
Executive Vice President

Attest:

_____
Assistant Secretary

FIRST CITY NATIONAL BANK OF HOUSTON

By _____
Assistant Vice President

Attest:

_____
Assistant Cashier

1021.CHRYSLER.1106.53:1

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

On this 18th day of August, 1986, before me personally came K. E. Kojalowicz, to me known, who, being by me duly sworn, did depose and say that she resides at New York, New York; that she is the Vice President of EL PASO FUNDING CORPORATION, one of the corporations described in and which executed the foregoing instrument; that she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation, and that she signed her name thereto by like authority.

[NOTARIAL SEAL]

Delia T. Santiago

DELIA T. SANTIAGO
Notary Public, State of New York
No. 01-4652100
Qualified in Queens County
Commission Expires March 30, 1988

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

On this 18th day of August, 1986, before me personally came Billye E. Bostic, to me known, who, being by me duly sworn, did depose and say that he resides at Houston, Texas ; that he is the Executive Vice President of **EL PASO ELECTRIC COMPANY**, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

[NOTARIAL SEAL]

Delia T. Santiago

DELIA T. SANTIAGO
Notary Public, State of New York
No. 41-4851160
Qualified in Queens County
Commission Expires March 30, 1987

1021.CHRYSLER.1106.53:1

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

On the 18th day of August, 1986, before me personally came John Chase III, to me known who, being by me duly sworn, did depose and say that he resides at Houston, Texas; that he is an Assistant Vice-President of FIRST CITY NATIONAL BANK OF HOUSTON, a national banking association and one of the associations described in and which executed the foregoing instrument; that he knows the seal of said associations; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said associations, and that he signed his name thereto on behalf of said associations by like order.

[NOTARIAL SEAL]

Delia T. Santiago

DELIA T. SANTIAGO
Notary Public, State of New York
No. 41-[illegible]
Qualified in Orange County
Commission Expires March 30, 1989

21.CHRYSLER.1106.53:1

EXHIBIT A
TO
COLLATERAL TRUST
INDENTURE

REQUIREMENTS FOR PLEDGED LESSOR NOTES AND LEASE INDENTURES

The Pledged Lessor Notes and the Lease Indentures relating to any series of Securities shall contain the provisions summarized below or other provisions substantially as protective or more protective of the interests of Holders of Outstanding Securities. Notwithstanding the foregoing, (i) the Principal Instruments in connection with the initial series of Securities issued under this Indenture shall be deemed to satisfy all criteria set forth in this Exhibit A and (ii) the Principal Instruments in connection with any subsequent series of Securities, if substantially similar in form and substance to the Principal Instruments in connection with such initial series of Securities, shall also be deemed to satisfy all criteria set forth in this Exhibit A.

I. Each Pledged Lessor Note will:

(i) be duly issued pursuant to, and be secured by, the related Lease Indenture;

(ii) provide for the payment to the registered holder thereof, not later than when due, of amounts at least equal to that portion of all principal of and premium, if any, and interest on the series of Securities issued in connection with and relating to the pledge thereof under the Indenture, such payment to be without defenses or set-offs and otherwise unconditional;

(iii) (A) if such Pledged Lessor Note is the initial series issued under the related Lease Indenture, the principal amount thereof shall not exceed an amount equal to 80% of the sum of the aggregate purchase price of the property being purchased with the proceeds of the issuance and sale of such Lessor Note; and (B) if such Pledged Lessor Note is of an additional series issued under the related Lease Indenture, the sum of the principal amount thereof and the principal amount of Pledged Lessor Notes theretofore issued under such Lease Indenture shall not exceed an amount equal to 80% of the sum of (1) the aggregate purchase price of property being purchased with the

proceeds of the issuance and sale of such Lessor Note and (2) the aggregate purchase price of the property purchased with the proceeds of the issuance and sale of each Pledged Lessor Note theretofore issued; and

(iv) provide that no Change to the Pledged Lessor Note may be made without the consent of the holder thereof.

II. Each Lease Indenture will:

(i) assign to the Lease Indenture Trustee obligations under the related Lease to which the Owner Trustee then or thereafter is entitled at least sufficient to pay the principal of, premium, if any, and interest on the related Pledged Lessor Note; and

(ii) contain provisions no less protective of the interests of Holders of Securities than the following provisions of the Lease Indentures in connection with the initial series of Securities: Article II, Sections 3.4, 3.5, 3.6, 3.8, 3.11, Article V, Article VI and Article VII.

EL PASO FUNDING CORPORATION,

EL PASO ELECTRIC COMPANY

AND

FIRST CITY NATIONAL BANK OF HOUSTON,
as Trustee

Series 1986A Bond Supplemental Indenture

Dated as of December 1, 1986

to

Collateral Trust Indenture

dated as of August 1, 1986

**Providing for the Issuance of
$146,305,000 Aggregate Principal Amount
of Lease Obligation Bonds, Series 1986A
with the Interest Rates and Stated Maturities
Set Forth Herein**

PALO VERDE NUCLEAR GENERATING STATION

SERIES 1986A BOND SUPPLEMENTAL INDENTURE, dated as of December 1, 1986 among EL PASO FUNDING CORPORATION, a Delaware corporation (the *Company*), EL PASO ELECTRIC COMPANY, a Texas corporation *(El Paso)*, and FIRST CITY NATIONAL BANK OF HOUSTON, a national banking association, as trustee (the *Trustee*).

WHEREAS, the Company and El Paso have heretofore executed and delivered to the Trustee an indenture dated as of August 1, 1986 (the *Original Indenture)* to provide for the issue from time to time of the Company's debentures, notes or other evidences of indebtedness to be issued in one or more series (the *Securities);*

WHEREAS, Section 2.03 of the Original Indenture provides, among other things, that El Paso, the Company and the Trustee may enter into indentures supplemental to the Original Indenture for, among other things, the purpose of establishing the form and terms of Securities of any series as permitted by Section 2.03 of the Original Indenture;

WHEREAS, Securities in the aggregate principal amount of $396,328,000 are currently issued and outstanding under the Original Indenture;

WHEREAS, El Paso and the Company (i) desire by the issuance by the Company of a new series of Securities as hereinafter designated to provide funds to be loaned by the Company to purchasers of portions of El Paso's undivided interest in Unit 2 of the Palo Verde Nuclear Generating Station, and (ii) have requested the Trustee to enter into this Series 1986A Bond Supplemental Indenture for the purpose of establishing the form and terms of the Securities of such series;

WHEREAS, all action on the part of the Company necessary to authorize the issuance of $146,305,000 principal amount of its Lease Obligation Bonds, Series 1986A (the *Bonds*) under the Original Indenture and this Series 1986A Bond Supplemental Indenture (said Original Indenture, as heretofore supplemented and amended and as supplemented by this Series 1986A Bond Supplemental Indenture, being hereinafter called the *Indenture)* has been duly taken;

WHEREAS, the Bonds to be issued hereunder are to be substantially in the form annexed as Schedule 1 hereto; and

WHEREAS, all acts and things necessary to make the Bonds, when executed by the Company and authenticated and delivered by the Trustee

as provided in the Original Indenture, the valid, binding and legal obligations of the Company, and to constitute these presents a valid and binding supplemental indenture and agreement according to its terms, have been done and performed, and the execution of this Series 1986A Bond Supplemental Indenture and the creation and issuance under the Indenture of $146,305,000 aggregate principal amount of the Bonds have in all respects been duly authorized, and the Company, in the exercise of legal right and power in it vested, executes this Series 1986A Bond Supplemental Indenture and proposes to create, execute, issue and deliver the Bonds:

NOW, THEREFORE, THIS SERIES 1986A BOND SUPPLEMENTAL INDENTURE WITNESSETH:

That in order to establish the form and terms of and to authorize the authentication and delivery of the Bonds, and in consideration of the acceptance of the Bonds by the holders thereof and of the sum of one dollar duly paid to the Company by the Trustee at the execution of these presents, the receipt whereof is hereby acknowledged, the Company and El Paso each covenant and agree with the Trustee, for the equal and proportionate benefit of the respective holders from time to time of the Bonds, as follows:

ARTICLE ONE

THE BONDS

SECTION 1.01. *Terms of the Bonds.*

There is hereby created a series of Securities designated "Lease Obligation Bonds, Series 1986A." Bonds in the aggregate principal amount of $146,305,000 may forthwith be executed by the Company and delivered to the Trustee for authentication and delivery by the Trustee in accordance with the provisions of Section 2.04 of the Original Indenture in the following principal amounts for the Stated Maturities of principal and at the interest rates indicated:

Stated Maturity of Principal	Interest Rate	Principal Amount
July 2, 1992	8.100%	$ 14,506,000
July 2, 1997	9.200%	24,129,000
January 2, 2011	10.375%	107,670,000

The Bonds shall be payable, bear interest and have and be subject to such other terms as provided in the form of Bond attached as Schedule 1 hereto.

SECTION 1.02. *Mandatory Redemption of the Bonds.*

(a) *Termination of Lease.* In the event that there shall occur under Section 14 of any Lease identified in Schedule 2 hereto a termination of such Lease, Bonds with a Stated Maturity of principal of January 2, 2011 shall be redeemed, in part, in an aggregate principal amount equal to the principal amount of the Pledged Lessor Notes related to such Lease (the *Prepaid Lessor Notes*), prepaid in accordance with their terms and Section 5.2 of the Lease Indenture under which such Pledged Lessor Notes are issued. Any such redemption shall be on the same date on which, and shall be made to the extent that, the Prepaid Lessor Notes are so prepaid.

(b) *Selection.* Any Bonds redeemed pursuant to Section 1.02(a) of this Series 1986A Bond Supplemental Indenture shall be selected in accordance with Section 6.02 of the Indenture, but without giving effect to the first proviso contained in such Section.

(c) *Redemption Price.* The Redemption Price for any Bond to be redeemed pursuant to this Section 1.02 shall be 100% of the principal amount thereof, together with accrued interest to the Redemption Date.

SECTION 1.03. *Optional Redemption of Bonds.*

(a) *Bonds with a Stated Maturity of Principal of July 2, 1997.* The Bonds with a Stated Maturity of principal of July 2, 1997 shall be redeemable prior to maturity at the option of the Company at the following times and redemption prices (expressed as a percentage of principal amounts), together with interest accrued to the redemption date:

Twelve Month Period Beginning January 2	Redemption Price
1992	102.63%
1993	101.31

and thereafter at the principal amount thereof, together with interest accrued to the redemption date.

(b) *Bonds with a Stated Maturity of Principal of January 2, 2011.* The Bonds with a Stated Maturity of principal of January 2, 2011 shall be redeemable prior to maturity at the option of the Company at the following times and redemption prices (expressed as a percentage of principal amounts), together with interest accrued to the redemption date:

Twelve Month Period Beginning January 2	Redemption Price	Twelve Month Period Beginning January 2	Redemption Price
1992	107.78%	2000	103.63%
1993	107.26	2001	103.11
1994	106.74	2002	102.59
1995	106.23	2003	102.08
1996	105.71	2004	101.56
1997	105.19	2005	101.04
1998	104.67	2006	100.52
1999	104.15		

and thereafter at the principal amount thereof, together with interest accrued to the redemption date.

SECTION 1.04. *Sinking Fund.*

(a) *Amounts and Dates.* The Bonds shall be redeemed through operation of a sinking fund. The amount of each Sinking Fund payment (subject to adjustment as provided in paragraphs (c) and (d) below) and each Sinking Fund Date applicable to a Stated Maturity of principal of the Bonds are as set forth below:

	Stated Maturity		
Sinking Fund Date	July 2, 1992	July 2, 1997	January 2, 2011
January 2, 1988	$ 670,000	—	—
July 2, 1988	704,000	—	—
January 2, 1989	1,423,000	—	—
July 2, 1989	1,480,000	—	—
January 2, 1990	1,540,000	—	—
July 2, 1990	1,603,000	—	—
January 2, 1991	1,668,000	—	—
July 2, 1991	1,735,000	—	—

Sinking Fund Date	Stated Maturity		
	July 2, 1992	July 2, 1997	January 2, 2011
January 2, 1992	$1,805,000	—	—
July 2, 1992	1,878,000	—	—
January 2, 1993		$ 1,955,000	—
July 2, 1993		2,045,000	—
January 2, 1994		2,139,000	—
July 2, 1994		2,237,000	—
January 2, 1995		2,339,000	—
July 2, 1995		2,447,000	—
January 2, 1996		2,559,000	—
July 2, 1996		2,677,000	—
January 2, 1997		2,801,000	—
July 2, 1997		2,930,000	—
January 2, 1998			$ 2,525,000
July 2, 1998			2,730,000
January 2, 1999			2,391,000
July 2, 1999			2,291,000
January 2, 2000			2,377,000
July 2, 2000			2,447,000
January 2, 2001			2,541,000
July 2, 2001			2,616,000
January 2, 2002			2,717,000
July 2, 2002			2,797,000
January 2, 2003			2,904,000
July 2, 2003			2,989,000
January 2, 2004			3,104,000
July 2, 2004			3,196,000
January 2, 2005			3,318,000
July 2, 2005			3,732,000
January 2, 2006			4,408,000
July 2, 2006			4,802,000
January 2, 2007			4,938,000
July 2, 2007			6,116,000
January 2, 2008			6,433,000
July 2, 2008			6,767,000
January 2, 2009			7,118,000
July 2, 2009			7,487,000

Sinking Fund Date	Stated Maturity July 2, 1992	July 2, 1997	January 2, 2011
January 2, 2010			$ 7,375,000
July 2, 2010			4,893,000
January 2, 2011			2,158,000

(b) *Selection of Bonds.* The provisions of Section 7.02 of the Original Indenture to the contrary notwithstanding, the Trustee shall first select for redemption on any Sinking Fund Date on which Bonds with a Stated Maturity of principal of January 2, 2011 are to be redeemed in accordance with the Sinking Fund relating thereto, such Bonds, if any, of such Stated Maturity of principal of January 2, 2011 as the Company shall specify (by Bond number) are held by El Paso or an Affiliate of El Paso in a Company Request delivered to the Trustee at least 40 (but not more than 90) days prior to such Sinking Fund Date and upon which the Trustee may rely. El Paso agrees that (i) neither it nor any of its Affiliates shall purchase any Bond more than 180 days in advance of the date of the mandatory sinking fund redemption applicable thereto, (ii) the aggregate principal amount of Bonds purchased by El Paso or any Affiliate shall not exceed the amount of the next succeeding sinking fund payment applicable thereto and (iii) any Bonds so purchased shall be the subject of a Company Request delivered in accordance with the preceding sentence.

(c) *Adjustments to Sinking Funds in Respect of Reoptimization Pursuant to Section 2(e) of a Participation Agreement.* The principal amount of Bonds of a particular Stated Maturity of principal to be redeemed through operation of the Sinking Fund for the Bonds of such Stated Maturity of principal may be adjusted (upward or downward) at the discretion of the Company at one time (contemporaneously with similar adjustments for all Stated Maturities of principal) prior to June 30, 1990; *provided, however,* that no such adjustment shall be made by the Company which will increase or reduce the average life of the Bonds of such Stated Maturity of principal (calculated in accordance with generally accepted financial practice from the date of initial issuance) by more than 6 months; *provided further, however,* such adjustment may only be made in connection with an adjustment to basic rent pursuant to Section 3(d) of one or more of the Leases identified in Schedule 2 hereto. If the Company shall elect to make the

foregoing adjustment, the Company shall deliver to the Trustee and El Paso at least 60 days prior to the first Sinking Fund Date proposed to be affected by such adjustment, a Company Request (w) stating that the Company has elected to make such adjustment in connection with adjustments to basic rent under one or more of such Leases, (x) setting forth a revised schedule of principal amounts of the Sinking Fund applicable to Bonds of the affected Stated Maturity of principal, (y) attaching a copy of the revised schedules of principal amortization for the related Pledged Lessor Notes (as hereinafter defined) and (z) attaching calculations showing that (i) the average life of the Bonds of the affected Stated Maturity of principal will not be reduced or increased except as permitted by this paragraph (c), (ii) the aggregate principal amount of the Pledged Lessor Notes identified on Schedule 2 hereto equals the aggregate principal amount of the Bonds and (iii) the aggregate amortization of the principal amount of such Pledged Lessor Notes is sufficient to repay in full, as and when due, the principal amount of the Bonds as and when due, whether upon redemption through operation of the applicable Sinking Funds or at maturity. The Trustee may rely on such Company Request and shall have no duty with respect to the calculations referred to in the foregoing clause (z), other than to make them available for inspection by any Holder of Bonds at the Corporate Trust Office upon reasonable notice. The Trustee shall, at the expense of El Paso, send to each Holder of Bonds of the affected Stated Maturity of principal at least 20 days before the first Sinking Fund Date to be affected thereby, by first class mail, a copy of such revised schedule of principal amounts of Sinking Fund payments applicable to such Bonds.

(d) *Adjustments to Sinking Fund in Respect of Partial Redemption.* Notwithstanding the second paragraph of Section 7.01 of the Original Indenture, in the event that there shall have been any partial redemption of Bonds of a particular Stated Maturity of principal (other than pursuant to the Sinking Fund), Sinking Fund payments thereafter to be made with respect to such Bonds shall be adjusted as follows. The Trustee shall first identify all related Pledged Lessor Notes identified in Schedule 2 hereto having the same maturity as the Bonds of such particular Stated Maturity of principal redeemed, if any, which are outstanding following such redemption and, having so identified all such Pledged Lessor Notes, shall determine the dates on which the principal of such Pledged Lessor Notes is to be amortized (the *Scheduled Amortization Dates*). The amount of the Sinking

Fund payment scheduled to be made on each Sinking Fund Date subsequent to the date of such redemption in respect of Bonds having the same Stated Maturity of principal as the Bonds redeemed shall then be adjusted to equal the aggregate principal amount of all related Pledged Lessor Notes identified in Schedule 2 hereto having the same maturity as the Stated Maturity of principal of the Bonds redeemed which is scheduled to be amortized on the Scheduled Amortization Date corresponding to such Sinking Fund Date, after taking into account any prepayment of Pledged Lessor Notes. All such adjustments in respect of a Sinking Fund Date shall be rounded to the nearest $1,000, and shall be subject to necessary further adjustment so that the total amount of such reduction is equal to the total principal amount of Bonds redeemed pursuant to such partial redemption. In connection with the adjustments required by the preceding two sentences, the Company shall deliver to the Trustee a Company Request not later than 30 days following any partial redemption of Bonds (other than pursuant to the Sinking Fund), setting forth (x) the schedules of principal amortization of all related Pledged Lessor Notes identified on Schedule 2 hereto having the same maturity as the Stated Maturity of principal of the Bonds redeemed and (y) a revised schedule of Sinking Fund payments applicable to Bonds having the same Stated Maturity of principal as the Bonds redeemed. The Trustee may rely on such Company Request and shall have no duty with respect to the adjustments set forth therein other than to make them available for inspection by a Holder of Bonds at the Corporate Trust Office upon reasonable notice.

(e) *Redemption Price.* The Redemption Price for any Bond to be redeemed pursuant to paragraph (a) of this Section 1.04 shall be 100% of the principal amount thereof, together with accrued interest to the Redemption Date.

SECTION 1.05. *Place of Payment for Bonds.*

The Bonds shall also be payable, at the option of any Holder, at the Corporate Trust Office.

ARTICLE TWO

Pledge of Lessor Notes

To secure the payment of the principal of and premium (if any) and interest on all the Securities from time to time Outstanding under the Indenture, and the performance of the covenants therein and herein contained, the Company by these presents does grant, bargain, sell, release, convey, assign, transfer, mortgage, hypothecate, pledge, confirm and create a security interest in, unto the Trustee, the Lessor Notes identified on Schedule 2 hereto (herein referred to as the *Pledged Lessor Notes*).

To Have and To Hold the aforesaid Pledged Lessor Notes unto the Trustee and its successors and assigns forever, in trust and for the uses and purposes and subject to the covenants and conditions set forth in the Indenture.

ARTICLE THREE

Miscellaneous

Section 3.01. *Execution as Supplemental Indenture; Definitions.*

This Series 1986A Bond Supplemental Indenture is executed and shall be construed as an indenture supplemental to the Original Indenture and, as provided in the Original Indenture, this Series 1986A Bond Supplemental Indenture forms a part thereof. Except as herein expressly otherwise defined, the use of the terms herein is in accordance with the definitions contained in the Original Indenture.

Section 3.02. *Responsibility for Recitals, Etc.*

The recitals contained herein and in the Bonds, except the Trustee's certificate of authentication, shall be taken as the statements of the Company and El Paso, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representation as to the validity or sufficiency of this Series 1986A Bond Supplemental Indenture or the Bonds.

SECTION 3.03. *Provisions Binding on Successors.*

All the covenants, stipulations, promises and agreements in this Series 1986A Bond Supplemental Indenture contained by or on behalf of the Company shall bind its successors and assigns, whether so expressed or not.

SECTION 3.04. *New York Contract.*

This Series 1986A Bond Supplemental Indenture and each Bond shall be deemed to be a contract under the laws of the State of New York, and for all purposes shall be governed by and construed in accordance with the laws of said state.

SECTION 3.05. *Counterparts.*

This Series 1986A Bond Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Company, El Paso and the Trustee have caused this Series 1986A Bond Supplemental Indenture to be duly executed by their respective officers thereunto duly authorized, as of the date and year first above written.

EL PASO FUNDING CORPORATION

[CORPORATE SEAL]

By _____
Vice President

Attest:

_____
Secretary

EL PASO ELECTRIC COMPANY

[CORPORATE SEAL]

By _____
Vice President

Attest:

_____
Assistant Secretary

FIRST CITY NATIONAL BANK OF HOUSTON,
as Trustee

[CORPORATE SEAL]

By _____
Assistant Vice President

Attest:

_____
Assistant Cashier

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

On this 13th day of December, 1986, before me personally came C. D. Dunlop, to me known, who, being by me duly sworn, did depose and say that he resides at Wilmington, Delaware; that he is the Vice President of EL PASO FUNDING CORPORATION, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

[NOTARIAL SEAL]

Delia T. Santiago

DELIA T. SANTIAGO
Notary Public, State of New York
No. 41-3451160
Qualified in Queens County
Commission Expires March 30, 1987

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

On this 13th day of December, 1986, before me personally came W. J. Johnson, to me known, who, being by me duly sworn, did depose and say that he resides at El Paso, Texas; that he is the Vice President of EL PASO ELECTRIC COMPANY, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

[NOTARIAL SEAL]

Delia T. Santiago

DELIA T. SANTIAGO
Notary Public, State of New York
No. 41-3451160
Qualified in Queens County
Commission Expires March 30, 1987

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 15th day of December, 1986, before me personally came JOHN CHASE, to me known, who, being by me duly sworn, did depose and say that he resides at Houston, Texas; that he is an Assistant Vice President of FIRST CITY NATIONAL BANK OF HOUSTON, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

[NOTARIAL SEAL]

Delia T. Santiago

DELIA T. SANTIAGO
Notary Public, State of New York
No. 41-4851160
Qualified in Queens County
Commission Expires March 30, 1987

SCHEDULE 1
to
SERIES 1986A BOND
SUPPLEMENTAL INDENTURE

[FORM OF FACE OF BOND]

No. R- $_____

EL PASO FUNDING CORPORATION

LEASE OBLIGATION BOND, SERIES 1986A

INTEREST RATE STATED MATURITY

REGISTERED HOLDER: ISSUE DATE: DECEMBER , 1986

PRINCIPAL AMOUNT: DOLLARS

EL PASO FUNDING CORPORATION, a Delaware corporation (hereinafter called the *"Company,"* which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received, hereby promises to pay to the Registered Holder (named above) hereof, or registered assigns, the Principal Amount (stated above) on the Stated Maturity (stated above) and to pay interest thereon from the Issue Date hereof (stated above), or from the most recent interest payment date to which interest has been paid or duly provided for, semiannually on January 2 and July 2 in each year, commencing July 2, 1987, at the Interest Rate (stated above) per annum, until the principal hereof is paid in full or made available for payment. The interest so payable, and punctually paid or duly provided for, on any interest payment date will, as provided in such Indenture, be paid to the person in whose name this Bond (or one or more Predecessor Securities, as defined in such Indenture) is registered at the close of business on the Regular Record Date for such interest, which shall be the June 17 or December 18, as the case may be (whether or not a Business Day, as defined in such Indenture), next preceding such interest payment date. Any such interest not so punctually paid or duly provided for

shall forthwith cease to be payable to the Registered Holder on such Regular Record Date, and may be paid to the person in whose name this Bond (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such defaulted interest to be fixed by the Trustee, notice of which shall be given to the Bondholders not less than 10 days prior to such Special Record Date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Bonds may be listed, and upon such notice as may be required by such exchange, all as more fully provided in such Indenture. Payment of the principal of (and premium, if any) and interest on this Bond will be made at the corporate trust office of the Paying Agent (or if such office is not in the Borough of Manhattan, The City of New York, at either such office or an office to be maintained in such Borough), or, at the option of the Registered Holder, at the Corporate Trust Office of the Trustee, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public or private debts. Payment of interest may, however, be made at the option of the Company by check mailed to the address of the Holder entitled thereto as such address shall appear on the Security Register.

Interest on any overdue principal and premium, if any, and (to the extent permitted by applicable law) any overdue interest shall be paid, on demand, from the due date thereof at the rate of interest per annum (computed on the basis of a 360-day year of twelve 30-day months) equal to 1% above the Interest Rate (stated above) on this Bond for the period during which any such principal, premium or interest shall be overdue.

Reference is hereby made to the further provisions of this Bond set forth on the reverse hereof which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee by manual signature, this Bond shall not be entitled to any benefit under such Indenture, or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

EL PASO FUNDING CORPORATION

By _____
President

Attest:

_____
Secretary

[FORM OF CERTIFICATE OF AUTHENTICATION]

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

FIRST CITY NATIONAL BANK OF HOUSTON
as Trustee

By _____
Authorized Officer

[FORM OF REVERSE OF BOND]

EL PASO FUNDING CORPORATION

LEASE OBLIGATION BOND, SERIES 1986A

This Bond is one of an authorized issue of Securities of the Company known as its *"Lease Obligation Bonds, Series 1986A"* (the *"Bonds")* issued under, and all equally and ratably secured by, a Collateral Trust Indenture dated as of August 1, 1986 among the Company, El Paso Electric Company, a Texas corporation (herein called *"El Paso"*), and First City National Bank of Houston, as Trustee (herein called the *"Trustee,"* which term includes any successor Trustee under the Indenture), as heretofore supplemented and amended and as further supplemented by the Series 1986A Bond Supplemental Indenture dated as of December 1, 1986 among such parties (collectively, the *"Indenture"*) to which Indenture reference is hereby made for a description of the nature and extent of the securities and other property assigned, pledged and transferred thereunder, the respective rights of the holders of the Bonds and of the Trustee and the Company in respect of such security, and the terms upon which the Bonds are and are to be authenticated and delivered.

The principal of, and premium, if any, and interest on, this Bond are payable from, and secured by, the assets subject to the lien of the Indenture or the income and proceeds received by the Trustee therefrom, and all payments of principal, premium (if any) and interest shall be made in accordance with the terms of the Indenture.

The Indenture and each of the Participation Agreements among an Equity Investor (as hereinafter defined), a Lessor (as hereinafter defined), the Company, a Lease Indenture Trustee (as hereinafter defined) and El Paso (each a *"Participation Agreement"*) provide that, as and when issued, certain Nonrecourse Promissory Notes (the *"Pledged Lessor Notes"*), in aggregate principal amount of $146,305,000, to be issued by The First National Bank of Boston, as owner trustee under separate Trust Agreements with the respective institutional investors named in such Trust Agreements (The First National Bank of Boston in each of such capacities as owner trustee being herein called a *"Lessor"* and each such institutional investor being herein called an *"Equity Investor"*), will be included within the assets subject to the lien of the Indenture pursuant to indenture supplements. Such Pledged Lessor Notes are to be issued under separate

documents entitled Trust Indenture, Mortgage, Security Agreement and Assignment of Rents, each between a Lessor and First City National Bank of Houston, as trustee ("*Lease Indenture Trustee*") (each of such Trust Indentures, as it was executed and delivered and as amended in accordance with its terms, being herein called a "*Lease Indenture*"). Reference is made to each Lease Indenture for a description of the nature and extent of property to be assigned, pledged, transferred and mortgaged thereunder and the rights of the holders of notes issued thereunder, including the Pledged Lessor Notes. Except as expressly provided in a Lease Indenture, all payments of principal, premium, if any, and interest to be made on a Pledged Lessor Note and under such Lease Indenture will be made only from the assets subject to the lien of such Lease Indenture or the income and proceeds received by the Lease Indenture Trustee therefrom, including, in the case of each Lease Indenture, the rights of the Lessor which is a party thereto to receive basic rentals and certain other payments under a Lease with El Paso relating to an undivided interest in certain assets constituting part of the Palo Verde Nuclear Generating Station (also known as the Arizona Nuclear Power Project) (each of such Leases, as it was executed and delivered and as amended in accordance with its terms, being herein called a "*Lease*"), which basic rentals and other payments will be at least sufficient to provide for the payment of the principal of and premium, if any, and interest when due on each Pledged Lessor Note issued under such Lease Indenture. Each Holder hereof, by its acceptance of this Bond, agrees (x) that except as expressly provided above, it will look solely to the assets subject to the lien of the Indenture or the income and proceeds received by the Trustee therefrom, to the extent available for distribution to the Holder hereof as provided in the Indenture and (y) that none of an Equity Investor, a Lessor, a Lease Indenture Trustee or the Trustee is liable to the Holder hereof or, in the case of an Equity Investor, a Lessor and a Lease Indenture Trustee, to the Trustee for any amounts payable under this Bond or, except as provided in the Indenture with respect to the Trustee, for any liability under the Indenture. An Equity Investor shall not have any duty or responsibility under the Indenture or the Bonds to any Holder or to the Trustee.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of El

Paso and the Company and the rights of the Holders of the Securities under the Indenture at any time by El Paso and the Company with the consent of the Holders of not less than a majority in aggregate principal amount of the Securities at the time Outstanding, as defined in the Indenture. The Indenture also contains provisions permitting the Holders of specified percentages in aggregate principal amount of the Securities at the time Outstanding, on behalf of the Holders of all the Securities, to waive compliance by El Paso and the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Bond shall be conclusive and binding upon such Holder and upon all future Holders of this Bond and of any Security issued upon the transfer hereof or in exchange herefor or in lieu hereof whether or not notation of such consent or waiver is made upon this Bond.

As provided in the Indenture, the aggregate principal amount of Securities which may be issued thereunder is unlimited. The Bonds are limited in aggregate principal amount to $146,305,000, consisting of:

Stated Maturity of Principal	Interest Rate	Principal Amount
July 2, 1992	8.100%	$ 14,506,000
July 2, 1997	9.200%	24,129,000
January 2, 2011	10.375%	107,670,000
		$146,305,000

In the event that one or more Leases are terminated under Section 14 thereof, the Bonds with a Stated Maturity of principal of January 2, 2011 are subject to mandatory redemption in whole or in part from time to time on not less than 20 nor more than 60 days' prior notice given as provided in the Indenture at a redemption price equal to the principal amount of the Bonds to be redeemed plus accrued interest to the date fixed for redemption, on the same date on which, and to the same extent that, the Pledged Lessor Notes relating to the Bonds are prepaid as provided in Section 5.2 of the Lease Indenture under which they were issued.

The Bonds of each Stated Maturity of principal are also subject to mandatory redemption pursuant to sinking fund installments, as more fully provided in the Indenture, at the principal amount thereof, together with

interest accrued to the date fixed for redemption, on the dates and in the respective principal amounts set forth in the Indenture.

The sinking fund installments for the Bonds of a particular Stated Maturity of principal set forth in the Indenture may be adjusted once at the discretion of the Company prior to June 30, 1990, in connection with certain adjustments in basic rent pursuant to one or more of the Leases; *provided, however,* that no such sinking fund adjustments shall be made by the Company which will increase or reduce the average life of such Bonds (calculated in accordance with generally accepted financial practice from the date of initial issuance thereof) by more than 6 months.

As provided in the Indenture, in connection with any mandatory sinking fund redemption of Bonds with a Stated Maturity of principal of January 2, 2011, the Company may cause the Trustee first to select for such redemption Bonds of such Stated Maturity of principal held by El Paso or an affiliate of El Paso.

In the event of any partial redemption of Bonds of a particular Stated Maturity of principal (other than pursuant to the aforementioned sinking fund), the principal amount of Bonds of such Stated Maturity of principal to be redeemed thereafter pursuant to the sinking fund schedule indicated in the Indenture shall be adjusted in accordance with the Indenture.

In addition, the Bonds (other than Bonds with a Stated Maturity of principal of July 2, 1992) are subject to redemption, in whole or in part, at the option of the Company, with monies deposited with the Trustee, on not less than 20 nor more than 60 days' notice given as provided in the Indenture, at the following redemption prices (expressed as a percentage of principal amount), together with interest accrued to the date fixed for redemption as follows:

Bonds with a Stated Maturity of principal of July 2, 1997 may be redeemed at any time on and after January 2, 1992 at a price of 102.63% of the principal amount thereof, such price to decline to 101.31% of such principal amount on January 2, 1993 and to 100% of such principal amount on January 2, 1994, as set forth in the Indenture, together with accrued interest; and

Bonds with a Stated Maturity of principal of January 2, 2011 may be redeemed at any time on and after January 2, 1992 at a

price of 107.78% of the principal amount thereof, such price to decline on January 2, 1993 and each anniversary thereof, as set forth in the Indenture, until such date as such price shall be the principal amount of such Bonds, together with accrued interest;

In the case of any redemption of Bonds, unpaid interest installments whose Stated Maturity, as defined in the Indenture, is on or prior to the date fixed for redemption will be payable to the Holders of such Bonds or one or more Predecessor Securities of record at the close of business on the relevant Regular or Special Record Date referred to on the face hereof.

The Indenture provides that Bonds of a denomination larger than $1,000 may be redeemed in part ($1,000 or an integral multiple thereof) and that upon any partial redemption of any such Bond the same may be surrendered at the corporate trust office of the Paying Agent in exchange for one or more new Bonds for the unredeemed portion thereof.

Bonds (or portions thereof as aforesaid) for whose redemption and payment provision is made in accordance with the Indenture shall thereupon cease to be entitled to the lien of the Indenture and shall cease to bear interest from and after the date fixed for redemption.

If an Event of Default, as defined in the Indenture, shall occur, the principal of this Bond may become or be declared due and payable, in the manner and with the effect provided in the Indenture.

This Bond is transferable by the registered owner hereof in person or by attorney authorized in writing, at the corporate trust office of the Bond Registrar, First City National Bank of Houston (or if such office is not in the Borough of Manhattan, The City of New York, at either such office or an office to be maintained in such Borough), upon surrender of this Bond, and upon any such transfer a new Bond of the same Stated Maturity of principal, for the same aggregate principal amount, will be issued to the transferee in exchange herefor.

The Bonds are issuable only as registered Bonds without coupons in denominations of $1,000 or any integral multiple thereof. As provided in, and subject to the provisions of, the Indenture, Bonds of a particular Stated Maturity of principal are exchangeable for other Bonds of such Stated Maturity, but of a different authorized denomination or denominations, as requested by the Holder surrendering the same.

CURRENT ENDING PAGE CONDITIONS ARE INCONSISTENT WITH THE NEXT PAGE : 028.00.00.00

No service charge will be made to any Holder of Bonds for any such transfer or exchange, but the Bond Registrar may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment for registration of transfer, the person in whose name this Bond is registered shall be deemed to be the owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Bond be overdue, regardless of any notice to anyone to the contrary.

As provided in the Indenture, the Indenture and the Bonds shall be construed in accordance with and governed by the laws of the State of New York.

SCHEDULE 2
to
SERIES 1986A BOND
SUPPLEMENTAL INDENTURE

A. As used in this Series 1986A Bond Supplemental Indenture, the following terms have the following meanings:

(1) *Lease Indenture* means each of:

(i) the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents, dated as of December 1, 1986, between the Indenture Trustee and the Owner Trustee, as owner trustee for Chrysler Financial Corporation; and

(ii) the Trust Indenture, Mortgage, Security Agreement and Assignment of Rents, dated as of December 1, 1986, between the Indenture Trustee and the Owner Trustee, as owner trustee for Commercial Federal Investment Corporation.

(2) *Lessor Note* means each of:

(i) the Non-Recourse Promissory Note, Initial Series (Due July 2, 1992) in the amount of $8,059,000 dated December 18, 1986, payable by the Owner Trustee, as owner trustee for Chrysler Financial Corporation, to the Company;

(ii) the Non-Recourse Promissory Note, Initial Series (Due July 2, 1997) in the amount of $12,295,000 dated December 18, 1986, payable by the Owner Trustee, as owner trustee for Chrysler Financial Corporation, to the Company;

(iii) the Non-Recourse Promissory Note, Initial Series (Due January 2, 2011) in the amount of $56,046,000 dated December 18, 1986, payable by the Owner Trustee, as owner trustee for Chrysler Financial Corporation, to the Company;

(iv) the Non-Recourse Promissory Note, Initial Series (Due July 2, 1992) in the amount of $6,447,000 dated December 18, 1986, payable by the Owner Trustee, as owner trustee for Commercial Federal Investment Corporation, to the Company;

(v) the Non-Recourse Promissory Note, Initial Series (Due July 2, 1997) in the amount of $11,834,000 dated December 18, 1986, payable by the Owner Trustee, as owner trustee for Commercial Federal Investment Corporation, to the Company; and

(vi) the Non-Recourse Promissory Note, Initial Series (Due January 2, 2011) in the amount of $51,624,000 dated December 18, 1986, payable by the Owner Trustee, as owner trustee for Commercial Federal Investment Corporation, to the Company.

(3) *Lessor* or *Owner Trustee* means The First National Bank of Boston, a national banking association (FNB), in its capacity as owner trustee under two separate Trust Agreements, each dated as of December 1, 1986, with the Equity Investor named therein.

(4) *Indenture Trustee* means First City National Bank of Houston, a national banking association, as Trustee.

(5) *Lease* means each of:

(i) the Facility Lease, dated as of December 1, 1986, between El Paso, as lessee, and the Owner Trustee, as owner trustee for Chrysler Financial Corporation, as lessor; and

(ii) the Facility Lease, dated as of December 1, 1986, between El Paso, as lessee, and the Owner Trustee, as owner trustee for Commercial Federal Investment Corporation, as lessor.

(6) *Participation Agreement* means each of:

(i) the Participation Agreement, dated as of December 1, 1986, among the Owner Participant designated therein, the Company, FNB, in its individual capacity

and as Owner Trustee for Chrysler Financial Corporation, First City National Bank of Houston, in its individual capacity and as Indenture Trustee, and El Paso; and

(ii) the Participation Agreement, dated as of December 1, 1986, among the Owner Participant designated therein, the Company, FNB, in its individual capacity and as Owner Trustee for Commercial Federal Investment Corporation, First City National Bank of Houston, in its individual capacity and as Indenture Trustee, and El Paso.

ASSIGNMENT, ASSUMPTION AND FURTHER AGREEMENT

dated as of December 1, 1986

between

EL PASO ELECTRIC COMPANY,

and

THE FIRST NATIONAL BANK OF BOSTON,

not in its individual capacity, but solely as Owner Trustee under a Trust Agreement dated as of December 1, 1986 with Commercial Federal Investment Corporation

Sale and Leaseback of an Undivided Interest in Palo Verde Nuclear Generating Station Unit 2 and Certain Common Facilities

THIS ASSIGNMENT, ASSUMPTION AND FURTHER AGREEMENT, dated as of December 1, 1986. between EL PASO ELECTRIC COMPANY, a Texas corporation (El Paso), and THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as Owner Trustee (the Owner Trustee), under a Trust Agreement, dated as of December 1, 1986. with Commercial Federal Investment Corporation, a Nebraska corporation, as Owner Participant (the Owner Participant).

WITNESSETH:

WHEREAS, El Paso and the other ANPP Participants are parties to the ANPP Participation Agreement (such terms and all other terms used in these recitals without definition having the respective definitions to which reference is made in Article I below); and

WHEREAS, El Paso has sold, and the Owner Trustee has purchased, the Undivided Interest and the Real Property Interest for and in consideration of the payment to El Paso by the Owner Trustee of the Purchase Price, the purchase price of the Real Property Interest and the assignments and assumptions herein set forth;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS; SCHEDULES

SECTION 1.01. *General.* For purposes hereof, unless otherwise defined herein capitalized terms used herein shall have the meanings assigned to such terms in Appendix A hereto. References in this Agreement to articles, sections and clauses are to articles, sections and clauses in this Agreement unless otherwise indicated.

SECTION 1.02. *Undivided Interest and Real Property Interest.* Attached as Exhibit A hereto is a description of the Real Property Interest and attached as Exhibit B is a description of the Undivided Interest.

ARTICLE II

NONPARTITIONMENT

SECTION 2.01. *Nonpartitionment.* The Owner Trustee hereby waives any rights it may have to partition Unit 2, whether by partitionment in kind or by sale and division of proceeds, and further agrees that it will not resort to any action in law or in equity to partition Unit 2, and it waives the benefits of all laws that may now or hereafter authorize such partition, for a term (i) which shall be coterminous with the ANPP Participation Agreement or (ii) which shall be for such lesser period as may be required under Applicable Law.

ARTICLE III

ASSIGNMENTS; EXERCISE OF RIGHTS

SECTION 3.01. *Assignment of Warranties.* El Paso hereby *ASSIGNS* to the Owner Trustee an undivided interest equal to the Applicable Unit 2 Percentage to and under any and all warranties of and other claims against dealers, manufacturers, vendors, contractors and subcontractors relating to Unit 2.

SECTION 3.02. *Assignment of the ANPP Participation Agreement.* (a) El Paso hereby *ASSIGNS* to the Owner Trustee an undivided interest equal to the Applicable Unit 2 Percentage in, to and under all of El Paso's rights under the ANPP Participation Agreement, to the extent that such rights relate to Unit 2 (including, but without limitation, a 1.998026% entitlement to the Net Energy Generation and Available Generating Capability (as each such term is defined in the ANPP Participation Agreement) of Unit 2).

(b) The Owner Trustee hereby *ASSIGNS* to El Paso the rights assigned under paragraph (a) until the Lease Termination Date.

SECTION 3.03. *Exercise of Rights as Participant under the ANPP Participation Agreement.* (a) Except as provided in Sections 15.2.2, 15.6.4 and Section 15.10 of the ANPP Participation Agreement (or any comparable successor provision), El Paso shall be and remain the sole "Participant" for all purposes of the ANPP Participation Agreement and the sole representative (with power to bind) in all dealings with the other ANPP Participants in relation to the Undivided Interest, the Real Property Interest and the rights assigned to the Owner Trustee pursuant to this Agreement: *provided, however,* that the foregoing shall not limit in any way any liability or obligation that El Paso may incur to the Owner Trustee or the Owner Participant under any Transaction Document as a result thereof.

(b) Unless the ANPP Participation Agreement shall otherwise permit, any right conferred on the Owner Trustee by Section 15.2.2 of the ANPP Participation Agreement shall be exercised as required by Section 15.6.3.3 of said Agreement.

(c) The provisions of this Section 3.03 shall remain in full force and effect until such time as the ANPP Administrative Committee or the ANPP Participants shall otherwise consent by amendment to the ANPP Participation Agreement or otherwise.

ARTICLE IV

ASSUMPTION; RELEASE

SECTION 4.01. *Assumption by Owner Trustee.* Except as contemplated by Section 5(a) of the Facility Lease, the Owner Trustee agrees that, effective on and as of the Lease Termination Date (unless a Transferee (Transferee) shall have qualified under Section 15.10 of the ANPP Participation Agreement or any comparable successor provision), unless a Default or Event of Default shall have occurred and be continuing or an Event of Loss shall have occurred or a Deemed Loss Event shall have been declared, the Owner Trustee shall assume and agree to pay, perform and discharge a percentage equal to the Applicable Unit 2 Percentage of all liabilities and obligations of El Paso under or with respect to, the ANPP Project Agreements, attributable to Unit 2, other than any and all costs relating to, allocable to, or incurred in connection with, Decommissioning.

SECTION 4.02. *Release.* Upon the assumption and agreement by a Transferee pursuant to Section 4.01 (whether at the Lease Termination Date or thereafter), the Owner Trustee shall therewith and thereupon be released and discharged from its obligations under Section 4.01 arising on or after such assumption and agreement.

ARTICLE V

NO RELEASE OF EL PASO; REIMBURSEMENT

SECTION 5.01. *No Release of El Paso.* Notwithstanding the provisions of Article IV or any other provision hereof or of any other Transaction Document, and except to the extent provided in Section 15.10 of the ANPP Participation Agreement (or any comparable successor provision), El Paso shall not be released from any liability or obligation under the ANPP Project Agreements, or otherwise, with respect to PVNGS, and El Paso shall remain liable for the payment and performance of all such liabilities and obligations, including, without limitation, any and all liabilities and obligations not assumed by the Owner Trustee or a Transferee pursuant to Section 4.01.

SECTION 5.02. *Reimbursement.* Unless a Default or an Event of Default shall have occurred and be continuing or an Event of Loss shall have occurred or a Deemed Loss Event shall have been declared, from and after the Lease Termination Date, upon the payment or performance by El Paso of any liability or obligation in respect of which the Owner Trustee shall also have become obligated in consequence of Article IV, and for so long as the Owner Trustee shall be so liable, El Paso shall b

entitled to prompt reimbursement by the Owner Trustee from the Trust Estate for all amounts expended in connection with such payment or performance.

ARTICLE VI

FURTHER AGREEMENTS OF EL PASO

SECTION 6.01. *Agreement to Sell or Lease Unit 2 Retained Assets.* Upon a transfer to a Transferee, El Paso agrees in respect to the Undivided Interest and the Real Property Interest, (i) if such Transferee is a purchaser of the Undivided Interest and the Real Property Interest, to sell to such Transferee, at a price equal to the then Fair Market Sales Value thereof (determined on the basis of the then actual condition of the Unit 2 Retained Assets), a .666007% undivided interest in and to the Unit 2 Retained Assets, or (ii) if the Transferee is a lessee of the Undivided Interest and the Real Property Interest, to lease or otherwise make available to the Transferee, at a rent equal to the then Fair Market Rental Value (determined on the basis of the then actual condition of the Unit 2 Retained Assets) a .666007% undivided interest in and to the Unit 2 Retained Assets. Any such sale or lease by El Paso shall be accomplished by an appropriate bill of sale or lease. The Bill of Sale referenced in the definition of Unit 2 Retained Assets as set forth in Appendix A hereto was recorded December , 1986 as Instrument No. , records of Maricopa County, Arizona, and is hereby incorporated herein by reference.

SECTION 6.02. *Agreement to Assign or Make Available ANPP Project Agreements.* Upon a transfer to a Transferee, El Paso agrees in respect of the Undivided Interest and the Real Property Interest, (i) if the Transferee is a purchaser of the Undivided Interest and the Real Property Interest, to assign to such Transferee an undivided interest equal to a .666007% undivided interest in the ANPP Project Agreements (other than the ANPP Participation Agreement) to the extent relating to Unit 2 and the Unit 2 Retained Assets, and (ii) if the Transferee is a lessee of the Undivided Interest and the Real Property Interest, to assign for the term of such lease to such Transferee an undivided interest equal to a .666007% undivided interest in the ANPP Project Agreements (other than the ANPP Participation Agreement) to the extent relating to Unit 2 and the Unit 2 Retained Assets. Any assignment pursuant to this Section 6.02 shall be accomplished by an appropriate instrument of assignment.

SECTION 6.03. *Agreements to Seek Amendment to the ANPP Participation Agreement and the License.* El Paso agrees to use its best efforts to obtain any required amendments to the ANPP Participation Agreement and the License to permit El Paso to act as Agent of the Owner Trustee in the manner contemplated by Section 7.01 hereof, if (i) El Paso shall not have elected to purchase the Undivided Interest and the Real Property Interest as provided in Section 13 of the Facility Lease and (ii) there shall not be a Transferee in respect of the Undivided Interest and the Real Property Interest.

SECTION 6.04 *Sale Proceeds.* If, on or after the occurrence of a Determination Event (as such term is defined in the Deed), the Lessee shall sell or otherwise convey all or any portion of the Undivided Interest (or any interest therein), the Lessee shall pay, upon demand (but in no event later than 10 days after such sale or conveyance), the proceeds of such sale or conveyance to the Owner Participant.

ARTICLE VII

INTERIM AGENCY ARRANGEMENTS

SECTION 7.01. *Designation of Agent.* From and after the Lease Termination Date and until a transfer to a Transferee in respect of the Undivided Interest and the Real Property Interest (such period being referred to as the Agency Period), El Paso shall be, and the Owner Trustee hereby designates El Paso as, the initial agent (the Agent) of the Owner Trustee in the exercise of all rights assigned to the Owner Trustee hereunder. The Owner Trustee may terminate such agreement and the Agency Period at any time.

SECTION 7.02. *Operation of Unit 2.* During the Agency Period, the Agent shall administer the operation of the Undivided Interest and the Real Property Interest in accordance with this Agreement and all instructions of the Owner Trustee in accordance with Applicable Law. If, however, the Owner

Trustee shall, prior to or at any time during the Agency Period, enter into any joint ownership and operating agreement with other Persons having a legal right to, or right to use, any other undivided interest in Unit 2, the Agent agrees to join in, and be bound by, the terms of such agreement if the Agent's performance thereunder shall not violate, or result in a violation of, any Applicable Law or the License. The Owner Trustee agrees to give the Agent reasonable prior written notice of the commencement of the negotiation of any such agreement.

SECTION 7.03. *ANPP Participation Agreement.* El Paso agrees that, at all times during the Agency Period, it will perform all obligations and discharge all liabilities for which it is responsible as a "Participant" under the ANPP Participation Agreement in respect of the Undivided Interest and the Real Property Interest. In the performance of the foregoing agreement, El Paso shall not exercise its rights as an ANPP Participant to cause Capital Improvements to be made to Unit 2 unless the Owner Trustee shall have agreed to provide funds for the payment of the Owner Trustee's share of the cost of such Capital Improvements to El Paso prior to the date on which such amounts shall be due with respect thereto under the ANPP Participation Agreement.

SECTION 7.04. *Support.* Except with respect to the Unit 2 Retained Assets for which provision is made in Section 7.06, El Paso covenants and agrees that, at all times during the Agency Period, it will provide, or make available, to the Owner Trustee all El Paso's rights in and to other assets owned by El Paso and the ANPP Project Agreements to the extent necessary for the operation, servicing and use of the Undivided Interest and the Real Property Interest.

SECTION 7.05. *Compensation.* As compensation for its obligations under Sections 7.02, 7.03 and 7.04 and so long as no Event of Default shall have occurred and be continuing, El Paso shall be entitled to receive, and the Owner Trustee hereby agrees to pay, an amount equal to the sum of (i) the Owner Trustee's share of (a) the aggregate of amounts paid by El Paso as provided in Section 7.03 to the extent reasonably allocable to Unit 2 and (b) reasonable compensation for the Unit 2 Retained Assets and (ii) out-of-pocket expenses incurred by El Paso or the Agent, as the case may be, in connection with the performance of its agreements in this Article VII. Compensation under this Section 7.05 shall be paid promptly upon receipt of an invoice from El Paso.

SECTION 7.06. *Transmission; Transmission Agreement.* (a) El Paso covenants and agrees that, at all times during the Agency Period, the Owner Trustee shall have the right to wheel, under normal transmission operating conditions, the Owner Trustee's share of up to 1270 MW of power and energy, under normal transmission operating conditions, over transmission equipment in which El Paso now owns or may hereafter acquire an ownership interest, between Unit 2 and the ANPP Switchyard.

(b) If El Paso shall fail or decline to give the notice of renewal of the Facility Lease or purchase of the Undivided Interest, in each case as provided in Section 13 of the Facility Lease, El Paso and the Owner Trustee shall forthwith commence the negotiation in good faith of a definitive transmission agreement, not inconsistent with the terms and provisions of Section 7.06(a), but containing sufficient detail for the proper wheeling of power and energy, under normal transmission operating conditions, over the equipment of El Paso referred to in such Section 7.06(a) under then existing circumstances. El Paso and the Owner Trustee shall complete such negotiations and execute such definitive transmission agreement prior to the Lease Termination Date and such definitive transmission agreement shall provide for compensation to El Paso for the transmission services so provided at the Fair Market Sales Value thereof.

ARTICLE VIII

MISCELLANEOUS

SECTION 8.01. *Successors and Assigns.* This Agreement shall be binding upon the successors and assigns of each of El Paso and the Owner Trustee.

SECTION 8.02. *Governing Law.* The interpretation of this Agreement and the rights and obligations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of New York.

SECTION 8.03. *Counterpart Execution.* This Agreement may be executed in any number of counterparts and by each of the parties hereto on separate counterparts. all such counterparts together constituting but one and the same instrument.

SECTION 8.04. *Amendments.* The terms of this Agreement shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever, except by written instrument signed by El Paso and the Owner Trustee.

SECTION 8.05. *Severability of Provisions.* Any provision of this Agreement which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and no such prohibition or unenforceability in any jurisdiction shall invalidate or render unenforceable such provisions in any other jurisdiction. To the extent permitted by Applicable Law, El Paso hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

SECTION 8.06. *Headings.* The division of this Agreement into sections, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

SECTION 8.07. *Disclosure of Beneficiary.* Pursuant to Arizona Revised Statutes 33.401, the beneficiary of the Trust Agreement is Commercial Federal Investment Corporation, a Nebraska corporation, whose address is Commercial Federal Tower, 2120 South 72nd Street, Omaha, Nebraska 68124. A copy of the Trust Agreement is available for inspection at the offices of the Owner Trustee at 100 Federal Street, Boston, Massachusetts 02110, Attention of Corporate Trust Division.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be duly executed in New York, New York by their respective officers thereunto duly authorized.

EL PASO ELECTRIC COMPANY

By: _____
Vice President

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as Owner Trustee under a Trust Agreement, dated as of December 1, 1986, with Commercial Federal Investment Corporation

By: _____
Assistant Vice President

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

The foregoing instrument was acknowledged before me this 16th day of December, 1986, by William J. Johnson, Vice President of EL PASO ELECTRIC COMPANY, a Texas corporation, on behalf of the corporation.

David Ho Spratt

Notary Public

David Ho Spratt
Notary Public, State of New York
No. 31-4693403
Qualified in New York County
Commission Expires March 30, 1987

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

The foregoing instrument was acknowledged before me this 16th day of December, 1986, by Martin P. Henry, an Assistant Vice President of THE FIRST NATIONAL BANK OF BOSTON, a national banking association, on behalf of the banking association under that certain Trust Agreement dated as of December 1, 1986.

David Ho Spratt

Notary Public

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EXHIBIT A
TO
ASSIGNMENT, ASSUMPTION
AND
FURTHER AGREEMENT

DESCRIPTION OF REAL PROPERTY INTEREST

The Real Property Interest consists of a .666007% undivided interest in the following:

1. PVNGS PLANT SITE.

PARCEL NO. 1: Lot Four (4); the Southwest quarter of the Northwest quarter; and the West half of the Southwest quarter, all in Section Two (2), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 2: All of Section Three (3), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 3: The East half of Section Four (4), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 4: The West half of Section Twenty-six (26), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 5: Section Twenty-seven (27), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the Northwest quarter of Section 27.

PARCEL NO. 6: The Southeast quarter of Section Twenty-eight (28), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT 50% of all oil, gas and other mineral deposits and geothermal resources recovered from or developed on the property, as reserved in instrument recorded May 10, 1974 in Docket 10647, page 136.

PARCEL NO. 7: The East half of Section Thirty-three (33), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 8: All of Section Thirty-four (34), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 9: The West half of Section Thirty-five (35), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 10: The Southeast quarter of Section Nine (9), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the Northwest quarter thereof.

PARCEL NO. 11: All of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the East half of the Southeast quarter thereof; and EXCEPT the North half of the South half of the Northwest quarter of the Northwest quarter thereof.

PARCEL NO. 12: That part of the East half of the Southwest quarter of Section Twenty-three (23), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Southeast corner of the said East half of the Southwest quarter of Section 23; thence West, an assumed bearing along the South line of the said East half of the Southwest quarter of Section 23, for a distance of 762.04 feet; thence North 0 degrees 03 minutes 39 seconds West; parallel to the East line of the said East half of the Southwest quarter of Section 23, for a distance of 1946.46 feet to a point on the South right-of-way line of the 200 foot wide HASSAYAMPA-SALOME HIGHWAY, as recorded in Book 12 of Road Maps, page 82, Maricopa

County Recorder, Maricopa County, Arizona; thence continuing North 0 degrees 03 minutes 39 seconds West for a distance of 234.15 feet to a point on the North right-of-way line of said highway; thence South 58 degrees 43 minutes 35 seconds East, along said North right-of-way line for a distance of 892.17 feet to a point on the said East line of the East half of the Southwes quarter of Section 23; thence South 0 degrees 03 minutes 39 seconds East, along said East line for distance of 234.15 feet to a point on the said South right-of-way line; thence continuing South 0 degrees 03 minutes 39 seconds East for a distance of 1483.31 feet to the true point of beginning;

EXCEPT the East 305 feet of the South 305 feet thereof; and EXCEPT one-half of the minerals and mineral rights and mineral estates of every kind and nature, as set forth in Deed recorded in Docket 11652, page 52, Maricopa County Records.

PARCEL NO. 13: The North half of the South half of the Northwest quarter of the Northwest quarter of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

II. HASSAYAMPA PUMPING STATION AND EFFLUENT PIPELINE.

All real property, leases, licenses, easements, rights-of-way and other property held by Title USA Company of Arizona Trust No. 530 established by that certain Trust Agreement dated October 15, 1975, as amended, but excluding therefrom all improvements.

III. MISCELLANEOUS REAL PROPERTY INTERESTS.

Those ANPP Project Agreements (as defined in the ANPP Participation Agreement), other than the Trust Agreement for Title USA Company of Arizona Trust 530, consisting of leases, licenses, easements, and permits, which provide land and land rights for (a) the pipeline to supply waste water effluent to PVNGS from the 91st Avenue sewage treatment plant serving the Phoenix metropolitan ar and (b) railroad access to the Nuclear Plant Site (as defined in the ANPP Participation Agreemen

EXHIBIT B
TO
ASSIGNMENT, ASSUMPTION
AND
FURTHER AGREEMENT

DESCRIPTION OF UNDIVIDED INTEREST

The Undivided Interest consists of a 1.998026% undivided interest in and to the property described under A below and a .666007% undivided interest in and to the property described under B below.

A. Unit 2 of the Palo Verde Nuclear Generating Station (PVNGS), located in Maricopa County, Arizona, approximately 55 miles west of the City of Phoenix, Arizona, and approximately 16 miles west of the City of Buckeye, Arizona, consisting of:

I. Unit 2 Combustion Engineering "System 80" pressurized water reactor nuclear steam supply system (the NSSS). The NSSS is comprised of a reactor vessel containing 241 fuel assemblies with approximately 100 tons of enriched uranium (fuel assemblies, however, are not part of Unit 2 and are not included in the Undivided Interest being sold), two steam generators, four reactor coolant pumps and various additional systems and subsystems. The licensed thermal rating of the NSSS is 3800 MW.

II. Unit 2 GE TC6F-43, 1800 RPM tandem-compound, six flow, reheat turbine-generator including turbine, generator, moisture separator-reheater, exciter, controls, and auxiliary subsystems. The turbine-generator is conductor cooled and rated at 1,554 MVA at 24,000 V, 3 phase, 60 Hz, 1.5 in Hg ABS back pressure, and approximately 1,363 MW maximum gross electric output.

III. Unit 2 146 ft. inside diameter, steel-lined, pre-stressed concrete cylindrical containment building with a hemispherical dome designed for 60 psig. The containment building houses the reactor system.

IV. Unit 2 auxiliary systems and equipment including engineered safeguards systems; reactor auxiliary systems and turbine-generator auxiliary systems associated with items I, II, and III above; extending to and including the Unit 2 start-up transformer.

V. Unit 2 cooling tower system consisting of three (3) mechanical draft cooling towers, including a closed cycle circulating water system, makeup water systems and essential spray ponds.

VI. Unit 2 radioactive waste treatment system, including liquid, gaseous, and solid waste subsystems, controls, instrumentation, storage, handling and shipment facilities.

VII. Unit 2 emergency diesel-generator system, including a diesel-generator building which contains two diesel generators, fuel oil systems, storage tanks, control and instrumentation systems and other equipment.

VIII. Unit 2 internal communication systems, including associated interconnections and computer data links.

BUT EXCLUDING:

I. Nuclear fuel for Unit 2, including spare fuel assemblies, and nuclear waste.
II. Spare Parts (Unit 2).
III. Transmission facilities (including any and all facilities and equipment providing interconnection between the Unit 2 turbine generator and the ANPP High Voltage Switchyard, including step-up transformers and standby equipment and systems).
IV. Oil and diesel fuel inventories (Unit 2).

B. All PVNGS common facilities, INCLUDING BUT NOT LIMITED TO:

I. Surveillance systems, including associated radioactive monitoring systems and equipment.
II. Water treatment facilities and transport systems for supply of waste water effluent.

III. Related storage facilities and equipment (excluding Warehouses).

BUT EXCLUDING:

I. Nuclear fuel, including spare fuel assemblies, and nuclear waste.

II. Electrical power facilities including Construction Switchyard and all transmission and ANPP High Voltage Switchyard facilities.

III. Administration Building.

IV. Administration Annex Building.

V. Technical Support Center.

VI. Visitor Center.

VII. External communication systems and equipment, including associated interconnections and computer data links.

VIII. Parking lot improvements, road improvements, site improvements, fencing and dikes.

IX. Spare parts (Common Facilities).

X. Simulator.

XI. Oil and diesel fuel inventories.

XII. Evaporation Pond.

XIII. Guard house.

XIV. Coating facility.

XV. Fire pump house.

XVI. Radiation Instrument calibration lab.

XVII. Service building.

XVIII. Water treatment building.

XIX. Shooting range.

XX. WRF operations building.

XXI. Warehouses.

XXII. Real Property, beneficial interest in Title USA Company of Arizona Trust 530, and Project Agreement interests described in Exhibit A.

When recorded, return to:

Greg Nielsen
Snell & Wilmer
3100 Valley Bank Center
Phoenix, Arizona 85073

DEED AND BILL OF SALE

dated as of December 18, 1986

between

EL PASO ELECTRIC COMPANY,
a Texas corporation
as Seller
and

THE FIRST NATIONAL BANK OF BOSTON,
a national banking association, not in its individual capacity, but solely as Owner Trustee under a Trust Agreement, dated as of December 1, 1986, with Commercial Federal Investment Corporation, as Buyer.

DEED AND BILL OF SALE, dated as of December 18, 1986 between EL PASO ELECTRIC COMPANY, a Texas corporation (the Seller), and THE FIRST NATIONAL BANK OF BOSTON, a national banking association, not in its individual capacity, but solely as Owner Trustee (in such capacity, the Owner Trustee) under the Trust Agreement, dated as of December 1, 1986, with Commercial Federal Investment Corporation (such Owner Trustee being herein referred to as the Buyer).

WITNESSETH:

WHEREAS, the Seller desires to sell, and the Buyer desires to purchase, the Undivided Interest, for and in consideration of the amounts paid by the Buyer to the Seller pursuant to the Participation Agreement (as hereinafter defined);

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. For the purpose hereof, capitalized terms used herein, unless otherwise defined herein, shall have the meanings assigned to such terms in Appendix A attached hereto.

The property described on Exhibit B hereto is collectively referred to herein as Unit 2 and the undivided interests therein being conveyed pursuant hereto are referred to collectively herein as the Undivided Interest. The Undivided Interest is located on the PVNGS Site described in Part I of Exhibit A hereto and the land subject to the agreements described in Parts II and III of said Exhibit A.

2. The Seller does hereby GRANT, BARGAIN, CONVEY, SELL, ASSIGN, TRANSFER AND SET OVER unto the Buyer (i) a 1.998026% undivided interest in and to the property described in Exhibit B, Section A hereto (the Generating Unit) and (ii) a .666007% undivided interest in and to all of the property described in Exhibit B, Section B hereto (the Common Facilities), TO HAVE AND TO HOLD the same unto the Buyer, its successors and assigns, FOREVER. It is the intent of this Deed and Bill of Sale, that, from and after the date as of which this Deed and Bill of Sale is executed and delivered, Buyer will own an undivided 1.998026% interest in the Generating Unit, as a tenant in common with the owners of the remaining undivided interests in the Generating Unit, and an undivided .666007% interest in the Common Facilities, as a tenant in common with the owners of the remaining undivided interests in the Common Facilities.

3. The Seller does hereby WARRANT AND COVENANT that it is the true and lawful owner of the Undivided Interest and has good right to sell the Undivided Interest, that title to the Undivided Interest is on the date of execution hereof free and clear of all claims, liens, security interests and encumbrances of any nature, other than Permitted Liens described in clauses (i), (v) (aggregating not more than 12.65% of $5,000,000), (vi), (ix), (x) and (xi) of the definition thereof and 1986 taxes not yet due and payable, that good, marketable and indefeasible title to the Undivided Interest is hereby conveyed to the Buyer, and that the Seller will forever warrant and defend such title against the claims of all Persons. The foregoing warranties of the Seller are to the restraint of any other covenant of the Seller otherwise arising by implication by virtue of Arizona Revised Statutes Section 33-435.

4. The Seller and the Buyer hereby acknowledge and confirm that, as between the Seller and the Buyer, the Undivided Interest is and will remain personal property, and is not, and will not become, an accession to the PVNGS Site or to the Real Property Interest, title thereto being separate and distinct from title to such real property. The Buyer hereby waives any rights it may have to partition Unit 2, whether by partitionment in kind or by sale and division of proceeds, and further agrees that it will not resort to any action in law or in equity to partition Unit 2 and it waives the benefits of all laws that may now or hereafter authorize such partition for a term (i) which shall be coterminous with the ANPP Participation Agreement or (ii) which shall be for such lesser period as may be required by Applicable Law.

5. Pursuant to the Participation Agreement and the Assignment and Assumption, the Seller has agreed to pay certain costs and expenses relating to Unit 2, including, without limitation, with respect

to decommissioning and retirement of Unit 2, and to perform and comply with certain obligations relating to transfers of interests in Unit 2. All such agreements and obligations of the Seller are hereby incorporated by reference in this Deed and Bill of Sale as if set forth in full herein.

6. Pursuant to Arizona Revised Statutes Section 33-401, the beneficiary of the Trust Agreement is Commercial Federal Investment Corporation, a Nebraska corporation, whose address is Commercial Federal Tower, 2120 South 72nd Street, Omaha, Nebraska 68124. A copy of the Trust Agreement is available for inspection at the offices of the Owner Trustee at 100 Federal Street, Boston, Massachusetts 02110, Attention of Corporate Trust Division.

IN WITNESS WHEREOF, the parties hereto have caused this Deed and Bill of Sale to be executed as of the 18th day of December, 1986.

EL PASO ELECTRIC COMPANY,
a Texas corporation

By _____
Vice President

THE FIRST NATIONAL BANK
OF BOSTON, a national banking
association, not in its individual
capacity, but solely as Owner
Trustee under the Trust Agreement

By _____
Assistant Vice President

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

The foregoing instrument was acknowledged before me this 16 day of December, 1986. by WILLIAM J. JOHNSON, Vice President of EL PASO ELECTRIC COMPANY, a Texas corporation. on behalf of the corporation.

Delia T. Santiago
Notary Public

DELIA T. SANTIAGO
Notary Public, State of New York
No. 41-3451160
Qualified in Queens County
Commission Expires March 30, 1987

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

The foregoing instrument was acknowledged before me this 16 day of December, 1986, by MARTIN P. HENRY, Assistant Vice President of THE FIRST NATIONAL BANK OF BOSTON, a national banking association, on behalf of the banking association as trustee under that certain Trust Agreement dated as of December 1, 1986.

Delia T. Santiago
Notary Public

DELIA T. SANTIAGO
Notary Public, State of New York
No. 41-3451160
Qualified in Queens County
Commission Expires March 30, 1987

EXHIBIT A
TO
DEED AND BILL OF SALE

PVNGS SITE DESCRIPTION

1. PVNGS PLANT SITE.

PARCEL NO. 1: Lot Four (4); the Southwest quarter of the Northwest quarter; and the West half of the Southwest quarter, all in Section Two (2), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 2: All of Section Three (3), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 3: The East half of Section Four (4), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 4: The West half of Section Twenty-six (26), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 5: Section Twenty-seven (27), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the Northwest quarter of Section 27.

PARCEL NO. 6: The Southeast quarter of Section Twenty-eight (28), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT 50% of all oil, gas and other mineral deposits and geothermal resources recovered from or developed on the property, as reserved in instrument recorded May 10, 1974 in Docket 10647, page 136.

PARCEL NO. 7: The East half of Section Thirty-three (33), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 8: All of Section Thirty-four (34), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 9: The West half of Section Thirty-five (35), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 10: The Southeast quarter of Section Nine (9), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the Northwest quarter thereof.

PARCEL NO. 11: All of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; EXCEPT the East half of the Southeast quarter thereof; and EXCEPT the North half of the South half of the Northwest quarter of the Northwest quarter thereof.

PARCEL NO. 12: That part of the East half of the Southwest quarter of Section Twenty-three (23), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Southeast corner of the said East half of the Southwest quarter of Section 23; thence West, an assumed bearing along the South line of the said East half of the Southwest quarter of Section 23, for a distance of 762.04 feet; thence North 0 degrees 03 minutes 39 seconds West; parallel to the East line of the said East half of the Southwest quarter of Section 23, for a distance of 1946.46 feet to a point on the South right-of-way line of the 200 foot wide

HASSAYAMPA-SALOME HIGHWAY, as recorded in Book 12 of Road Maps, page 82, Maricopa County Recorder, Maricopa County, Arizona; thence continuing North 0 degrees 03 minutes 39 seconds West for a distance of 234.15 feet to a point on the North right-of-way line of sa highway; thence South 58 degrees 43 minutes 35 seconds East, along said North right-of-way li for a distance of 892.17 feet to a point on the said East line of the East half of the Southwest quarter of Section 23; thence South 0 degrees 03 minutes 39 seconds East, along said East line for a distance of 234.15 feet to a point on the said South right-of-way line; thence continuing South 0 degrees 03 minutes 39 seconds East for a distance of 1483.31 feet to the true point of beginning;

EXCEPT the East 305 feet of the South 305 feet thereof; and EXCEPT one-half of the minerals and mineral rights and mineral estates of every kind and nature, as set forth in Deed recorded in Docket 11652, page 52, Maricopa County Records.

PARCEL NO. 13: The North half of the South half of the Northwest quarter of the Northwest quarter of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

II. HASSAYAMPA PUMPING STATION AND EFFLUENT PIPELINE.

All real property, leases, licenses, easements, rights-of-way and other property held by Title USA Company of Arizona Trust No. 530 established by that certain Trust Agreement dated October 15, 1975, as amended, but excluding therefrom all improvements.

III. MISCELLANEOUS REAL PROPERTY INTERESTS.

Those ANPP Project Agreements (as defined in the ANPP Participation Agreement), other than the Trust Agreement for Title USA Company of Arizona Trust 530, consisting of leases, licenses, easements, and permits, which provide land and land rights for (a) the pipeline to supply waste water effluent to PVNGS from the 91st Avenue sewage treatment plant serving the Phoenix metropolitan ar and (b) railroad access to the Nuclear Plant Site (as defined in the ANPP Participation Agreement)

EXHIBIT B
TO
DEED AND BILL OF SALE

UNIT 2 DESCRIPTION

A. Unit 2 of the Palo Verde Nuclear Generating Station (PVNGS), located in Maricopa County, Arizona, approximately 55 miles west of the City of Phoenix, Arizona, and approximately 16 miles west of the City of Buckeye, Arizona, consisting of:

I. Unit 2 Combustion Engineering "System 80" pressurized water reactor nuclear steam supply system (the NSSS). The NSSS is comprised of a reactor vessel containing 241 fuel assemblies with approximately 100 tons of enriched uranium (fuel assemblies, however, are not part of Unit 2 and are not included in the Undivided Interest being sold), two steam generators, four reactor coolant pumps and various additional systems and subsystems. The licensed thermal rating of the NSSS is 3800 MW.

II. Unit 2 GE TC6F-43, 1800 RPM tandem-compound, six flow, reheat turbine-generator including turbine, generator, moisture separator-reheater, exciter, controls, and auxiliary subsystems. The turbine-generator is conductor cooled and rated at 1,554 MVA at 24,000 V, 3 phase, 60 Hz, 1.5 in Hg ABS back pressure, and approximately 1,363 MW maximum gross electric output.

III. Unit 2 146 ft. inside diameter, steel-lined, pre-stressed concrete cylindrical containment building with a hemispherical dome designed for 60 psig. The containment building houses the reactor system.

IV. Unit 2 auxiliary systems and equipment including engineered safeguards systems, reactor auxiliary systems and turbine-generator auxiliary systems associated with items I, II, and III above, extending to and including the Unit 2 start-up transformer.

V. Unit 2 cooling tower system consisting of three (3) mechanical draft cooling towers, including a closed cycle circulating water system, makeup water systems and essential spray ponds.

VI. Unit 2 radioactive waste treatment system, including liquid, gaseous, and solid waste subsystems, controls, instrumentation, storage, handling and shipment facilities.

VII. Unit 2 emergency diesel-generator system, including a diesel-generator building which contains two diesel generators, fuel oil systems, storage tanks, control and instrumentation systems and other equipment.

VIII. Unit 2 internal communication systems, including associated interconnections and computer data links.

BUT EXCLUDING:

I. Nuclear fuel for Unit 2, including spare fuel assemblies, and nuclear waste.

II. Spare Parts (Unit 2).

III. Transmission facilities (including any and all facilities and equipment providing interconnection between the Unit 2 turbine generator and the ANPP High Voltage Switchyard, including step-up transformers and standby equipment and systems).

IV. Oil and diesel fuel inventories (Unit 2).

B. All PVNGS common facilities, INCLUDING BUT NOT LIMITED TO:

I. Surveillance systems, including associated radioactive monitoring systems and equipment.

II. Water treatment facilities and transport systems for supply of waste water effluent.

III. Related storage facilities and equipment (excluding Warehouses).

BUT EXCLUDING:

I. Nuclear fuel, including spare fuel assemblies, and nuclear waste.

II. Electrical power facilities including Construction Switchyard and all transmission and ANPP High Voltage Switchyard facilities.

III. Administration Building.

IV. Administration Annex Building.

V. Technical Support Center.

VI. Visitor Center.

VII. External communication systems and equipment, including associated interconnections and computer data links.

VIII. Parking lot improvements, road improvements, site improvements, fencing and dikes.

IX. Spare parts (Common Facilities).

X. Simulator.

XI. Oil and diesel fuel inventories.

XII. Evaporation Pond.

XIII. Guard house.

XIV. Coating facility.

XV. Fire pump house.

XVI. Radiation Instrument calibration lab.

XVII. Service building.

XVIII. Water treatment building.

XIX. Shooting range.

XX. WRF operations building.

XXI. Warehouses.

XXII. Real Property, beneficial interest in Title USA Company of Arizona Trust 530, and Project Agreement interests described in Exhibit A.

When recorded, return to: Greg R. Nielsen
Snell & Wilmer
3100 Valley Bank Center
Phoenix, Arizona 85073

DEED

For the consideration of Ten Dollars ($10.00) and other valuable considerations, EL PASO ELECTRIC COMPANY, a Texas corporation ("Grantor"), hereby grants, conveys, sells, transfers and assigns to THE FIRST NATIONAL BANK OF BOSTON, a national banking association, as Owner Trustee (the "Owner Trustee") under that certain Trust Agreement (the "Trust Agreement"), with the beneficiary identified below, dated as of December 1, 1986 (the Owner Trustee being hereinafter referred to as "Grantee"), (A) an undivided .666007% interest in the land that is more particularly described on Exhibit A attached hereto and by this reference incorporated herein until the occurrence of the Determination Event, as hereinafter defined, and (B) an undivided .666007% interest in those ANPP Project Agreements (as defined in the Arizona Nuclear Power Project Participation Agreement dated August 23, 1973, among Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company, Public Service Company of New Mexico, El Paso Electric Company, Southern California Public Power Authority and Los Angeles Department of Water and Power, as amended, recorded on December 31, 1985 as Instrument No. 85-620132, records of Maricopa County, Arizona (the "ANPP Participation Agreement"), other than the Trust Agreement for the Title USA Company of Arizona Trust 530), consisting of leases, licenses, easements and permits, which provide land and land rights for (a) the pipeline to supply waste water effluent to the Palo Verde Nuclear Generating Station (as defined in the ANPP Participation Agreement) from the 91st Avenue sewage treatment plant serving the Phoenix, Arizona metropolitan area and (b) railroad access to the Nuclear Plant Site (as defined in the ANPP Participation Agreement) (such ANPP Project Agreements being hereinafter referred to as the "Assigned Project Agreements", and the land described in Exhibit A together with the land subject to the Assigned Project Agreements being hereinafter collectively referred to as the "Land"), together with all rights and privileges of Grantor appurtenant thereto, including but not limited to the perpetual (subject to the Possibility of Reversion, as hereinafter defined) right to locate, maintain and use the Improvements (as hereinafter defined) on the Land and the perpetual (subject to the Possibility of Reversion) right of ingress and egress over, upon and across the Land to the Improvements, BUT excepting and excluding from the transfer being made pursuant to this Deed any and all facilities, structures, improvements, equipment and property of whatever kind and nature now or hereafter constructed, placed or affixed on the Land (collectively, the Improvements), Grantor and Grantee hereby acknowledging and agreeing that the interest in the Improvements was acquired by Grantee pursuant to a separate Deed and Bill of Sale dated as of the date hereof between Grantor and Grantee and not pursuant to this Deed.

1. The interest being transferred pursuant to this Deed is subject to the ANPP Participation Agreement, the Project Agreements as defined in said ANPP Participation Agreement, any Permitted Liens described in clauses (i), (v) (aggregating not more than 12.65% of $5,000,000), (vi), (ix), (x) and (xi) of the definition thereof and to the matters set forth on Exhibit B attached hereto and incorporated herein by this reference.

2. Grantor hereby warrants that it is the true and lawful owner of the undivided interest conveyed hereby in the property described on Exhibit A attached hereto and has good right to sell the undivided interest in such property; that Grantor has good and marketable title to the undivided interest in the property described in Exhibit A and that title to such property is on the date of execution hereof free and clear of all claims, liens, encumbrances, security interests, covenants, assessments, rights, reservations, easements, restrictions and conditions save and except for any Permitted Liens described in clauses (i), (v) (aggregating not more than 12.65% of $5,000,000), (vi), (ix), (x) and (xi) and those matters set forth on Exhibit B attached hereto. Grantor hereby warrants

that good and marketable title to the undivided interest in the property described on Exhibit A is hereby conveyed to Owner Trustee subject to the Possibility of Reversion; and that the title to the undivided interest in the property described on Exhibit A conveyed to the Owner Trustee is determinable to the extent that such title shall automatically terminate and revert to the Grantor, its successors and assigns, without any further act or deed by any person whatsoever upon the occurrence of the Determination Event (such possibility of automatic termination and reversion being herein referred to as the "Possibility of Reversion"). Subject only to the Possibility of Reversion and to the matters set forth on Exhibit B attached hereto, Grantor hereby warrants, and will forever defend, the title to the undivided interest in the property described in Exhibit A conveyed hereby against all persons whomsoever. Any attempt by Grantor or its successors and assigns to release to Grantee or otherwise terminate the Possibility of Reversion shall be null, void and of no force and effect whatsoever.

3. Grantor intends by this Deed that (i) from and after the date as of which this Deed is executed and delivered, but subject to the Possibility of Reversion, Grantee will own an undivided .666007% interest in the property described in Exhibit A, as a tenant in common with the owners of the remaining undivided interests in such property and (ii) from and after the date as of which this Deed is executed and delivered, Grantee will own an undivided .666007% interest in the Assigned Project Agreements as a tenant in common with the owners of the remaining undivided interests in the Assigned Project Agreements.

4. Determination Event as used herein means the commencement of Decommissioning.

5. Pursuant to Arizona Revised Statutes Section 33-401, the beneficiary of the Trust Agreement is Commercial Federal Investment Corporation, a Nebraska corporation, whose address is Commercial Federal Tower, 2120 South 72nd Street, Omaha, Nebraska 68124. A copy of the Trust Agreement is available for inspection at the offices of the Owner Trustee at 100 Federal Street, Boston, Massachusetts 02110, Attention of Corporate Trust Division.

6. Terms used herein and not otherwise defined herein shall have the meanings set forth in Appendix A attached hereto.

IN WITNESS WHEREOF, Grantor has caused this Deed to be executed as of the 18th day of December, 1986.

EL PASO ELECTRIC COMPANY,
a Texas corporation

By: _____
Vice President

ACCEPTED AND AGREED TO:

THE FIRST NATIONAL BANK
OF BOSTON,
a national banking
association, not in
its individual capacity,
but solely as Trustee
under the Trust Agreement.

By _____
Assistant Vice President

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

The foregoing instrument was acknowledged before me this 11th day of December, 1986, by WILLIAM J. JOHNSON, the Vice President of EL PASO ELECTRIC COMPANY, a Texas corporation, on behalf of the corporation.

David A. Spivak

Notary Public

DAVID A. SPIVAK
Notary Public, State of New York
No. 31-4693468
Qualified in New York County
Commission Expires March 30, 1987

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

The foregoing instrument was acknowledged before me this 16th day of December, 1986, by MARTIN P. HENRY, an Assistant Vice President of THE FIRST NATIONAL BANK OF BOSTON, a national banking association, on behalf of the banking association as trustee under that certain Trust Agreement dated as of December 1, 1986.

David A. Spivak

Notary Public

DAVID A. SPIVAK
Notary Public, State of New York
No. 31-4693468
Qualified in New York County
Commission Expires March 30, 1987

PVNGS Plant Site

PARCEL NO. 1: Lot Four (4); the Southwest quarter of the Northwest quarter; and the West half of the Southwest quarter, all in Section Two (2), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 2: All of Section Three (3), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 3: The East half of Section Four (4), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 4: The West half of Section Twenty-six (26), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 5: Section Twenty-seven (27), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the Northwest quarter of Section 27.

PARCEL NO. 6: The Southeast quarter of Section Twenty-eight (28), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT 50% of all oil, gas and other mineral deposits and geothermal resources recovered from or developed on the property, as reserved in instrument recorded May 10, 1974 in Docket 10647, page 136.

PARCEL NO. 7: The East half of Section Thirty-three (33), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 8: All of Section Thirty-four (34), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 9: The West half of Section Thirty-five (35), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 10: The Southeast quarter of Section Nine (9), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the Northwest quarter thereof.

PARCEL NO. 11: All of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the East half of the Southeast quarter thereof; and

EXCEPT the North half of the South half of the Northwest quarter of the Northwest quarter thereof.

PARCEL NO. 12: That part of the East half of the Southwest quarter of Section Twenty-three (23), Township One (1) North, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Southeast corner of the said East half of the Southwest quarter of Section 23; thence West, an assumed bearing along the South line of the said East half of the Southwest quarter of Section 23, for a distance of 762.04 feet; thence North 0 degrees 03 minutes 39 seconds West; parallel to the East line of the said East half of the Southwest quarter of Section 23, for a distance of 1946.46 feet to a point on the South right-of-way line of the 200 foot wide HASSAYAMPA-SALOME HIGHWAY, as recorded in Book 12 of Road Maps, page 82, Maricopa

County Recorder, Maricopa County, Arizona; thence continuing North 0 degrees 03 minutes 39 seconds West for a distance of 234.15 feet to a point on the North right-of-way line of said highway; thence South 58 degrees 43 minutes 35 seconds East, along said North right-of-way line for a distance of 892.17 feet to a point on the said East line of the East half of the Southwest quarter of Section 23; thence South 0 degrees 03 minutes 39 seconds East, along said East line for a distance of 234.15 feet to a point on the said South right-of-way line; thence continuing South 0 degrees 03 minutes 39 seconds East for a distance of 1483.31 feet to the true point of beginning;

EXCEPT the East 305 feet of the South 305 feet thereof; and

EXCEPT one-half of the minerals and mineral rights and mineral estates of every kind and nature, as set forth in Deed recorded in Docket 11652, page 52, Maricopa County, Records.

PARCEL NO. 13: The North half of the South half of the Northwest quarter of the Northwest quarter of Section Ten (10), Township One (1) South, Range Six (6) West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

1. The right to enter upon, occupy and use, any part of all of that portion of the West half of the West half of Section 27, lying within 20 feet of the center line of the transmission line right of way of the Central Arizona Light and Power Company for the purposes provided in the Act of June 10, 1920 (41 STAT., 1063), and subject to the conditions and limitations of Section 24 of said Act, as amended by the Act of August 26, 1935 (49 STAT., 846), as reserved unto the United States of America in instrument recorded September 30, 1949 in Docket 442, page 577. (Part of Parcel 5—South half of said Section 27)

2. Roadway over the South 65 feet of said Sections 9 and 10, as shown on Book 13 of Road Maps, page 48. (Parcels 10 and 11)

3. Easement and rights incident thereto for electric lines approximately 28 feet South of the North line of said Section 34, as set forth in instrument recorded February 20, 1952 in Docket 878, page 548. (Parcel No. 8)

4. All the Oil and Gas in said lands, as reserved unto the United States of America, and the right to prospect for, mine and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the Act of June 17, 1914 (38 Stat. 509), as set forth in Patent recorded June 4, 1957 in Docket 2194, page 409. (Part of Parcel No. 11)

5. Easement and rights incident thereto for transmission line over said Section 34, said easement being 10 feet in width, the centerline described as follows: Beginning at a point approximately 28 feet South and 2445.5 feet East of the Northwest corner of said Section 34; thence Southerly along, parallel to and approximately 2620 feet to a point; thence Easterly along, parallel to, and approximately 2648 feet South of the North line of said Section 34, a distance of approximately 1556 feet to a point, as set forth in instrument recorded January 15, 1962 in Docket 3992, page 49. (Parcel No. 8)

6. One-Sixteenth of all gas, oil, metals and mineral rights as reserved unto the State of Arizona, in Patent recorded January 11, 1974 in Docket 10473, page 477. (Parcel 1)

7. Easement and rights incidents thereto for highway purposes over the West 55 feet of the East half of said Section 4, as set forth in the instrument recorded October 10, 1975 in Docket 11370, page 142. (Parcel 3)

8. Easement and rights incident thereto for highway purposes over the West 55 feet of the Southeast quarter of said Section 28, as set forth in instrument recorded October 10, 1975 in Docket 11370, page 142. (Parcel 6)

9. Easement and rights incident thereto for highway purposes over the West 55 feet of the East half of said Section 33, as set forth in instrument recorded October 10, 1975 in Docket 11370, page 142. (Parcel 7)

10. Easement and rights incident thereto for highway purposes over the West 55 feet of the Southeast quarter of said Section 9, as set forth in instrument recorded October 10, 1975 in Docket 11370, page 142. (Part of Parcel 10)

11. Easement and rights incident thereto for electric lines over the North 10 feet of the following described property: The Southeast quarter of Section 28, Township 1 North, Range 6 West Except the West 55 feet thereof for roadway, as set forth in instrument recorded June 25, 1976 in Docket 11736, page 1089. (Parcel 6)

12. Easement for highway purposes over said premises, as granted to Maricopa County, a Political Subdivision, by instrument recorded December 15, 1977 in Docket 12602, page 575, described as follows: The South 40 feet of the East one-half of the Southeast quarter of Section 9; the South 40 feet of the Southwest quarter of Section 10; the South 40 feet of the West one-half of the Southeast quarter of Section 10; the South 40 feet of the Southwest quarter of the Southeast quarter of Section 9;

All being in Township 1 South, Range 6 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

13. A roadway of a width consistent with the right of way over the Southerly portion of Sections 9 and 10 of the within described property, and other property designated County Road on Book 25 of Road Maps, page 47, recorded December 26, 1978. (Also known as Ward Road from the Hassayampa-Salome Highway to the South entrance of the Palo Verde Nuclear Generating Station)

14. 1986 taxes not yet due and payable.

15. Easement and rights incident thereto for transmission lines over a portion of said premises, as set forth in instrument recorded November 15, 1985 in Document No. 85-544604. (Parcels 1, 2, 8, 9 and 11)

16. Easement and rights incident thereto for highway over a portion of said premises, as set forth in instrument recorded February 3, 1959 in Docket 2740, page 309, and as shown in Book 12 of Road Maps, page 82. (Parcel 12)

17. Easement and rights incident thereto for roadway 20 feet in width, over the East 20 feet of the within described property, by instrument recorded October 19, 1976, in Docket 11907, page 115. (Parcel 12)

DEED AND ASSIGNMENT OF BENEFICIAL INTEREST
TITLE USA TRUST NO. 530

EL PASO ELECTRIC COMPANY, a Texas corporation (the "Assignor"), as the present owner of an undivided 4.181673% of the entire beneficial interest under Title USA Company of Arizona Trust No. 530, formerly known as US Life Title Company of Arizona Trust No. 530 ("Trust 530") established by that certain Trust Agreement dated October 15, 1975 (the "Trust 530 Agreement"), for and in consideration of the sum of Ten and no/100 Dollars ($10.00) and other valuable consideration, does by these presents sell, assign, convey, transfer and set over to THE FIRST NATIONAL BANK OF BOSTON, a national banking association, not in its individual capacity, but solely as Owner Trustee (the "Owner Trustee") under that certain Trust Agreement (the "Trust Agreement") with the beneficiary identified below, dated as of December 1, 1986 (the Owner Trustee being referred to herein as the "Assignee") an undivided .666007% beneficial interest in Trust 530.

1. It is the intent of this Deed and Assignment of Beneficial Interest that, from and after the date as of which this instrument is executed and delivered, Assignee will own an undivided .666007% of the entire beneficial interest in Trust 530, as a tenant in common with other beneficiaries.

2. Assignor hereby warrants that it is the true and lawful owner of the beneficial interest being transferred hereby and has good right to sell such interest; that Assignor has good and marketable title to such beneficial interest and that title to such beneficial interest is on the date of execution hereof free and clear of all claims, liens, security interests, covenants, rights, restrictions, conditions and encumbrances of any nature, save and except only those matters set forth in paragraph 3 below; that good, marketable and indefeasible title to such beneficial interest is hereby conveyed to Owner Trustee; and that, subject only to the matters set forth in paragraph 3 below, Assignor warrants and will forever defend such title against the claims of all persons whomsoever.

3. This Deed and Assignment of Beneficial Interest is given and accepted with the understanding and agreement that Assignor and Assignee hereby ratify, confirm and approve all proper actions heretofore taken by Title USA Company of Arizona, as Trustee of Trust 530 (the "Trustee") and all proper disbursements heretofore made by the Trustee, and is given and accepted with the understanding and agreement that the interest in Trust 530 which is being transferred hereby is being transferred and assigned, and the property held under Trust 530 is, subject to all the terms and conditions of (i) the Arizona Nuclear Power Project Participation Agreement dated August 23, 1973, among Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company, Public Service Company of New Mexico, El Paso Electric Company, Southern California Public Power Authority and Los Angeles Department of Water and Power, as amended, (ii) the Project Agreements as defined in said Arizona Nuclear Power Project Participation Agreement and (iii) the Trust 530 Agreement, including all supplements and amendments thereto; and is subject to all obligations and liabilities under the Trust 530 Agreement heretofore accrued or hereafter arising under the terms thereof. Assignee hereby accepts, assumes and agrees to be bound by all of the terms, conditions, stipulations and obligations of the Trust 530 Agreement. Trustee is authorized to substitute Assignee in place of Assignor under the Trust 530, to the extent of the interest hereby assigned to Assignee.

4. Assignee hereby advises the Trustee that, until further notice, Assignee's address for all Trust 530 purposes is:

100 Federal Street
Boston, Massachusetts 02110
Attention of Corporate
Trust Division

5. Pursuant to Arizona Revised Statutes Section 33-401, the beneficiary of the Trust Agreement is Commercial Federal Investment Corporation, a Nebraska corporation, whose address is Commercial Federal Tower, 2120 South 72nd Street, Omaha, Nebraska 68124. A copy of the Trust Agreement is available for inspection at the offices of the Owner Trustee at 100 Federal Street, Boston, Massachusetts 02110; Attention of Corporate Trust Division. Assignee is entering into this Deed and Assignment of Beneficial Interest solely as trustee under the Trust Agreement; only the Trust Estate thereunder, and not Assignee in its individual capacity nor the beneficiary of the Trust Agreement, is liable for any of the obligations of Assignee hereunder.

IN WITNESS WHEREOF, Assignor has caused this Deed and Assignment of Beneficial Interest to be executed as of the 18th day of December, 1986.

EL PASO ELECTRIC COMPANY,
a Texas corporation

By: _____
Vice President

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

The foregoing instrument was acknowledged before me this 16th day of December, 1986, by WILLIAM J. JOHNSON, the Vice President of EL PASO ELECTRIC COMPANY, a Texas corporation, on behalf of the corporation.

_____
Notary Public
DAVID A. SPIVAK
Notary Public, State of New York
No. 31-4693468
Qualified in New York County
Commission Expires March 30, 1987

ACCEPTANCE BY ASSIGNEE

The foregoing Deed and Assignment of Beneficial Interest is hereby accepted and all terms and conditions are hereby approved, and Assignee hereby acknowledges receipt of a copy of the Trust 530 Agreement and all amendments and supplements thereto, and hereby agrees to be bound by and to comply with all the terms and obligations of the Trust 530 Agreement.

Dated as of December 18, 1986.

THE FIRST NATIONAL BANK OF BOSTON,
a national banking association,
not in its individual capacity but
solely as Trustee under the Trust
Agreement

By: _____
Assistant Vice President

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

The foregoing instrument was acknowledged before me this 16th day of December, 1986, by Martin P. Henry, an Assistant Vice President of The First National Bank of Boston, a national banking association, on behalf of the banking association as Trustee under that certain Trust Agreement dated as of December 1, 1986.

_____
Notary Public
DAVID A. SPIVAK
Notary Public, State of New York
No. 31-4693468
Qualified in New York County
Commission Expires March 30, 1987

ENDORSEMENT OF TRUSTEE

The foregoing Deed and Assignment of Beneficial Interest is hereby accepted, and filed in the Trust Department of TITLE USA COMPANY OF ARIZONA this day of December, 1986.

TITLE USA COMPANY OF ARIZONA,
Trustee

By_____
Authorized Signature

NOTE: Trustee's endorsement hereon shall be effective only after all assignment fees and other fees currently due Trustee with respect to the interest being assigned have been paid in full.

STATE OF ARIZONA
COUNTY OF MARICOPA } ss.:

The foregoing instrument was acknowledged before me this day of December, 1986, by , a trust officer of TITLE USA COMPANY OF ARIZONA, an Arizona corporation, on behalf of the corporation, as Trustee under the Trust 530 Agreement.

_____
Notary Public

December 18, 1986

FIRST CITY NATIONAL BANK OF HOUSTON
not in its individual
capacity, but solely as Collateral
Trust Trustee
First City Financial Center
1301 Fannin Street, 21st Floor
Houston, Texas 77002
Attention: Corporate Trust Department

EL PASO ELECTRIC COMPANY
PALO VERDE NUCLEAR GENERATING STATION UNIT 2 LEASE

Dear Sirs:

Reference is made to the Participation Agreement, dated as of December 1, 1986 (the Participation Agreement), among the parties whose signatures appear at the foot hereof. All capitalized terms used herein without definition shall have the meanings set forth in Appendix A to the Participation Agreement.

1. Representations, Warranties and Agreements. The Loan Participant, the Owner Participant, FNB, the Owner Trustee, the Indenture Trustee and El Paso Electric Company (EL Paso) hereby confirm for your benefit that their respective representations and warranties (in the capacity given therein) and, in the case of EL Paso, agreements contained in Sections 6, 7, 8, 9, 10, 13 and 14 of the Participation Agreement and, in the case of the Owner Participant, the agreements contained in Section 14(a) of the Participation Agreement, are true and correct and hereby respectively repeat such representations, warranties and agreements, in the case of EL Paso and the Owner Participant, to the same extent as if such

representations, warranties and agreements were set forth herein in full, whether or not the same are amended after the date hereof.

2. **Survival of Representations, Warranties and Agreements.** All representations, warranties and agreements contained herein shall survive the execution and delivery of this letter.

3. **Successors and Assigns.** All terms and provisions of this letter shall inure to your benefit and the benefit of your successors and assigns and each holder from time to time of each Bond.

4. **Consequences of Breach.** A breach of the representations, warranties and agreements contained herein will not entitle you or any holder of a Bond to exercise remedies or take other action under the Participation Agreement or any other Transaction Document, but you may pursue all other rights you have at law or in equity in consequence of such a breach.

5. **Governing Law.** This letter shall in all respects be governed by, and construed in accordance with, the laws of the State of New York.

COMMERCIAL FEDERAL INVESTMENT
CORPORATION

By: _____
Assistant Vice President

EL PASO FUNDING CORPORATION

By: _____
Vice President

FIRST CITY NATIONAL BANK OF
HOUSTON,
as Indenture Trustee

By: _____
Assistant Vice President

EL PASO ELECTRIC COMPANY

By: _____
Vice President

THE FIRST NATIONAL BANK OF
BOSTON,
in its individual capacity
and as owner Trustee

By: _____
Assistant Vice President