

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

Form S-3
Registration Statement
and
Post-Effective Amendment No. 1
under
the Securities Act of 1933

AVISTA CORPORATION

(Exact name of Registrant as specified in its charter)

Washington

(State or other jurisdiction of incorporation or organization)

91-0462470

(I.R.S. Employer Identification No.)

1411 East Mission Avenue
 Spokane, Washington 99202
 (509) 489-0500

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

AVA CAPITAL TRUST III

(Exact name of Registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

To be applied for

(I.R.S. Employer Identification No.)

c/o Avista Corporation
 1411 East Mission Avenue
 Spokane, Washington 99202
 (509) 489-0500

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

DAVID J. MEYER
 Vice President and Chief Counsel
 for Regulatory and Governmental Affairs
 Avista Corporation
 1411 East Mission Avenue
 Spokane, Washington 99202
 (509) 489-0500

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

J. ANTHONY TERRELL
 Dewey Ballantine LLP
 1301 Avenue of the Americas
 New York, New York 10019
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It is respectfully requested that the Commission
 send copies of all notices, orders and communications to:
 John E. Baumgardner, Jr.
 Sullivan & Cromwell LLP
 125 Broad Street
 New York, New York 10004

Approximate date of commencement of proposed sale to the public: To be determined by market conditions and other factors, after the registration statement becomes effective.If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, please check the following box and list the Securities Act of 1933 registration statement number of the earlier effective registration statement for the same offering. If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act of 1933, check the following box and list the Securities Act of 1933 registration statement number of the earlier effective registration statement for the same offering. If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. **CALCULATION OF REGISTRATION FEE**

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be	Proposed maximum offering price per unit ⁽¹⁾⁽²⁾	Proposed maximum aggregate offering price ⁽¹⁾⁽²⁾	Amount of registration fee ⁽¹⁾

AVA Capital Trust III
Preferred Securities

Avista Corporation
Guarantees with respect
to AVA Capital Trust III
Preferred Securities and
Avista Corporation
obligations with respect to
such Preferred Securities
under an Indenture and an
Amended and Restated
Declaration of Trust(3)(4)

Avista Corporation
Subordinated Debt
Securities

Total	\$20,000,000	100%	\$20,000,000	\$2,534.00
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- (1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457.
- (2) Exclusive of accrued interest and dividends, if any.
- (3) Pursuant to Rule 457(n), no separate consideration is to be received for the Guarantees.
- (4) Includes the obligations of Avista Corporation under the Declaration of Trust, the applicable indenture, the related series of Subordinated Debt Securities, the Guarantee and the Agreements as to Expenses and Liabilities, which include Avista Corporation's covenant to pay any indebtedness, expenses or liabilities of the Trust (other than obligations pursuant to the terms of the Preferred Securities or other similar interests), all as described in this Registration Statement.

Pursuant to Rule 429 under the Securities Act of 1933, as amended (the "Securities Act"), the prospectus contained in this registration statement will be used as a combined prospectus in connection with this Registration Statement and Registration Statement No. 333-16353 which was initially filed on November 19, 1996 and became effective on January 9, 1997 (the "Prior Registration Statement") under which \$40,000,000 in principal amount of securities remain unsold. This Registration Statement is a new registration statement and also constitutes Post-Effective Amendment No. 1 to the Prior Registration Statement. Such Post-Effective Amendment will become effective concurrently with the effectiveness of this Registration Statement in accordance with Section 8(c) of the Securities Act.

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

The Information contained in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED MARCH 11, 2004

PROSPECTUS

60,000 Preferred Securities
AVISTA CORPORATION
AVA Capital Trust III
Flexible Trust Preferred Securities
(T-FLEXSM)
(Five Year Initial Fixed Rate Period)
(Liquidation Amount \$1,000 per Preferred Security)
Fully and unconditionally guaranteed, as described herein

The initial distribution rate on the Flexible Trust Preferred Securities will be % per annum from the date of original issuance through , 2009, which is the initial fixed rate period. Thereafter, the distribution rate for the Preferred Securities may be at fixed rates determined through remarketings of the Preferred Securities for specific periods of varying length or may be at a Floating Rate as defined herein.

A brief description of the Preferred Securities can be found under *Summary Information-Q&A* in this Prospectus.

	Per Preferred Security	Total
Initial public offering price(1)	\$	\$
Underwriting commissions to be paid by Avista Corporation	\$	\$
Proceeds to AVA Capital Trust III	\$	\$

(1) Plus accumulated distributions, if any, from the date of original issuance, which is expected to be , 2004.

INVESTING IN THESE PREFERRED SECURITIES INVOLVES RISKS. SEE THE SECTION ENTITLED "RISK FACTORS" BEGINNING ON PAGE 6 OF THIS PROSPECTUS

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the Preferred Securities or determined that this Prospectus is accurate or complete. Any representation to the contrary is a criminal offense.

The Preferred Securities will be ready for delivery in book-entry form only through The Depository Trust Company on or about , 2004.

The date of this Prospectus is _____, 2004.

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You should rely only on the information incorporated by reference or provided in this Prospectus. We have not authorized anyone to provide you with different information. We are not making an offer of these securities in any state where the offer is not permitted. You should not assume that the information in this Prospectus is accurate as of any date other than the date on the front of this Prospectus.

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SUMMARY INFORMATION – Q&A

The following information supplements, and should be read together with, the information contained in other parts of this Prospectus. This summary highlights selected information from this Prospectus to help you understand the Flexible Trust Preferred Securities (the “Preferred Securities”). You should carefully read this Prospectus to understand fully the terms of the Preferred Securities as well as the tax and other considerations that are important to you in making a decision about whether to invest in the Preferred Securities. You should pay special attention to the *Risk Factors* section beginning on page 6 of this Prospectus to determine whether an investment in the Preferred Securities is appropriate for you.

What are the Preferred Securities?

Each Preferred Security represents an undivided beneficial interest in the assets of AVA Capital Trust III (the “Trust”). Each Preferred Security will entitle the holder to receive cash distributions (“Distributions”) as described in this Prospectus. The Trust is offering 60,000 Preferred Securities at a price of \$ _____ for each Preferred Security.

Who is the Trust?

The Trust is a Delaware statutory trust. Its principal place of business is c/o Avista Corporation, 1411 East Mission Avenue, Spokane, Washington 99202, and its telephone number is 509-489-0500.

The Trust will sell its Preferred Securities to the public and its common securities (the “Common Securities”) to Avista Corporation (the “Company” or “Avista Corp.”). The Trust will use the proceeds from these sales to buy a series of Subordinated Debt Securities, Series due _____ (the “Subordinated Debt Securities”) from the Company with the same financial terms as the Preferred Securities. The Company will guarantee payments made on the Preferred Securities as described herein.

Union Bank of California, N.A. will act as institutional trustee (the “Institutional Trustee”) of the Trust. Two officers of the Company also will act as trustees (the “Regular Trustees”) of the Trust. SunTrust Delaware Trust Company will be an additional trustee (the “Delaware Trustee”) of the Trust.

Union Bank of California, N.A. will act as trustee (the “Indenture Trustee”) under the Indenture, dated as of _____, 2004 (the “Indenture”), pursuant to which the Subordinated Debt Securities will be issued and will act as trustee (the “Guarantee Trustee”) under the Trust Securities Guarantee, dated as of _____, 2004, of the Company (the “Guarantee”). The Institutional Trustee, the Delaware Trustee and the Regular Trustees are sometimes referred to as the “Securities Trustees”.

Who is the Company?

The Company is an energy company engaged in the generation, transmission and distribution of electric energy and the distribution of natural gas, as well as other energy-related businesses. The Company provides electric distribution and transmission as well as natural gas distribution services in eastern Washington and northern Idaho and natural gas distribution service in northeast and southwest Oregon and the South Lake Tahoe region of California. The Company’s principal executive offices are located at 1411 East Mission Avenue, Spokane, Washington 99202, telephone number (509) 489-0500.

What will the Distribution Rate be on the Preferred Securities?

Distributions will initially be paid at a rate (a “Distribution Rate”) of _____ % per annum (the “Initial Distribution Rate”), payable semiannually in arrears, for the period from the date of original issuance of the Preferred Securities (the “Issue Date”), which is expected to be _____, 2004, through _____, 2009 (the “Initial Fixed Rate Period”).

The Company and the Trust will have the option to remarket the Preferred Securities prior to expiration of the Initial Fixed Rate Period to establish a new fixed per annum Distribution Rate (together with the Initial Distribution Rate and any subsequent fixed rate established pursuant to a remarketing, as described below, a “Fixed Rate”) with respect to the Preferred Securities (to be in effect after the Initial Fixed Rate Period). Any new Fixed Rate so established will be in effect for such period (together with the Initial Fixed Rate Period and any subsequent period established pursuant to a remarketing, as described below, a “Fixed Rate Period”) as the Company and the Trust determine in connection with the remarketing, provided that a Fixed Rate Period must be for a duration of at least six months. A Fixed Rate Period may not

extend beyond _____, the final maturity of the Subordinated Debt Securities, and may not end on a day other than a day immediately preceding a Distribution Payment Date (as defined below). Distributions on Preferred Securities during any Fixed Rate Period will be payable semiannually in arrears. Prior to the expiration of any Fixed Rate Period, the Company and the Trust will have the option to again remarket the Preferred Securities to establish a new Fixed Rate for a new Fixed Rate Period (to be in effect after the expiration of the then current Distribution Period, as defined below).

If the Company and the Trust do not remarket the Preferred Securities prior to expiration of the Initial Fixed Rate Period or any subsequent Fixed Rate Period, or if they are unable to successfully remarket all Preferred Securities tendered for sale in a remarketing, Distributions on the Preferred Securities will thereafter be payable at a floating rate (a "Floating Rate") reset quarterly equal to _____% (the "Initial Credit Spread"), plus the "Adjustable Rate", which will be the greater of (i) the 3-month LIBOR Rate; (ii) the 10-year Treasury CMT Rate; and (iii) the 30-year Treasury CMT Rate (each as defined herein). A Floating Rate will be in effect until the Company and the Trust subsequently remarket Preferred Securities to again establish a Fixed Rate for a new Fixed Rate Period as described above. During any period during which a Floating Rate is in effect (a "Floating Rate Period"), Distributions on the Preferred Securities will be payable quarterly in arrears. The Company and the Trust may elect to remarket the Preferred Securities prior to any Distribution Payment Date relating to a Floating Rate Period in order to again establish a new Fixed Rate for a new Fixed Rate Period (to be in effect after the expiration of the then current Distribution Period).

In this Prospectus, each semiannual distribution period in a Fixed Rate Period (including, without limitation, the Initial Fixed Rate Period) and each quarterly distribution period in a Floating Rate Period are sometimes referred to as a "Distribution Period".

What are the procedures for remarketing the Preferred Securities and establishing the Distribution Rate for Distribution Periods subsequent to the Initial Fixed Rate Period?

In connection with any remarketing of the Preferred Securities, holders of Preferred Securities will be given the option to elect to retain or tender all or a portion of their Preferred Securities for sale in the remarketing. Such election will be required to be made on a date that is no later than the fifth Business Day (as defined below) prior to the proposed remarketing date (an "Election Date"). A holder that fails to give an election notice to the Remarketing Agent (as defined below) by the Election Date will be deemed to have elected to tender its Preferred Securities for purchase in the remarketing. A holder of Preferred Securities may notify the Remarketing Agent of its interest in retaining all or some of its Preferred Securities, provided that the new Distribution Rate is a Fixed Rate not less than a rate per annum specified by the holder. In such case, the holder will tender all its Preferred Securities and then be given priority to purchase the specified number of Preferred Securities in the remarketing, provided the new Distribution Rate is a Fixed Rate not less than the rate specified by the holder.

If the Remarketing Agent is able to remarket all Preferred Securities tendered or deemed tendered in connection with the remarketing at a price equal to \$1,000 per Preferred Security for the new Fixed Rate Period selected by the Company and the Trust, the Distribution Rate on the Preferred Securities for the new Fixed Rate Period will be the rate that the Remarketing Agent determines, in its sole judgment, to be the lowest rate per annum that will enable it to remarket all Preferred Securities tendered or deemed tendered for purchase in the remarketing at a price of \$1,000 per Preferred Security.

If the Remarketing Agent is unable to remarket all Preferred Securities tendered or deemed tendered for purchase in a remarketing at a price equal to \$1,000 per Preferred Security for the new Fixed Rate Period selected by the Company and the Trust, the Distribution Rate on the Preferred Securities will be the then applicable Floating Rate. In such case, each holder will continue to hold its Preferred Securities at the Floating Rate.

The purchase price payable to a holder for any Preferred Securities purchased from it in a remarketing will be equal to \$1,000 per Preferred Security plus accrued and unpaid Distributions. Lehman Brothers Inc. is expected to act as remarketing agent (the "Remarketing Agent") in connection with any remarketing of the Preferred Securities.

You should read *Description of the Preferred Securities—Remarketing* for more information regarding the procedures relating to a remarketing of the Preferred Securities.

When will you receive Distributions?

If you purchase the Preferred Securities, you are entitled to receive Distributions at the Distribution Rate on the applicable distribution payment date (each, a "Distribution Payment Date"). During the Initial Fixed Rate Period, Distributions will be payable semi-annually in arrears on _____ and _____ of each year, commencing on _____, 2004. In any subsequent Fixed Rate Period, Distributions will be payable semiannually in arrears determined based on the Remarketing Date (as defined below) (if the Preferred Securities are remarketed for a new Fixed Rate Period that begins on _____ or _____, Distributions will be payable on _____ and _____ of each year and if the Preferred Securities are remarketed for a new Fixed Rate Period that begins on _____ or _____, Distributions will be payable on _____ and _____ of each year). Distributions during any Floating Rate Period will be payable on _____, _____, and _____ of each year.

When can payment of your Distributions be deferred?

The Company can, on one or more occasions, defer interest payments on the Subordinated Debt Securities for up to five years at a time (each, an "Extension Period"). A deferral of interest payments cannot extend, however, beyond the maturity date of the Subordinated Debt Securities (which is _____). See *Description of the Subordinated Debt Securities—Option to Extend Interest Payment Period*.

If the Company defers interest payments on the Subordinated Debt Securities, the Trust will also defer Distributions on the Preferred Securities. During any Extension Period, Distributions will continue to accrue on the Preferred Securities. If the Company elects to defer interest during a Fixed Rate Period, Distributions will continue to accrue at the Fixed Rate until the expiration of the Fixed Rate Period. Upon expiration of such Fixed Rate Period and any Fixed Rate Period during the Extension Period, the Company and the Trust will have the option to remarket the Preferred Securities for a new Fixed Rate Period. If the Company and the Trust do not remarket the Preferred Securities, the Floating Rate during the Extension Period shall not be less than the Fixed Rate for the Fixed Rate Period just ended. If the Company elects to defer interest during a Floating Rate Period, Distributions will continue to accrue at the applicable Floating Rate, reset quarterly, subject to the right of the Company and the Trust to remarket the Preferred Securities prior to any Distribution Payment Date in order to establish a new Fixed Rate Period to begin on that Distribution Payment Date. Deferred Distributions will themselves accrue interest at the then prevailing Distribution Rate (to the extent permitted by law). Once the Company makes all interest payments on the Subordinated Debt Securities, with accrued interest, it can again defer interest payments on the Subordinated Debt Securities.

During any period in which the Company defers interest payments on the Subordinated Debt Securities, the Company will not be permitted to (with limited exceptions):

- declare or pay any dividend on, make any distribution or liquidation payment with respect to, or redeem, purchase or exchange any of its capital stock, or
- make any payment of principal, premium, if any, or interest, if any, on or repay, repurchase or redeem any of its debt securities that rank pari passu with or junior in right of payment to the Subordinated Debt Securities, or
- make any guarantee payments with respect to the foregoing (other than pursuant to the Guarantee).

For a description of the limited exceptions pursuant to which the Company may make certain repurchases, redemptions or other acquisitions during an Extension Period, see *Description of the Preferred Securities—Certain Covenants*.

If the Company defers payments of interest on the Subordinated Debt Securities, the Preferred Securities will, from the time of deferral, be treated as being issued with original issue discount ("OID") for United States federal income tax purposes. This means you will be required to recognize interest income with respect to deferred Distributions and include such amounts in your gross income for United States federal income tax purposes even though you will not have received any cash Distributions relating to such interest income. You should consult with your own tax advisor regarding the tax consequences of an investment in the Preferred Securities. See *Certain United States Federal Income Tax Consequences—Payments of Interest*.

When can the Trust redeem the Preferred Securities?

The Trust must redeem all of the outstanding Preferred Securities and Common Securities (together, the "Trust Securities") when the Subordinated Debt Securities are paid at maturity on _____ or are otherwise due. In addition, if the Company redeems the Subordinated Debt Securities before their maturity, the Trust will use the cash it receives from the redemption to redeem Preferred Securities and Common Securities having a combined liquidation amount equal to the principal amount of the Subordinated Debt Securities redeemed.

The Company can redeem, in whole, but not in part, the Subordinated Debt Securities before their maturity on the last Distribution Payment Date relating to the Initial Fixed Rate Period, on such dates with respect to any other Fixed Rate Period as the Company and the Trust may determine prior to the remarketing establishing such Fixed Rate Period or on any Distribution Payment Date relating to a Floating Rate Period (each, a "Redemption Date"), at 100% of their principal amount plus accrued and unpaid interest to that Redemption Date (the "Debt Securities Redemption Price"). The Company also has the option to redeem the Subordinated Debt Securities, in whole, but not in part, at any time at the Debt Securities Redemption Price if certain changes in tax or investment company law occur and certain other conditions are satisfied, as more fully described under *Description of the Preferred Securities—Special Event Redemption; Distribution of Subordinated Debt Securities*.

What is the Company's guarantee of the Preferred Securities?

The Company will guarantee the Preferred Securities based on:

- its obligations to make payments on the Subordinated Debt Securities;
- its obligations under the Guarantee; and
- its obligations under the Declaration of Trust and the Agreement as to Expenses and Liabilities between the Company and the Trust (the "Agreement as to Expenses and Liabilities").

The Company's obligations under the Subordinated Debt Securities are subordinate and junior in right of payment to all of its Senior Indebtedness (as defined under *Description of the Subordinated Debt Securities—Subordination*), which aggregated approximately \$1.04 billion (including the current portion of long-term debt of \$30 million and short-term borrowings of \$81 million) at December 31, 2003.

The payment of Distributions on the Preferred Securities is guaranteed by the Company under the Guarantee, but only to the extent the Trust has funds on hand available to make Distributions.

The Company's obligations under the Guarantee are:

- subordinate and junior in right of payment to all of its other liabilities, including the Subordinated Debt Securities, except those obligations or liabilities made pari passu or subordinate by their terms;
- pari passu with its most senior preferred or preference stock, now or hereafter issued by it and with any guarantee now or hereafter entered into by it in respect of any preferred or preference securities by any of its affiliates; and
- senior to its common stock.

When could the Subordinated Debt Securities be distributed to you?

The Company has the right to dissolve the Trust at any time. If the Company dissolves the Trust, the Trust will liquidate by distributing the Subordinated Debt Securities to holders of the Preferred Securities and the Common Securities on a pro rata basis. For a discussion of the Company's ability to distribute the Subordinated Debt Securities, see *Description of the Preferred Securities—Special Event Redemption; Distribution of Subordinated Debt Securities and –Dissolution of Trust; Liquidation Distribution*.

Will the Preferred Securities be listed on a stock exchange?

The Preferred Securities will not be listed on a stock exchange.

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Will holders of the Preferred Securities have any voting rights?

Generally, the holders of the Preferred Securities will not have any voting rights. See *Description of the Preferred Securities—Voting Rights; Amendment of the Declaration*.

In what form will the Preferred Securities be issued?

The Preferred Securities will be represented by one or more global securities that will be deposited with and registered in the name of a securities depository or its nominee. This means that you will not receive a certificate for your Preferred Securities and that your broker will maintain your position in the Preferred Securities. The Company expects that the Preferred Securities will be ready for delivery through a securities depository on or about , 2004. The Depository Trust Company ("DTC") will act as the initial securities depository for the Preferred Securities.

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RISK FACTORS

Your investment in the Preferred Securities will involve certain risks. You should carefully consider the following discussion of risks as well as the other information in this Prospectus before deciding whether an investment in the Preferred Securities is suitable for you.

Risks Relating to the Preferred Securities

The Company's obligations under the Guarantee and the Subordinated Debt Securities are subordinated.

The Company's obligations under the Subordinated Debt Securities will rank junior in priority of payment to all of the Company's Senior Indebtedness (as defined under *Description of the Subordinated Debt Securities—Subordination*). This means that the Company cannot make any payments on the Subordinated Debt Securities if it defaults on a payment of Senior Indebtedness and does not cure such default within the applicable grace period or if the Senior Indebtedness becomes immediately due because of a default and has not yet been paid in full. The Company's Senior Indebtedness aggregated approximately \$1.04 billion (including the current portion of long-term debt of \$30 million and short-term borrowings of \$81 million) as of December 31, 2003.

The Company's obligations under the Guarantee will rank in priority of payment as follows:

- subordinate and junior in right of payment to all of its other liabilities, including the Subordinated Debt Securities, except those obligations or liabilities made pari passu or subordinate by their terms;
- pari passu with its most senior preferred or preference stock, now or hereafter issued by it and with any guarantee now or hereafter entered into by it in respect of any preferred or preference securities by any of its affiliates; and
- senior to its common stock.

This means that the Company cannot make any payments on the Guarantee if it defaults on a payment on any of its other liabilities, except those obligations or liabilities made pari passu or subordinate by their terms. In addition, in the event of the bankruptcy, liquidation or dissolution of the Company, its assets would be available to pay obligations under the Guarantee only after the Company made all payments on its other liabilities, except those obligations or liabilities made pari passu or subordinate by their terms.

Neither the Preferred Securities, the Subordinated Debt Securities nor the Guarantee limit the ability of the Company to incur additional indebtedness, including indebtedness that ranks senior in priority of payment to the Subordinated Debt Securities and the Guarantee. See *Description of the Subordinated Debt Securities—Subordination*.

The Guarantee only covers payments if the Trust has cash available.

The ability of the Trust to pay scheduled Distributions on the Preferred Securities, the Preferred Securities Redemption Price (as defined below) and the liquidation amount of each Preferred Security is solely dependent upon the Company making the related payments on the Subordinated Debt Securities when due.

If the Company defaults on its obligations to pay principal or interest on the Subordinated Debt Securities, the Trust will not have sufficient funds to pay Distributions, the Preferred Securities Redemption Price or the liquidation amount of each Preferred Security. In those circumstances, you will not be able to rely upon the Guarantee for payment of these amounts.

Instead, you:

- may directly sue the Company or seek other remedies to collect your pro rata share of payments owed; or
- may rely on the Institutional Trustee to enforce the Trust's rights under the Subordinated Debt Securities.

Deferral of Distributions would have tax consequences for you and may affect the trading price of the Preferred Securities.

will defer Distributions on the Preferred Securities during such Extension Period. However, Distributions would still accumulate and such deferred Distributions would themselves accrue interest at the prevailing Distribution Rate (to the extent permitted by law).

If the Company defers payments of interest on the Subordinated Debt Securities, you will be required to recognize interest income for United States federal income tax purposes (based on your pro rata share of the interest on the Subordinated Debt Securities held by the Trust) before you receive any cash relating to such interest. In the event of a deferral, this income would constitute OID. In addition, you will not receive such cash if you sell the Preferred Securities before the end of any deferral period or before the Record Date (as defined under *Description of the Preferred Securities—Distributions*) relating to Distributions which are paid. Instead, the accrued Distributions will be paid to the holder of record on the Record Date, regardless of who the holder of record may have been on any date during the deferral period. Moreover, the accrued OID will be added to your adjusted tax basis in the Preferred Securities but might not be reflected in the amount you realize on the sale. To the extent the amount realized on a sale is less than your adjusted tax basis, you will recognize a capital loss for United States federal income tax purposes. The deduction of capital losses is subject to limitations.

The Company has no current intention of deferring interest payments on the Subordinated Debt Securities. However, if the Company exercises its right in the future, the Preferred Securities may trade at a price that does not fully reflect the value of accrued but unpaid interest on the Subordinated Debt Securities. If you sell the Preferred Securities during an interest deferral period, you may not receive the same return on investment as someone else who continues to hold the Preferred Securities. In addition, the existence of the Company's right to defer payments of interest on the Subordinated Debt Securities may mean that the market price for the Preferred Securities (which represent an undivided beneficial interest in the Trust, substantially all of the assets of which consist of the Subordinated Debt Securities) may be more volatile than other securities that do not have these rights.

See *Certain United States Federal Income Tax Consequences* for more information regarding the tax consequences of purchasing, holding and selling the Preferred Securities.

Preferred Securities may be redeemed at any time if certain changes in tax or investment company law occur.

Certain tax law changes have been proposed from time to time which could affect the deductibility of interest paid on the Subordinated Debt Securities. None of these proposals has become law. If certain changes in tax or investment company law occur and are continuing, and certain other conditions are satisfied, the Company has the right to redeem the Subordinated Debt Securities, in whole, but not in part, at any time. Any such redemption will cause a mandatory redemption of all Preferred Securities and Common Securities at a redemption price equal to \$1,000 per security plus any accrued and unpaid Distributions (the "Preferred Securities Redemption Price"). See *Description of the Preferred Securities—Special Event Redemption; Distribution of Subordinated Debt Securities*.

Preferred Securities may be redeemed at the option of the Company.

At the option of the Company, the Subordinated Debt Securities may be redeemed, in whole, but not in part, on the last Distribution Payment Date relating to the Initial Fixed Rate Period, on such dates with respect to any other Fixed Rate Period as the Company and the Trust may determine prior to the remarketing establishing such Fixed Rate Period or on any Distribution Payment Date relating to a Floating Rate Period at the Debt Securities Redemption Price. See *Description of the Subordinated Debt Securities—Redemption*. You should assume that the Company will exercise its redemption option if the Company is able to refinance at a lower interest rate or it is otherwise in the interest of the Company to redeem the Subordinated Debt Securities. If the Subordinated Debt Securities are redeemed, the Trust must redeem the Preferred Securities and the Common Securities having an aggregate liquidation amount equal to the aggregate principal amount of Subordinated Debt Securities to be redeemed. See *Description of the Preferred Securities—Redemption*.

There can be no assurance as to the liquidity of the Preferred Securities.

There is no assurance that a secondary market for the Preferred Securities will develop or, if such a market develops, that the Preferred Securities will trade at or close to their stated liquidation amount. The ability of a holder of the Preferred Securities to sell such Preferred Securities may depend on the success of the remarketing. If the Remarketing Agent cannot remarket the Preferred Securities or the Company does not elect to remarket the Preferred Securities,

the holders of the Preferred Securities may not be able to sell Preferred Securities. It is not expected that the Preferred Securities will be listed on any securities exchange.

After the Initial Fixed Rate Period, the Distribution Rate on the Preferred Securities will vary.

The Distribution Rate on the Preferred Securities is fixed at % per annum for the Initial Fixed Rate Period. Thereafter, the Preferred Securities will pay Distributions at Fixed Rates during future Fixed Rate Periods, which rates will be determined through remarketings of the Preferred Securities, or at Floating Rates during Floating Rate Periods, which rates will be the Initial Credit Spread plus the Adjustable Rate. In connection with any proposed remarketing to set a Fixed Rate for a new Fixed Rate Period, you may have the opportunity to elect to sell your Preferred Securities to the Remarketing Agent at a price of \$1,000, plus accrued and unpaid Distributions, per Preferred Security. If, however, the remarketing is unsuccessful, the Preferred Securities will pay Distributions at a Floating Rate until any future time that the Company and the Trust elect to remarket the Preferred Securities to set a new Fixed Rate and are able to successfully remarket the Preferred Securities.

Fixed Rate Periods and Floating Rate Periods can be of varying lengths and varying Distribution Rates. Distribution Rates on the Preferred Securities may move back and forth between Fixed Rates and Floating Rates over the life of the Preferred Securities.

There can be no assurance as to the market prices for the Preferred Securities or the Subordinated Debt Securities.

There can be no assurance as to the market prices for the Preferred Securities or the Subordinated Debt Securities that may be distributed in exchange for Preferred Securities upon a dissolution of the Trust. Accordingly, the Preferred Securities that an investor may purchase, whether pursuant to the offer made by this Prospectus, in a remarketing or in the secondary market, or the Subordinated Debt Securities that a holder of Preferred Securities may receive upon a dissolution of the Trust, may trade at a discount to the price that the investor paid to purchase the Preferred Securities offered by this Prospectus. As a result of the Company's right to defer interest payments on the Subordinated Debt Securities, the market price of the Preferred Securities (which represent undivided beneficial interests in the assets of the Trust, substantially all the assets of which consist of the Subordinated Debt Securities) may be more volatile than the market prices of other securities that are not subject to such optional deferrals.

The Company may dissolve the Trust at any time.

The Company has the right to dissolve the Trust at any time. If the Company decides to exercise its right to dissolve the Trust, after satisfying creditors of the Trust, if any, the Trust will liquidate by distributing the Subordinated Debt Securities to holders of the Preferred Securities and the Common Securities on a pro rata basis.

Under current United States federal income tax law, a distribution of Subordinated Debt Securities to you on the dissolution of the Trust should not be a taxable event to you. However, if the Trust is characterized for United States federal income tax purposes as an association taxable as a corporation at the time it is dissolved or if there is a change in law, the distribution of Subordinated Debt Securities to you may be a taxable event to you.

The Company has no current intention of causing the dissolution of the Trust and the distribution of the Subordinated Debt Securities. The Company anticipates that it would consider exercising this right in the event that expenses associated with maintaining the Trust were substantially greater than currently expected such as if certain changes in tax law or investment company law occurred. See *Description of the Preferred Securities—Special Event Redemption, Distribution of Subordinated Debt Securities*. The Company cannot predict the other circumstances under which this right would be exercised.

You have limited voting rights.

You will have limited voting rights. In particular, subject to certain exceptions, only the Company can appoint or remove any of the Securities Trustees. See *Description of the Preferred Securities—Voting Rights; Amendment of the Declaration*.

Risks Relating to the Company's Business

The Company is subject to various operational and event risks, which are common to the utility industry.

Avista Utilities, the Company's regulated utility operation, is subject to operational and event risks including, among others, increases in load demand, transmission or transport disruptions, fuel quality specifications, forced outages at generating plants and disruptions to information systems and other administrative tools required for normal operations. The Company also has exposure to weather conditions and natural disasters that can cause physical damage to its property, requiring repairs to restore utility service. The emergence of terrorism threats, both domestic and foreign, is a risk to the entire utility industry, including the Company. Potential disruptions to operations or destruction of facilities from terrorism are not readily determinable.

The Company is subject to the commodity price risk, credit risk and other risks associated with energy markets.

Both of the Company's energy-related businesses, Avista Utilities and Avista Energy, are subject to energy commodity price risk. Price risk is, in general, the risk of fluctuation in the market price of the commodity needed, held or traded. In the case of electricity, prices can be affected by the adequacy of generating reserve margins, scheduled and unscheduled outages of generating facilities, availability of streamflows for hydroelectric generation, the price of thermal generating plant fuel, and disruptions or constraints to transmission facilities. Demand changes (caused by variations in the weather and other factors) can also affect market prices. Any combination of these factors that results in a shortage of energy generally causes the market price of power to move upward. Price risk also includes the risk of fluctuation in the market price of associated derivative commodity instruments (such as options and forward contracts). Price risk may also be influenced to the extent that the performance or non-performance by market participants of their contractual obligations and commitments affect the supply of, or demand for, the commodity.

Avista Utilities and Avista Energy are also subject to credit risk. Credit risk relates to the risk of loss that the Company would incur as a result of non-performance by counterparties of their contractual obligations to deliver energy and make financial settlements.

Credit risk also involves the exposure that counterparties perceive related to performance by the Company to perform deliveries and settlement of energy transactions. These counterparties may seek assurance of performance from the Company in the form of letters of credit, prepayment or cash deposits, and, in the case of Avista Energy, parent company performance guarantees. In periods of price volatility, the level of exposure can change significantly, with the result that sudden and significant demands may be made against the Company's capital resource reserves (credit facilities and cash).

Avista Energy has concentrations of suppliers and customers in the electric and natural gas industries including electric utilities, natural gas distribution companies, and other energy marketing and trading companies. In addition, Avista Energy has concentrations of credit risk related to geographic location as Avista Energy operates in the western United States and western Canada. These concentrations of counterparties and concentrations of geographic location may negatively impact Avista Energy's overall exposure to credit risk, because the counterparties may be similarly affected by changes in economic, regulatory or other conditions.

The Company's commodity marketing and risk management activities may increase the volatility in the Company's results of operations.

Avista Energy engages in resource management activities, as well as commodity marketing and trading. These activities include entering into financial and physical derivative activities. These derivatives are accounted for in accordance with SFAS No. 149, "Amendment of Statement 133 on Derivative Instruments and Hedging Activities." SFAS 149 requires Avista Energy to record all derivatives on the Consolidated Balance Sheet at market value. Changes in the market value of derivatives are immediately recognized in earnings unless they are designated as hedges of forecasted transactions. Changes in the market value of derivatives accounted for as cash flow hedges of forecasted transactions are deferred and recorded as a component of accumulated other comprehensive income until the hedged transactions occur and are recognized in earnings. Most derivative contracts are marked-to-market and changes in their market value, brought upon by fluctuations in the underlying commodity prices, flow through the Consolidated Statements of Income. As a result,

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the Company is unable to predict the impact that its energy marketing and resource management activities may have on its results of operations or financial position.

The Company's deferred power costs are subject to regulatory review and it will take several years for recovery.

The Company defers the recognition in the income statement of certain power supply costs that are in excess of the level currently recovered from its retail customers as authorized by the Washington Utilities and Transportation Commission ("WUTC") and the Idaho Public Utilities Commission ("IPUC"). These excess power supply costs are recorded as a deferred charge on the balance sheet with certain of these costs remaining subject to future review and the opportunity for recovery through retail rates.

In Washington, power costs are deferred under an Energy Recovery Mechanism ("ERM") as established by WUTC order. The ERM allows the Company to increase or decrease electric rates periodically with WUTC approval (subject to prudence review) to reflect changes in power supply costs. Under the ERM, the Company agreed to make an annual filing on or before April 1st of each year to provide the opportunity for the WUTC and other interested parties to review the prudence of and audit the ERM deferred power costs transactions for the prior calendar year.

In Idaho, power costs are deferred under a Power Cost Adjustment ("PCA") mechanism, which allows the Company to modify electric rates periodically with IPUC approval (subject to prudence review) to recover or rebate a substantial portion of the difference between actual net power supply costs and the amount included in base retail rates. The IPUC originally approved a 19.4 percent surcharge in October 2001, which has been extended through October 2004 for recovery of previously deferred power costs.

Despite the opportunity to eventually recover a substantial portion of power and natural gas costs in excess of the levels currently recovered from retail customers, the Company's cash flows are negatively affected in the periods in which these costs are paid. Factors that could cause the Company's purchased power costs to exceed the levels currently recovered from its customers include, but are not limited to, higher prices in wholesale markets and/or increased requirements to purchase power. Factors beyond the Company's control that could result in an increased need to purchase power include, but are not limited to, increases in demand (either due to weather or customer growth), low availability of hydroelectric resources, outages at generating facilities and failure of third parties to deliver on energy or capacity contracts. The Company currently expects that the recovery of current balances of deferred power costs will take several years.

The Company is currently the subject of several regulatory proceedings and named in multiple lawsuits with respect to its activities in western energy markets.

Since August 2002, the Company and other market participants have been subject to an ongoing investigation by the Federal Energy Regulatory Commission ("FERC") into certain of the Company's trading practices in western energy markets. The Company has entered into an agreement in resolution that has been certified by the FERC Chief Administrative Law Judge, which, if approved by the FERC, would resolve all issues in this investigation. However, certain California parties (the Office of the Attorney General, the California Public Utilities Commission and the California Electricity Oversight Board, filing jointly) have filed a motion challenging the resolution and certification of this agreement.

The FERC is conducting proceedings and investigations related to market controls within the western United States that include proposals by certain parties to impose refunds. As a result, certain parties have asserted claims for significant refunds from the Company, which could result in liabilities for refunding revenues recognized in prior periods. The Company has joined other parties in opposing these proposals. On June 25, 2003, the FERC denied the request of certain parties for retroactive refunds for spot market sales in the Pacific Northwest during the period from December 25, 2000 to June 20, 2001. On July 25, 2003, several other parties filed requests for rehearing on the FERC's order on the Pacific Northwest refund proceedings. The requests for rehearing were denied by the FERC in November 2003. A petition for review of the FERC's decision was filed by the City of Tacoma on December 24, 2003, with the United States Court of Appeals for the Ninth Circuit.

There has also been a class action shareholder lawsuit filed against the Company. On August 19, 2003, the plaintiffs filed their consolidated amended class action complaint. In their complaint, the plaintiffs assert violations of the federal securities laws in connection with alleged misstatements and omissions of material fact pursuant to Sections 10(b)

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and 20(a) of the Securities Exchange Act of 1934, as amended. In particular, the plaintiffs allege that the Company did not have adequate risk management processes, procedures and controls. The plaintiffs further allege that the Company failed to disclose that it engaged in unlawful energy trading practices and that it manipulated western power markets. The plaintiffs assert that alleged misstatements and omissions have occurred in the Company's filings with the Securities and Exchange Commission (the "SEC") and other information made publicly available by the Company, including press releases. The Company filed a motion to dismiss this complaint in October 2003 and the plaintiffs filed an answer to this motion in January 2004. Arguments before the court on the motion are scheduled to be held in March 2004.

Several parties, including the Port of Seattle and the Attorney General of the State of Montana, have filed complaints against numerous companies, including the Company, alleging various violations of laws with respect to alleged manipulation of western energy markets.

At this time, the Company cannot predict the outcome or potential impact of these regulatory proceedings and lawsuits.

The Company has contingent liabilities with respect to certain environmental matters.

The Company is subject to environmental regulation by federal, state and local authorities. Current environmental issues include a lawsuit filed against the owners of the Colstrip Generating Project (Colstrip). The Company has a 15 percent ownership interest in units 3 and 4 of Colstrip, which is located in southeastern Montana. The plaintiffs allege damages to buildings as a result of rising ground water as well as damages from contaminated waters leaking from the lakes and ponds of Colstrip.

Other environmental issues include contamination of certain parcels of land that the Company currently owns or has formerly owned, contamination of certain portions of the Spokane River, issues surrounding the relicensing of the Company's hydroelectric facilities on the Spokane River as well as the levels of dissolved gas in waters downstream of its hydroelectric facilities and the resulting impact on free ranging fish.

The Company needs to maintain adequate credit with banks.

The Company needs to maintain access to adequate levels of credit with its banks. On May 13, 2003, the Company amended its committed line of credit with various banks to increase the amount to \$245.0 million from \$225.0 million and extend the expiration date to May 11, 2004. The committed line of credit is secured by \$245.0 million of non-transferable first mortgage bonds of the Company issued to the agent banks. The Company is currently in discussion with its banks for the renewal of the committed line of credit for an additional year beyond the May 11, 2004 expiration date. However, at this time, the Company cannot predict whether it will have access to credit beyond the expiration date. The committed line of credit contains customary covenants and default provisions, including covenants not to permit the ratio of "consolidated total debt" to "consolidated total capitalization" of the Company to be, at the end of any fiscal quarter, greater than 65%. As of December 31, 2003, the Company was in compliance with this covenant. The committed line of credit also has a covenant requiring the ratio of "earnings before interest, taxes, depreciation and amortization" to "interest expense" of Avista Utilities for the twelve-month period ending December 31, 2003 to be greater than 1.6 to 1. As of December 31, 2003, the Company was in compliance with this covenant.

Although as of December 31, 2003 the Company was in compliance with the covenants of all of its financing arrangements, any future default on its committed line of credit or other financing arrangements could result in cross-defaults to other agreements and could induce vendors and other counterparties to demand collateral. In the event of default, it would be difficult for the Company to obtain financing on any reasonable terms to pay creditors or fund operations, and the Company would likely be prohibited from paying dividends on its common stock.

On July 25, 2003, Avista Energy and its subsidiary, Avista Energy Canada, Ltd., as co-borrowers, entered into a committed credit agreement with a group of banks in the aggregate amount of \$110.0 million expiring July 23, 2004. The Avista Energy credit agreement contains customary covenants and default provisions, including covenants to maintain "minimum net working capital" and "minimum net worth", as well as a covenant limiting the amount of indebtedness which the co-borrowers may incur. The credit agreement also contains covenants and other restrictions related to Avista Energy's trading limits and positions, including Value-at-Risk limits, restrictions with respect to changes in risk management policies or volumetric limits, and limits on exposure related to hourly and daily trading of electricity. Also, a reduction in the long-term credit rating of Avista Corp. to below BB+ or the equivalent thereof by Standard & Poor's Ratings Group, a division of McGraw-Hill, Inc., or Ba1 or the equivalent thereof by Moody's Investors Services, Inc.

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would represent an event of default under Avista Energy's credit agreement. These covenants, certain counterparty agreements and current market liquidity conditions result in Avista Energy maintaining certain levels of cash and therefore effectively limit the amount of cash dividends that are available for distribution to Avista Capital and ultimately Avista Corp. At this time, the Company cannot predict whether Avista Energy will have access to credit beyond the July 23, 2004 expiration date of its committed line of credit.

SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS

The Company is including the following cautionary statements in this Prospectus to make applicable, and to take advantage of, the safe harbor provisions of the Private Securities Litigation Reform Act of 1995 for any forward-looking statements made by, or on behalf of, the Company or the Trust. Forward-looking statements include statements concerning plans, objectives, goals, strategies, projections of future events or performance, and underlying assumptions (many of which are based, in turn, upon further assumptions) and are all statements which are not statements of historical fact. Forward-looking statements include statements that are identified by the use of the words such as, but not limited to, "will", "anticipates", "seeks to", "estimates", "expects", "intends", "plans", "predicts", and similar expressions. From time to time, the Company may publish or otherwise make available forward-looking statements of this nature. All such subsequent forward-looking statements, whether written or oral and whether made by or on behalf of the Company or the Trust, are also expressly qualified by these cautionary statements.

Such statements are inherently subject to a variety of risks and uncertainties that could cause actual results to differ materially from those expressed. Most of these uncertainties are beyond the Company's control. Such risks and uncertainties include, among others:

- changes in the utility regulatory environment in the individual states and provinces in which the Company operates and the United States and Canada in general. This can impact allowed rates of return, financings, or industry and rate structures;
- the impact of regulatory and legislative decisions, including FERC price controls, and including possible retroactive price caps and resulting refunds;
- the potential effects of any legislation or administrative rulemaking passed into law;
- the impact from the potential formation of a Regional Transmission Organization and/or an Independent Transmission Company;
- the impact from the implementation of the FERC's proposed wholesale power market rules;
- volatility and illiquidity in wholesale energy markets, including the availability and prices of purchased energy and demand for energy sales;
- wholesale and retail competition (including but not limited to, electric retail wheeling and transmission costs);
- future streamflow conditions that affect the availability of hydroelectric resources;
- outages at any Company-owned generating facilities from any cause including equipment failure;
- unanticipated delays or changes in construction costs with respect to present or prospective facilities;
- changes in weather conditions that can affect customer demand, result in natural disasters and/or disrupt energy delivery;
- changes in industrial, commercial and residential growth and demographic patterns in the Company's service territory;
- the loss of significant customers and/or suppliers;
- failure to deliver on the part of any parties from which the Company purchases and/or sells capacity or energy;
- changes in the creditworthiness of customers and energy trading counterparties;
- the Company's ability to obtain financing through the issuance of debt and/or equity securities, which can be affected by various factors including the Company's credit ratings, interest rate fluctuations and other capital market conditions;

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- changes in future economic conditions in the Company's service territory and the United States in general, including inflation or deflation and monetary policy;
- the potential for future terrorist attacks, particularly with respect to utility plant assets;
- changes in tax rates and/or policies;
- changes in, and compliance with, environmental and endangered species laws, regulations, decisions and policies, including present and potential environmental remediation costs;
- the outcome of legal and regulatory proceedings concerning the Company or affecting directly or indirectly its operations, including the potential disallowance of previously deferred costs;
- employee issues, including changes in collective bargaining unit agreements, strikes, work stoppages or the loss of key executives, as well as the ability to recruit and retain employees;
- changes in actuarial assumptions and the return on assets with respect to the Company's pension plan, which can impact future funding obligations, costs and pension plan liabilities;
- increasing health care costs and the resulting effect on health insurance premiums paid for employees and on the obligation to provide post-retirement health care benefits; and
- increasing costs of insurance, changes in coverage terms and the ability to obtain insurance.

The Company's expectations, beliefs and projections are expressed in good faith and are believed by the Company to have a reasonable basis including, without limitation, management's examination of historical operating trends, data contained in the Company's records and other data available from third parties. However, there can be no assurance that the Company's expectations,

beliefs, or projections will be achieved or accomplished. Furthermore, any forward-looking statement speaks only as of the date on which such statement is made. The Company undertakes no obligation to update any forward-looking statement or statements to reflect events or circumstances that occur after the date on which such statement is made or to reflect the occurrence of unanticipated events. New factors emerge from time to time, and it is not possible for management to predict all such factors, nor can it assess the impact of each such factor on the Company's business or the extent to which any such factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statement.

AVISTA CORPORATION AND SELECTED FINANCIAL INFORMATION

Selected Financial Information

Set forth below is certain audited consolidated financial information for the years ended December 31, 2003, 2002 and 2001. This financial information has been derived from the consolidated financial statements of the Company, which are incorporated herein by reference. The following material should be read in conjunction with the Company's consolidated financial statements and related notes, management's discussion and analysis of results of operations and other financial information which are incorporated by reference herein.

	Year Ended December 31,		
	2003	2002	2001
	(in millions of dollars, except ratios)		
Operating Revenues	\$1,123	\$1,063	\$1,512
Operating Income	172	157	184
Income From Continuing Operations	51	42	68
Net Income	45	31	12
Income for Common Stock	43	29	10
Ratios of Earnings to Fixed Charges(1)	1.88	1.69	1.98

(1) The ratios for the years 2000 and 1999 were 3.62 and 1.71, respectively. The ratios are computed using the consolidated earnings and fixed charges of the Company and its subsidiaries. Earnings consist of Income from Continuing Operations increased by, income tax expense and fixed charges. Fixed charges consist of interest on debt and preferred trust securities, net amortization of debt expense and premium, and the interest portion of rentals.

General

The Company, which was incorporated in the State of Washington in 1889, is an energy company engaged in the generation, transmission and distribution of energy as well as other energy-related businesses. The Company's corporate headquarters are in Spokane, Washington, which serves as the Inland Northwest center for manufacturing, transportation, health care, education, communication, agricultural, financial and service businesses.

The Company has four business segments:

- Avista Utilities;
- Energy Marketing and Resource Management;
- Avista Advantage, Inc. ("Avista Advantage"); and
- Other.

Avista Utilities is an operating division of the Company comprising the regulated utility operations that started in 1889. Avista Utilities generates, transmits and distributes electricity and distributes natural gas. Avista Utilities also engages in wholesale purchases and sales of electric capacity and energy. Avista Capital, a wholly-owned subsidiary of the Company, is the parent company of all of the subsidiary companies in the non-utility business segments.

Avista Utilities

Avista Utilities generates, transmits and distributes electricity and distributes natural gas. Retail electric and natural gas customers include residential, commercial and industrial classifications. Avista Utilities also engages in wholesale purchases and sales of electric capacity and energy as part of its resource management and load-serving obligations.

Avista Utilities provides electric distribution and transmission as well as natural gas distribution services in a 26,000 square mile area in eastern Washington and northern Idaho with a population of approximately 850,000. It also provides natural gas distribution service in a combined 4,000 square mile area in northeast and southwest Oregon and the South Lake Tahoe region of California with a population of approximately 495,000. At the end of 2003, Avista

Utilities supplied retail electric service to a total of 325,000 customers and retail natural gas service to a total of 298,000 customers across its entire service territory.

In addition to providing electric transmission and distribution services, Avista Utilities generates electricity from its owned facilities. Avista Utilities owns and operates eight hydroelectric projects, a wood-waste fueled generating station, a two-unit natural gas-fired combustion turbine ("CT") generating facility and two small generating facilities. In July 2003, the combined cycle natural gas-fired Coyote Springs 2 Generation Project ("Coyote Springs 2") was placed into operation. Avista Utilities has a 50 percent ownership interest in Coyote Springs 2. Avista Utilities also owns a 15 percent share in a two-unit coal-fired generating facility and leases and operates a two-unit natural gas-fired CT generating facility. WP Funding LP, an entity that is included in the Company's consolidated financial statements and included in the Avista Utilities business segment, owns the two-unit natural gas-fired CT generating facility that is leased by Avista Utilities. In addition to company-owned resources, Avista Utilities has a number of long-term power purchase and exchange contracts that increase its available resources.

Energy Marketing and Resource Management

The Energy Marketing and Resource Management business segment includes Avista Energy, Inc. ("Avista Energy") and Avista Power, LLC ("Avista Power"), both subsidiaries of Avista Capital.

Avista Energy is an electricity and natural gas marketing, trading and resource management business, operating primarily within the Western Electricity Coordinating Council geographic area, which is comprised of eleven western states as well as the provinces of British Columbia and Alberta, Canada. Avista Energy focuses on optimization of combustion turbines and hydroelectric assets owned by other entities, long-term electric supply contracts, natural gas storage, and electric and natural gas transmission and transportation arrangements. Avista Energy is also involved in trading electricity and natural gas, including derivative commodity instruments.

Avista Power is an investor in certain generation assets, primarily its 49 percent interest in a 270-megawatt natural gas-fired combustion turbine plant in northern Idaho (Lancaster Project), which commenced commercial operation in September 2001. All of the output from the Lancaster Project is contracted to Avista Energy through 2026.

Avista Advantage

Avista Advantage is a provider of utility bill processing, payment and information services to multi-site customers throughout North America. Avista Advantage's solutions are designed to provide multi-site companies with critical and easy-to-access information that enables them to proactively manage and reduce their facility-related expenses.

Other

The Other business segment includes several subsidiaries, including Avista Ventures, Inc., Pentzer Corporation, Avista Development and certain other operations of Avista Capital. The Company continues to limit its future investment in the Other business segment. Over time as opportunities arise, the Company plans to dispose of assets and phase out of operations in the Other business segment.

Discontinued Operations

In July and September 2003, the Company announced total investments of \$12.2 million by private equity investors in a new entity, AVLB, Inc., which acquired the assets previously held by the Company's fuel cell manufacturing and development subsidiary, Avista Labs. As of December 31, 2003, Avista Corp. had an ownership interest of approximately 17.5 percent in AVLB, Inc., with the opportunity but no further obligation to fund or invest in this business.

Avista Communications, Inc., provided local dial tone, data transport, internet services, voice messaging and other telecommunications services to several communities in the western United States. In September 2001, the Company decided to dispose of substantially all of the assets of Avista Communications, Inc. The divestiture of operating assets was completed by the end of 2002.

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AVA CAPITAL TRUST III

The Trust is a statutory trust created under Delaware law by the filing of a certificate of trust with the Delaware Secretary of State on November 4, 1996. The original name of the Trust was Washington Water Power Capital III. The Trust's name was changed to AVA Capital Trust III pursuant to an amended and restated certificate of trust filed with the Delaware Secretary of State on March 9, 2004. The Trust's business is defined in a declaration of trust, dated November 4, 1996, executed by the Company, as Sponsor, and the Securities Trustees thereunder. This declaration was amended on March 9, 2004 to reflect the change of the name of the Trust and to appoint new Securities Trustees. The declaration of trust will be further amended and restated in its entirety on the Issue Date substantially in the form filed as an exhibit to the Registration Statement of which this Prospectus forms a part (the "Declaration"). The Declaration will be qualified as an indenture under the Trust Indenture Act of 1939, as amended (the "1939 Act"). The Trust exists for the exclusive purposes of (i) issuing the Trust Securities representing undivided beneficial interests in the assets of the Trust; (ii) investing the gross proceeds of the Trust Securities in the Subordinated Debt Securities; (iii) maintaining its status as a grantor trust for federal income tax purposes; (iv) making Distributions; and (v) engaging in only those other activities necessary, appropriate, convenient or incidental thereto. The Trust has a term of approximately 40 years, but may terminate earlier as provided in the Declaration.

Upon issuance of the Preferred Securities offered by this Prospectus, the purchasers thereof will own all of the Preferred Securities issued by the Trust. The Company will acquire all of the Common Securities, which will have an aggregate liquidation amount equal to at least 3% of the total capital of the Trust. The Common Securities will rank on a parity with, and payments will be made thereon pro rata with, the Preferred Securities, except that upon the occurrence and continuance of an Indenture Event of Default (as defined below), the rights of the holders of Common Securities to payment in respect of distributions and payments upon liquidation, redemption and otherwise will be subordinated to the rights of the holders of the Preferred Securities.

The Trust's business and affairs will be conducted by the Securities Trustees, which shall be appointed by the Company as the holder of the Common Securities. Two officers of the Company initially will serve as the Regular Trustees. Union Bank of California, N.A. will serve as Institutional Trustee and will hold legal title to the Subordinated Debt Securities issued by the Company on behalf of the Trust and the holders of the Trust Securities. SunTrust Delaware Trust Company will serve as Delaware Trustee. In certain circumstances, the holders of a majority in liquidation amount of the Preferred Securities will be entitled to appoint a substitute institutional trustee. See *Description of the Preferred Securities—Voting Rights*.

The Institutional Trustee will hold legal title to the Subordinated Debt Securities for the benefit of the Trust and the holders of the Trust Securities and will have the power to exercise all rights, powers and privileges under the Indenture as the holder of the Subordinated Debt Securities. The Institutional Trustee will make payments of Distributions and payments on liquidation, redemption and otherwise to the holders of the Trust Securities. Subject to the right of the holders of the Preferred Securities to appoint a substitute Institutional Trustee in certain instances, the Company, as the holder of all the Common Securities, will have the right to appoint, remove or replace all the Securities Trustees.

The Subordinated Debt Securities will constitute substantially all of the assets of the Trust. Other assets that may constitute "Trust Property" (as that term is defined in the Declaration) include any cash on deposit in, or owing to, the payment account as established under the Declaration, as well as any other property or assets held by the Institutional Trustee pursuant to the Declaration. In addition, the Trust may, from time to time, receive cash pursuant to the Agreement as to Expenses and Liabilities.

The rights of the holders of the Preferred Securities, including economic rights, rights to information and voting rights, are as set forth in the Declaration, the Delaware Statutory Trust Act and the 1939 Act. See *Description of the Preferred Securities*.

The principal place of business of the Trust shall be c/o the Company, 1411 East Mission Avenue, Spokane, Washington 99202, telephone number (509) 489-0500.

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CAPITALIZATION

The following table sets forth the Company's consolidated capitalization as of December 31, 2003, as well as the Company's consolidated cash balance and short-term debt (including the current portion of long-term debt). The following data are qualified in their entirety by the Company's financial statements and other information incorporated herein by reference. The "As Adjusted" column reflects the sale of the Preferred Securities, the Company's receipt of proceeds of approximately \$ million from this offering (after discounts and commissions and estimated offering expenses) and the application of \$ million of the proceeds as discussed under "Use of Proceeds".

As of December 31, 2003

	Actual	As Adjusted
	(unaudited)	
	(millions of dollars)	
Short-Term Debt (including current portion of long-term debt)(1)	110	110
Long-Term Debt(1)	925	925
Long-Term Debt to Affiliated Trusts	113	113
Preferred Stock (including current portion)	32	32
Common Equity	751	751
Total Capitalization	\$1,931	\$1,931

(1) Long-term debt includes \$343 million of first mortgage bonds. Short-term debt includes indebtedness outstanding under the Company's \$245 million revolving credit agreement, \$80 million outstanding at December 31, 2003 and \$80 million, as adjusted. The Company has delivered \$245 million of non-transferable first mortgage bonds to the agent bank in order to secure its obligations under the revolving credit agreement. Short-term debt also includes approximately \$29 million of maturing unsecured medium-term notes.

USE OF PROCEEDS

The Trust will invest the proceeds received from the sale of the Trust Securities in the Subordinated Debt Securities. The net proceeds received by the Company from such investment, together with other available funds, will be used by the Company to redeem \$60 million in aggregate outstanding principal amount of the Company's 7 7/8% Junior Subordinated Deferrable Interest Debentures, Series A, due 2037 which will, in turn, cause the redemption of the Avista Capital I 7 7/8% Trust Originated Preferred Securities, Series A.

ACCOUNTING TREATMENT

For financial reporting purposes, the Subordinated Debt Securities issued by the Company to the Trust will be included as a liability on the Company's consolidated balance sheet under Long-Term Debt to Affiliated Trusts. The Company's investment in the Common Securities of the Trust will be included as an asset on the Company's consolidated balance sheet as an Investment in Affiliated Trusts. Interest payments on the Subordinated Debt Securities will be included in interest expense on the consolidated statement of income. Distributions on the Common Securities held by the Company will be included in interest income on the consolidated statements of income.

DESCRIPTION OF THE PREFERRED SECURITIES

The Preferred Securities will be issued pursuant to the terms of the Declaration. The Declaration will be qualified as an indenture under the 1939 Act. The Institutional Trustee will act as the Indenture Trustee with respect to the Trust, as well as the Guarantee, for purposes of compliance with the provisions of the 1939 Act. The terms of the Preferred Securities will include those stated in the Declaration and the Delaware Statutory Trust Act and those made part of the Declaration by the 1939 Act. The following summary of the principal terms and provisions of the Preferred Securities does not purport to be complete and is subject to, and qualified in its entirety by reference to, the Declaration, the form of which is filed as an exhibit to the Registration Statement of which this Prospectus is a part, as well as the Delaware Statutory Trust Act and 1939 Act.

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General

The Declaration authorizes the Regular Trustees, on behalf of the Trust, to issue the Preferred Securities, which represent preferred undivided beneficial interests in the assets of the Trust, and the Common Securities, which represent common undivided beneficial interests in the assets of the Trust. All of the Common Securities will be owned by the Company. The Common Securities rank on a parity with, and payments will be made thereon on a pro rata basis with, the Preferred Securities, except that upon the occurrence of an Indenture Event of Default, the rights of the holders of the Common Securities to receive payment of periodic Distributions and payments upon liquidation, redemption and otherwise will be subordinated to the rights of the holders of the Preferred Securities. The Declaration does not permit the issuance by the Trust of any securities other than the Trust Securities or the incurrence of any indebtedness by the Trust. Pursuant to the Declaration, the Institutional Trustee will own and hold the Subordinated Debt Securities for the benefit of the Trust and the holders of the Trust Securities. The payment of Distributions out of money held by the Trust, and payments upon redemption of the Preferred Securities or liquidation of the Trust, are guaranteed by the Company on a subordinated basis as and to the extent described under the captions *Risk Factors—Risks Relating to the Preferred Securities—The Company's obligations under the Guarantee and the Subordinated Debt Securities are subordinated* and *Description of the Guarantee*. The Guarantee does not cover payment of Distributions on the Preferred Securities when the Trust does not have funds available on hand sufficient to make such Distributions. In such event, the remedy of a holder of Preferred Securities is to direct the Institutional Trustee to enforce its rights on the Subordinated Debt Securities. In addition, a holder of Preferred Securities may institute a legal proceeding directly against the Company, without first instituting a legal proceeding against the Institutional Trustee or any other person or entity, for enforcement of payment to such holder of principal of or interest on the Subordinated Debt Securities having a principal amount equal to the aggregate stated liquidation amount of the Preferred Securities of such holder on or after the due dates specified in the Subordinated Debt Securities. The above mechanisms and obligations, together with the Company's obligations under the Agreement as to Expenses and Liabilities, constitute a full and unconditional guarantee by the Company of payments due on the Preferred Securities.

Distributions

General

The Initial Distribution Rate on the Preferred Securities will be _____ % per annum, payable semiannually in arrears, for the Initial Fixed Rate Period.

The Company and the Trust will have the option to remarket the Preferred Securities prior to the expiration of the Initial Fixed Rate Period to establish a new Fixed Rate with respect to the Preferred Securities (to be in effect after the Initial Fixed Rate Period). Any new Fixed Rate so established will be in effect for such Fixed Rate Period as the Company and the Trust determine in connection with the remarketing, provided that a Fixed Rate Period must be for a duration of at least six months, may not extend beyond the stated maturity of the Subordinated Debt Securities and may not end on a day other than a day immediately preceding a Distribution Payment Date. Distributions on Preferred Securities during any Fixed Rate Period will be payable semiannually in arrears. Prior to expiration of any Fixed Rate Period, the Company and the Trust will have the option to again remarket the Preferred Securities to establish a new Fixed Rate for a new Fixed Rate Period (to be in effect after the expiration of the then current Fixed Rate Period). In a Fixed Rate Period subsequent to the Initial Fixed Rate Period, the Company and the Trust also have the option to remarket the Preferred Securities for the purpose of establishing a new Fixed Rate for a new Fixed Rate Period prior to any Distribution Payment Date during a time in which Preferred Securities are redeemable.

If the Company and the Trust do not remarket the Preferred Securities prior to expiration of the Initial Fixed Rate Period or any subsequent Fixed Rate Period, or if they are unable to successfully remarket all Preferred Securities tendered for sale in a remarketing, Distributions on the Preferred Securities will thereafter be payable at the Floating Rate, subject to the right of the Company and the Trust to subsequently remarket Preferred Securities to again establish a Fixed Rate for a new Fixed Rate Period. During any Floating Rate Period, Distributions on the Preferred Securities will be payable quarterly in arrears. The Company and the Trust may elect to remarket the Preferred Securities prior to any Distribution Payment Date relating to a Floating Rate Period in order to again establish a new Fixed Rate for a new Fixed Rate Period (to be in effect after the expiration of the then current Distribution Period).

During the Initial Fixed Rate Period, Distributions will be payable semiannually in arrears on and of each year, commencing on _____, 2004. In any subsequent Fixed Rate Period, Distributions will be payable semi-

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annually in arrears determined based on the Remarketing Date (if the Preferred Securities are remarketed for a new Fixed Rate Period that begins on _____ or _____, Distributions will be payable on _____ and _____ of each year, and if the Preferred Securities are remarketed for a new Fixed Rate Period that begins on _____ or _____, Distributions will be payable on and of each year). Distributions during any Floating Rate Period will be payable on _____, _____, and _____ of each year. Distributions not paid on a Distribution Payment Date will (to the extent permitted by law) accumulate and be compounded semiannually at the Fixed Rate or quarterly at the Floating Rate, as applicable, then in effect.

If any Distribution Payment Date with respect to a Fixed Rate Period is not a Business Day, then Distributions will be payable on the first Business Day following such Distribution Payment Date with the same force and effect as if payment had been made on the date such payment was originally payable (and without the accrual of any additional amount of Distributions). If any Distribution Payment Date with respect to a Floating Rate Period is not a Business Day, then Distributions will be payable on the first Business Day following such Distribution Payment Date and Distributions will accrue to the actual payment date (except for a Distribution Payment Date that coincides with the Redemption Date).

Distributions will be payable on the Distribution Payment Date to holders of record as of the opening of business on the Business Day immediately preceding such Distribution Payment Date (the "Record Date").

The amount of Distributions per Preferred Security payable on each semiannual Distribution Payment Date relating to a Fixed Rate Period will be computed on the basis of a 360-day year of twelve 30-day months. The amount of Distributions per Preferred Security payable on each quarterly Distribution Payment Date in respect of a Floating Rate Period will be computed by multiplying the per annum Distribution Rate in effect for such Distribution Period by a fraction, the numerator of which will be the actual number of days in such Distribution Period (or portion thereof) (determined by including the first day thereof and excluding the last thereof) and the denominator of which will be 360, and multiplying the rate so obtained by \$1,000.

Distributions on the Preferred Securities must be paid on the Distribution Payment Dates to the extent that the Trust has funds on hand available for the payment of such Distributions. The Trust's funds available for distribution to the holders of the Preferred Securities will be limited to payments received on the Subordinated Debt Securities. See *Description of the Subordinated Debt Securities*.

Determining the Floating Rate

On the Floating Rate Determination Date (as defined below) for any Floating Rate Period, the Calculation Agent (as defined below) will calculate the Floating Rate and the amount of Distributions payable on each quarterly Distribution Payment Date relating to a Floating Rate Period. Promptly upon such determination, the Calculation Agent will notify the Company, the Indenture Trustee and the Institutional Trustee, if the Institutional Trustee or the Indenture Trustee is not then serving as the Calculation Agent, of the Floating Rate for the new Distribution Period. The Floating Rate determined by the Calculation Agent, absent manifest error, will be binding and conclusive upon the beneficial owners and holders of the Preferred Securities, the Company and the Securities Trustees.

Except as provided below, the Floating Rate for any Floating Rate Period for the Preferred Securities will be equal to the Adjustable Rate (as defined below) plus % (the "Initial Credit Spread"). The "Adjustable Rate" for any Distribution Period will be equal to the highest of the 3-month LIBOR Rate, the 10-year Treasury CMT and the 30-year Treasury CMT (each as defined below and collectively referred to as the "Benchmark Rates") for such Distribution Period during the Floating Rate Period. In the event that the Calculation Agent determines in good faith that for any reason:

- any one of the Benchmark Rates cannot be determined for any Distribution Period, the Adjustable Rate for such Distribution Period will be equal to the higher of whichever two of such rates can be so determined;
- only one of the Benchmark Rates can be determined for any Distribution Period, the Adjustable Rate for such Distribution Period will be equal to whichever such rate can be so determined; or
- none of the Benchmark Rates can be determined for any Distribution Period, the Adjustable Rate for the preceding Distribution Period will be continued for such Distribution Period.

The "3-month LIBOR Rate" means, for each Distribution Period, the arithmetic average of the two most recent weekly quotes for deposits for U.S. Dollars having a term of three months, as published on the first Business Day of each week immediately preceding the Distribution Period for which the Floating Rate is being determined. Such quotes will be taken from Telerate Page 3750 at approximately 11:00 a.m. London time on the relevant date. If such rate does not appear on Telerate Page 3750 on the Floating Rate Determination Date, the 3-month LIBOR Rate will be the arith

metic mean of the rates quoted by three major banks in New York City selected by the Calculation Agent, at approximately 11:00 a.m., New York City time, on the Floating Rate Determination Date for loans in U.S. Dollars to leading European banks for a period of three months.

The "10-year Treasury CMT" means the rate determined in accordance with the following provisions:

- With respect to any Floating Rate Determination Date and the Distribution Period that begins immediately thereafter, the 10-year Treasury CMT means the rate displayed on Telerate Page 7051 under the caption "...Treasury Constant Maturities...Federal Reserve Board Release H.15...Mondays Approximately 3:45 p.m.", under the column for the Designated CMT Maturity Index (as defined below).
- If such rate is no longer displayed on the relevant page, or is not so displayed by 3:00 p.m., New York City time, on the applicable Floating Rate Determination Date, then the 10-year Treasury CMT for such Floating Rate Determination Date will be such treasury constant maturity rate for the Designated CMT Maturity Index as is published in H.15(519).
- If such rate is no longer displayed on the relevant page, or if not published by 3:00 p.m., New York City time, on the applicable Floating Rate Determination Date, then the 10-year Treasury CMT for such Floating Rate Determination Date will be such constant maturity treasury rate for the Designated CMT Maturity Index (or other United States Treasury rate for the Designated CMT Maturity Index) for the applicable Floating Rate Determination Date as may then be published by either the Board of Governors of the Federal Reserve System or the United States Department of the Treasury that the Calculation Agent determines to be comparable to the rate formerly displayed on the Telerate Page 7051 and published in H.15(519).
- If such information is not provided by 3:00 p.m., New York City time, on the Floating Rate Determination Date, then the 10-year Treasury CMT for such Distribution determination date will be calculated by the Calculation Agent and will be a yield to maturity, based on the arithmetic mean of the secondary market offered rates as of approximately 3:30 p.m., New York City time, on such Floating Rate Determination Date reported, according to their written records, by three leading primary United States government securities dealers in The City of New York (each, a "Reference Dealer") selected by the Calculation Agent (from five such Reference Dealers selected by the Calculation Agent and eliminating the highest quotation (or, in the event of equality, one of the highest) and the lowest quotation (or, in the event of equality, one of the lowest)), for the most recently issued direct noncallable fixed rate obligations of the United States ("Treasury Debentures") with an original maturity of approximately the Designated CMT Maturity Index and a remaining term to maturity of not less than such Designated CMT Maturity Index minus one year.
- If the Calculation Agent is unable to obtain three such Treasury Debentures quotations, the 10-year Treasury CMT for the applicable Floating Rate Determination Date will be calculated by the Calculation Agent and will be a yield to maturity based on the arithmetic mean of the secondary market offered rates as of approximately 3:30 p.m., New York City time, on the applicable Floating Rate Determination Date of three Reference Dealers in The City of New York (from five such Reference Dealers selected by the Calculation Agent and eliminating the highest quotation (or, in the event of equality, one of the highest) and the lowest quotation (or, in the event of equality, one of the lowest)), for Treasury Debentures with an original maturity of the number of years that is the next highest to the Designated CMT Maturity Index and a remaining term to maturity closest to the Designated CMT Maturity Index and in an amount of at least \$100 million.
- If three or four (and not five) of such Reference Dealers are quoting as set forth above, then the 10-year Treasury CMT will be based on the arithmetic mean of the offered rates obtained and neither the highest nor lowest of such quotes will be eliminated; *provided, however*, that if fewer than three Reference Dealers selected by the Calculation Agent are quoting as set forth above, the 10-year Treasury CMT with respect to the applicable Floating Rate Determination Date will remain the 10-year Treasury CMT for the immediately preceding Distribution Period. If two Treasury Debentures with an original maturity as described in the second preceding sentence have remaining terms to maturity equally close to the Designated CMT Maturity Index, then the quotes for the Treasury Debentures with the shorter remaining term to maturity will be used.

The "30-year Treasury CMT" has the meaning specified under the definition of 10-year Treasury CMT, except that the Designated CMT Maturity Index for the 30-year Treasury CMT shall be 30 years.

The 3-month LIBOR Rate, the 10-year Treasury CMT and the 30-year Treasury CMT shall each be rounded to the nearest hundredth of a percent.

The Floating Rate with respect to each Floating Rate Period will be calculated as promptly as practicable by the Calculation Agent according to the appropriate method described above.

"Business Day" means a day other than (i) a Saturday or Sunday; (ii) a day on which banks in New York, New York are authorized or obligated by law or executive order to remain closed; or (iii) a day on which the Indenture Trustee's corporate trust office is closed for business.

"Calculation Agent" means Union Bank of California, N.A., or its successor appointed by the Company and the Trust, acting as calculation agent.

"Designated CMT Maturity Index" means the original period to maturity of the U.S. Treasury securities (10 years) with respect to which the 10-year Treasury CMT will be calculated.

"Floating Rate Determination Date" means the second London Business Day immediately preceding the first day of the relevant Distribution Period in the Floating Rate Period.

"London Business Day" means a day that is a Business Day and a day on which dealings in deposits in U.S. dollars are transacted, or with respect to any future date are expected to be transacted, in the London interbank market.

"Telerate Page 3750" means the display designated on page 3750 on MoneyLine Telerate (or such other page as may replace the 3750 page on the service or such other service as may be nominated by the British Bankers' Association for the purpose of displaying London interbank offered rates for U.S. Dollars deposits).

Deferred Distributions

The Company has the right under the Indenture to defer payments of interest on the Subordinated Debt Securities by extending the interest payment period from time to time on the Subordinated Debt Securities which, if exercised, would defer Distributions on the Preferred Securities. During any Extension Period, Distributions will continue to accrue on the Preferred Securities at the then applicable Distribution Rate.

If the Company elects to defer interest during a Fixed Rate Period, Distributions will continue to accrue and be compounded semiannually at the Fixed Rate until the expiration of the Fixed Rate Period. Upon expiration of such Fixed Rate Period and any subsequent Fixed Rate Period during the Extension Period, the Company and the Trust will have the option to remarket the Preferred Securities for a new Fixed Rate Period. If the Company and the Trust do not remarket the Preferred Securities, the Floating Rate during the Extension Period will not be less than the Fixed Rate for the Fixed Rate Period just ended.

If the Company elects to defer interest during a Floating Rate Period, Distributions will continue to accrue and be compounded quarterly at the applicable Floating Rate, reset quarterly, subject to the right of the Company and the Trust to remarket the Preferred Securities prior to any Distribution Payment Date in order to establish a new Fixed Rate for a new Fixed Rate Period.

An Extension Period will not extend beyond the stated maturity of the Subordinated Debt Securities. Prior to the termination of any Extension Period, the Company may further defer payments of interest provided that the Extension Period, together with all such previous and further extensions thereof, may not exceed five years. The Company may only terminate an Extension Period on an Interest Payment Date (as defined below). Upon the termination of any Extension Period and the payment of all amounts then due, the Company may select a new Extension Period, subject to the above requirements. There could be multiple Extension Periods of varying lengths throughout the term of the Subordinated Debt Securities.

Deferred installments of interest on the Subordinated Debt Securities will bear interest, compounded on each Interest Payment Date, at a rate per annum equal to the applicable Distribution Rate. Any deferred Distributions and accumulations thereof will be payable to holders of record of the Preferred Securities as they appear on the books and records

of the Trust on the Record Date next preceding the termination of such Extension Period. See *Description of the Subordinated Debt Securities—Interest and—Option to Extend Interest Payment Period*.

Redemption

The Preferred Securities are subject to mandatory redemption upon repayment of the Subordinated Debt Securities at stated maturity, their earlier redemption or when they are otherwise due.

The Subordinated Debt Securities will mature on _____ . The Subordinated Debt Securities may be redeemed, in whole, but not in part, at the option of the Company at the Debt Securities Redemption Price:

- on the last Distribution Payment Date relating to the Initial Fixed Rate Period;
- on such dates with respect to any other Fixed Rate Period as the Company and the Trust may determine prior to the commencement of such Fixed Rate Period; or
- on any Distribution Payment Date relating to a Floating Rate Period or at any time in whole, but not in part, upon the occurrence of a Special Event (as discussed below).

Upon the payment of the Subordinated Debt Securities, whether at maturity, upon redemption or when they are otherwise due, the proceeds from such payment will simultaneously be applied to redeem a like amount of Trust Securities upon not less than 30 nor more than 60 days' notice at the Preferred Securities Redemption Price. See *Description of the Subordinated Debt Securities—Redemption*.

Special Event Redemption; Distribution of Subordinated Debt Securities

As described above, upon the occurrence of a Special Event at any time, the Company will have the option to redeem the Subordinated Debt Securities in whole (and thus cause the redemption of the Preferred Securities in whole) (a “Special Event Redemption”). A Special Event is either an Investment Company Act Event or a Tax Event.

An “Investment Company Act Event” means the receipt by the Regular Trustees and the Company of an opinion of independent counsel (which may be counsel to the Company) to the effect that, as a result of a change in law or regulation or a written change (including any announced prospective change) in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority, there is more than an insubstantial risk that the Trust is or will be considered an investment company that is required to be registered under the Investment Company Act of 1940, as amended (the “1940 Act”), which change or prospective change becomes effective or would become effective, as the case may be, after the Issue Date.

“Tax Event” means the receipt by the Regular Trustees and the Company of an opinion from independent tax counsel experienced in such matters (which may be counsel to the Company) to the effect that, as a result of (a) any amendment to, or change (including any announced proposed change) in, the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein or (b) any amendment to, or change in, an interpretation or application of such laws or regulations, there is more than an insubstantial risk that (i) the Trust would be subject to United States federal income tax with respect to income accrued or received on the Subordinated Debt Securities; (ii) interest payable on the Subordinated Debt Securities would not be deductible, in whole or in part, by the Company for United States federal income tax purposes; or (iii) the Trust would be subject to more than a de minimis amount of other taxes, duties or other governmental charges, which change or amendment becomes effective on or after the Issue Date.

The Company will have the right at any time to terminate the Trust and, after satisfaction of liabilities to creditors of the Trust, if any, cause the Subordinated Debt Securities to be distributed to the holders of the Preferred Securities in liquidation of the Trust. See *—Termination of Trust; Liquidation Distribution* below. This right is optional and wholly within the discretion of the Company. Circumstances under which the Company may determine to exercise such right could include the occurrence of an Investment Company Act Event or a Tax Event, adverse tax consequences to the Company or the Trust that are not within the definition of a Tax Event because they do not result from an amendment or change described in such definition or changes in the accounting requirements applicable to the Preferred Securities as described under *Accounting Treatment*.

If Subordinated Debt Securities are distributed to the holders of the Preferred Securities, the Interest Rate, interest payable, Interest Periods and Interest Payment Dates for the Subordinated Debt Securities will be determined in

the same manner as the Distribution Rate, Distributions, Distribution Periods and Distribution Payment Dates for the Preferred Securities and the associated remarketing procedures shall remain the same except (i) the effects of Declaration Events of Default (as defined below) shall be occasioned only by the Indenture Events of Default and (ii) the cure and waiver provisions relating to Declaration Events of Default shall be superceded by the cure and waiver provisions relating to Indenture Events of Default. See *Description of the Subordinated Debt Securities—Indenture Events of Default*. After the date for any distribution of Subordinated Debt Securities upon termination of the Trust, (i) the Preferred Securities and the Guarantee will no longer be deemed to be outstanding; (ii) the securities depository or its nominee, as the record holder of the Preferred Securities, will receive a registered global certificate or certificates representing the Subordinated Debt Securities to be delivered upon such distribution; and (iii) any certificates representing Preferred Securities and the Guarantee not held by the securities depository or its nominee will be deemed to represent Subordinated Debt Securities having an aggregate principal amount equal to the aggregate stated liquidation amount of, with an Interest Rate identical to the Distribution Rate of, and accrued and unpaid interest equal to accrued and unpaid Distributions on, such Preferred Securities, until such certificates are presented to the Company or its agent for transfer or reissuance.

There can be no assurance as to the market prices for the Preferred Securities or the Subordinated Debt Securities that may be distributed in exchange for the Preferred Securities if a termination and liquidation of the Trust were to occur. Accordingly, the Preferred Securities that an investor may purchase, or the Subordinated Debt Securities that the investor may receive on termination and liquidation of the Trust, may trade at a discount to the price that the investor paid to purchase the Preferred Securities offered hereby.

Redemption Procedures

Redemption of the Preferred Securities shall be at the Preferred Securities Redemption Price with the proceeds from the simultaneous redemption of the Subordinated Debt Securities. The Preferred Securities Redemption Price shall be deemed payable on each Redemption Date only to the extent that the Trust has funds on hand available for payment of such Preferred Securities Redemption Price.

If the Trust gives a notice of redemption in respect of any Preferred Securities, then, by 12:00 noon, New York City time, on the Redemption Date, to the extent funds are available, in the case of Preferred Securities held in book-entry form, the Institutional Trustee will deposit irrevocably with the depository funds sufficient to pay the Preferred Securities Redemption Price and will give the depository irrevocable instructions and authority to pay the Preferred Securities Redemption Price to the holders of the Preferred Securities. With respect to Preferred Securities not held in book-entry form, the Institutional Trustee, to the extent funds are available, will irrevocably deposit with the paying agent for the Preferred Securities funds sufficient to pay the Preferred Securities Redemption Price and will give the paying agent irrevocable instructions and authority to pay the Preferred Securities Redemption Price to the holders upon surrender of their certificates evidencing the Preferred Securities. Notwithstanding the foregoing, Distributions payable on or prior to the Redemption Date for any Preferred Securities called for redemption will be payable to the holders of the Preferred Securities on the relevant Record Dates for the related Distribution Dates. If notice of redemption has been given (or if the Company has given irrevocable instructions to the Institutional Trustee to give notice of redemption) and if funds have been deposited as required, then upon the date of the deposit all rights of the holders of the Preferred Securities so called for redemption will cease, except the right of the holders of the Preferred Securities to receive the Preferred Securities Redemption Price, and any Distribution payable in respect of the Preferred Securities, but without interest on the Preferred Securities Redemption Price, and the Preferred Securities will cease to be outstanding. In the event that payment of the Preferred Securities Redemption Price in respect of Preferred Securities called for redemption is improperly withheld or refused and not paid either by the Trust or by the Company pursuant to the Guarantee as described under *Description of the Guarantee*, Distributions on the Preferred Securities will continue to accumulate at the then applicable rate, from the Redemption Date originally established by the Trust for the Preferred Securities to the date the Preferred Securities Redemption Price is actually paid, in which case the actual payment date will be the date fixed for redemption for purposes of calculating the Preferred Securities Redemption Price.

Notice of any redemption of the Preferred Securities will be mailed at least 30 days but not more than 60 days before the redemption date to each registered holder of Preferred Securities to be redeemed at its address appearing on the securities register for the Trust Securities. As provided in the Indenture, any notice of redemption of the Subordinated Debt Securities at the option of the Company may state that such redemption will be conditional upon receipt by the paying agent or agents, on or before the date fixed for such redemption, of money sufficient to pay the principal of and premium, if any, and interest, if any, on such Subordinated Debt Securities and that if such money has not been

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received, such notice will be of no force or effect and the Company will not be required to redeem such Subordinated Debt Securities. In such case, the Trust will not be required to redeem the Preferred Securities. Unless the Company defaults in payment of the Debt Securities Redemption Price on the related Subordinated Debt Securities, on and after the Redemption Date interest will cease to accrue on the Subordinated Debt Securities or portions of them called for redemption and Distributions will cease to accumulate on the Preferred Securities.

Subject to the foregoing and to applicable law (including, without limitation, United States federal securities laws), the Company or its affiliates may, at any time and from time to time, purchase outstanding Preferred Securities by tender, in the open market or by private agreement.

Remarketing

Remarketing Procedures

Set forth below is a summary of the procedures to be followed in connection with a remarketing of the Preferred Securities (or, if the Subordinated Debt Securities have been distributed to holders of the Trust Securities in liquidation of the Trust, the Subordinated Debt Securities):

If the Company and the Trust elect to conduct a remarketing, not less than 20 nor more than 35 Business Days prior to the related Election Date, the Trust is required to give the notice of remarketing of the Preferred Securities to DTC, the Remarketing Agent, the Institutional Trustee, the Indenture Trustee and the Calculation Agent. Such notice will describe the remarketing and will indicate the length of the proposed new Fixed Rate Period, the proposed Remarketing Date and any redemption provisions that will apply during such new Fixed Rate Period. At any time prior to the Election Date, the Company and the Trust may elect to terminate a remarketing by giving DTC, the Remarketing Agent, the Institutional Trustee, the Indenture Trustee and the Calculation Agent notice of such termination.

Not later than 4:00 p.m., New York City time, on an Election Date, each holder of Preferred Securities may give, through the facilities of DTC, a notice to the Institutional Trustee of its election ("Notice of Election") (i) to retain and not to have all or any portion of the Preferred Securities owned by it remarketed in the remarketing, or (ii) to tender all or any portion of such Preferred Securities for purchase in the remarketing (such portion, in either case, is required to be in the liquidation amount of \$1,000 or any integral multiple thereof). Any Notice of Election given to the Institutional Trustee will be irrevocable and may not be conditioned upon the level at which the Fixed Rate is established in the remarketing. Promptly after 4:30 p.m., New York City time, on such Election Date, the Institutional Trustee, based on the Notices of Election received by it through DTC prior to such time, will notify the Trust, the Company and the Remarketing Agent of the number of Preferred Securities to be retained by holders of Preferred Securities and the number of Preferred Securities tendered for purchase in the remarketing.

If any holder of Preferred Securities gives a Notice of Election to tender Preferred Securities as described in clause (ii) in the prior paragraph, the Preferred Securities so subject to such Notice of Election will be deemed tendered for purchase in the remarketing, notwithstanding any failure by such holder to deliver or properly deliver such Preferred Securities to the Remarketing Agent for purchase. If any holder of Preferred Securities fails timely to deliver a Notice of Election, as described above, such Preferred Securities will be deemed tendered for purchase in such remarketing, notwithstanding such failure or the failure by such holder to deliver or properly deliver such Preferred Securities to the Remarketing Agent for purchase.

The right of each holder of Preferred Securities to have Preferred Securities tendered for purchase shall be limited to the extent that (i) the Remarketing Agent conducts a remarketing pursuant to the terms of the Remarketing Agreement (as defined below); (ii) Preferred Securities tendered have not been called for redemption; (iii) the Remarketing Agent is able to find a purchaser or purchasers for tendered Preferred Securities at a Fixed Rate; and (iv) such purchaser or purchasers deliver the purchase price therefor to the Remarketing Agent.

Any holder of Preferred Securities that desires to continue to maintain an investment in a number of Preferred Securities, but only if the Fixed Rate is not less than a rate per annum specified by such holder, should submit a Notice of Election to tender such number of Preferred Securities and separately notify the Remarketing Agent of its interest at the telephone number set forth in the notice of remarketing. If such holder so notifies the Remarketing Agent, the Remarketing Agent will give priority to such holder's purchase of such number of Preferred Securities in the remarketing, providing that the Fixed Rate is not less than such specified rate.

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If holders submit Notices of Election to retain all of the Preferred Securities then outstanding, the Fixed Rate will be the rate determined by the Remarketing Agent, in its sole discretion, as the rate that would have been established had a remarketing been held on the related Remarketing Date.

On any Remarketing Date on which the remarketing is to be conducted, the Remarketing Agent will use commercially reasonable efforts to remarket, at a price equal to 100% of the liquidation amount thereof, Preferred Securities tendered or deemed tendered for purchase.

If, as a result of such efforts, on any Remarketing Date, the Remarketing Agent has determined that it will be able to remarket all Preferred Securities tendered or deemed tendered for purchase in the remarketing at a Fixed Rate and at a price of \$1,000 per Preferred Security, prior to 4:00 p.m., New York City time, on such Remarketing Date, the Remarketing Agent will determine the Fixed Rate, which will be the rate per annum (rounded to the nearest one-thousandth (0.001) of one percent per annum) which the Remarketing Agent determines, in its sole judgment, to be the lowest Fixed Rate per annum that will enable it to remarket all Preferred Securities tendered or deemed tendered for sale in the remarketing at a price of \$1,000 per Preferred Security.

If the Remarketing Agent is unable to remarket by 4:00 p.m., New York City time on the third Business Day prior to the Remarketing Settlement Date, all Preferred Securities tendered or deemed tendered for purchase at a price of \$1,000 per Preferred Security, the Distribution Rate will be the Floating Rate. In such case, no Preferred Securities will be sold in the remarketing and each holder

will continue to hold its Preferred Securities.

All Preferred Securities tendered or deemed tendered in the remarketing will be automatically delivered to the account of the Remarketing Agent through the facilities of DTC against payment of the purchase price therefor on the Remarketing Settlement Date. The Remarketing Agent will make payment to the Participant (as defined below) of each tendering holder of Preferred Securities in the remarketing through the facilities of DTC by the close of business on the Remarketing Settlement Date.

In accordance with DTC's normal procedures, on the Remarketing Settlement Date, the transactions described above with respect to each Preferred Security tendered for purchase and sold in the remarketing will be executed through DTC and the accounts of the Participants (as defined below) will be debited and credited and such Preferred Securities delivered by book entry as necessary to effect purchases and sales of such Preferred Securities. DTC is expected to make payment in accordance with its normal procedures.

If the Preferred Securities are no longer held by DTC and if any holder selling Preferred Securities in the remarketing fails to deliver such Preferred Securities, the Participant of such selling holder and of any other person that was to have purchased Preferred Securities in the remarketing may deliver to any such other person a number of Preferred Securities that is less than the number of Preferred Securities that otherwise was to be purchased by such person. In such event, the number of Preferred Securities to be so delivered will be determined by such Participant and delivery of such lesser number of Preferred Securities will constitute good delivery.

The Remarketing Agent is not obligated to purchase any Preferred Securities that would otherwise remain unsold in a remarketing. Neither the Trust, any Securities Trustee, the Company nor the Remarketing Agent shall be obligated in any case to provide funds to make payment upon tender of Preferred Securities for remarketing.

As used herein:

"Remarketing Date" means any Business Day no later than the third Business Day prior to any Remarketing Settlement Date.

"Remarketing Settlement Date" means (i) the first Business Day of the next Distribution Period following the expiration of the Initial Fixed Rate Period and any subsequent Fixed Rate Period; (ii) any Distribution Payment Date during a Floating Rate Period; or (iii) any Distribution Payment Date during a time in which Preferred Securities are redeemable in a subsequent Fixed Rate Period.

Remarketing Agent

The Remarketing Agent will be Lehman Brothers Inc. The Company and the Trust will enter into a Remarketing Agreement (the "Remarketing Agreement") with the Remarketing Agent which provides, among other things, that Lehman Brothers Inc. will act as the exclusive Remarketing Agent and will use commercially reasonable efforts to remarket Preferred Securities tendered or deemed tendered for purchase in the remarketing at a price of \$1,000 per Preferred Security. Under

certain circumstances, some portion of the Preferred Securities tendered in the remarketing may be purchased by the Remarketing Agent. See *Remarketing Procedures* above.

The Remarketing Agreement provides that the Remarketing Agent will incur no liability to the Company or to any holder of Preferred Securities in its individual capacity or as Remarketing Agent for any action or failure to act in connection with a remarketing or otherwise, except as a result of gross negligence or willful misconduct on its part.

The Company has agreed to indemnify the Remarketing Agent against certain liabilities, including liabilities under the Securities Act of 1933, as amended (the "Securities Act") or contribute to payments that the Remarketing Agent may be required to make, arising out of or in connection with its duties under the Remarketing Agreement.

The Remarketing Agreement will also provide that any Remarketing Agent may resign and be discharged from its duties and obligations thereunder; *provided, however*, that no such resignation will become effective until the Company has appointed at least one nationally recognized broker-dealer as successor Remarketing Agent and such successor Remarketing Agent has entered into a remarketing agreement with the Company and the Trust. In such case, the Company and the Trust will use its reasonable best efforts to appoint a successor Remarketing Agent and enter into such a remarketing agreement with such person as soon as reasonably practicable.

Book-Entry Only Issuance — The Depository Trust Company

DTC will act as the initial securities depository for the Preferred Securities. The Preferred Securities will be issued only as fully registered securities registered in the name of Cede & Co., DTC's nominee, or such other name as may be requested by an authorized representative of DTC. One or more fully registered global Preferred Securities certificates will be issued, representing in the aggregate the total number of Preferred Securities, and will be deposited with DTC or a custodian therefor.

The following information is based upon information furnished by DTC:

DTC is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended. DTC holds and provides asset servicing for equity issues, corporate and municipal debt issues and money market instruments from many countries that its participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC, in turn, is owned by a number of Direct Participants of DTC and members of the National Securities Clearing Corporation, Government Securities Clearing Corporation, MBS Clearing Corporation and Emerging Markets Clearing Corporation (NSCC, GSCC, MBSCC and EMCC, also subsidiaries of DTCC), as well as by the New York Stock Exchange, Inc., the American Stock Exchange LLC and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others, such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants" and, together with Direct Participants, "Participants"). The DTC Rules applicable to its Participants are on file with the SEC. More information about DTC can be found at www.dtcc.com. Information on this website does not constitute a part of this Prospectus.

Purchases of Preferred Securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the Preferred Securities on DTC's records. The ownership interest of each actual purchaser of Preferred Securities ("Beneficial Owner") is in turn to be recorded on the Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchases, but Beneficial Owners are expected to receive written confirmations providing details of the transactions, as well as periodic statements of their holdings, from the Participants through which the Beneficial Owners purchased the Preferred Securities. Transfers of ownership interests in the Preferred Securities are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial

Owners will not receive certificates representing their ownership interests in Preferred Securities, except in the event that use of the book-entry system for the Preferred Securities is discontinued.

To facilitate subsequent transfers, all Preferred Securities deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Preferred Securities with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Preferred Securities; DTC's records reflect only the identity of the Direct Participants to whose accounts such Preferred Securities are credited, which may or may not be the Beneficial Owners. The Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices shall be sent to DTC.

Although voting with respect to the Preferred Securities is limited, in those cases where a vote is required, neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Preferred Securities. Under its usual procedures, DTC mails an Omnibus Proxy to the Trust as soon as possible after the Record Date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Preferred Securities are credited on the Record Date (identified in a listing attached to the Omnibus Proxy).

Distribution payments on the Preferred Securities will be made to Cede & Co. or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Trust or the Institutional Trustee on the relevant payment date in accordance with their respective holdings shown on DTC's records unless DTC has reason to believe that it will not receive payments on such payment date. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name", and will be the responsibility of such Participant and not of DTC nor its nominee, the Trust or the Institutional Trustee, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of Distributions to Cede & Co. (or such nominee as may be requested by an authorized representative of DTC) is the responsibility of the Trust, disbursement of such payments to Direct Participants is the responsibility of DTC and disbursement of such payments to the Beneficial Owners is the responsibility of Direct and Indirect Participants.

Except as provided herein, a Beneficial Owner in a global Preferred Security will not be entitled to receive physical delivery of Preferred Securities certificates. Accordingly, each Beneficial Owner must rely on the procedures of DTC to exercise any rights under the Preferred Securities. The laws of some jurisdictions require that certain purchasers of securities take physical delivery of Securities in definitive form. Such laws may impair the ability to transfer beneficial interests in a global Preferred Security.

DTC may discontinue providing its services as securities depository with respect to the Preferred Securities at any time by giving reasonable notice to the Trust. Under such Circumstances, in the event that a successor securities depository is not obtained, Preferred Securities certificates will be printed and delivered to the holders of record. Additionally, the Company may decide to discontinue use of the system of book-entry transfers through DTC (or a successor depository) with respect to the Preferred Securities. In that event, certificates for the Preferred Securities will be printed and delivered to the holders of record.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Company and the Trust believe to be reliable, but the Company and the Trust take no responsibility for the accuracy thereof. The Company and the Trust have no responsibility for the performance by DTC or its Participants of their respective obligations as described herein or under the rules and procedures governing their respective operations.

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Dissolution of Trust; Liquidation Distribution

Pursuant to the Declaration, the Trust will dissolve on December 31, 2044 or earlier upon (i) the occurrence of a Bankruptcy Event (as defined in the Declaration) in respect of the Company, dissolution or liquidation of the Company, or dissolution of the Trust pursuant to a judicial decree; (ii) the delivery of written direction to the Institutional Trustee by the Company, as Sponsor, at any time (which direction is optional and wholly within the discretion of the Company, as Sponsor) to dissolve the Trust and distribute the Subordinated Debt Securities to the holders of the Preferred Securities in liquidation of the Trust (see *Special Event Redemption; Distribution of Subordinated Debt Securities* above); or (iii) the payment at maturity, upon redemption, or otherwise when due of all of the Subordinated Debt Securities, and the consequent payment of the Trust Securities.

If an early dissolution occurs as described in clause (i) or (ii) above, the Trust will be liquidated, and the Institutional Trustee shall distribute to each holder of Preferred Securities and Common Securities a like amount of Subordinated Debt Securities, unless in the case of an event described in clause (i) such distribution is determined by the Regular Trustees not to be practical, in which event such holders will be entitled to receive, out of the assets of the Trust available for distribution to holders after satisfaction of liabilities to creditors, an amount equal to the aggregate of the stated liquidation preference of \$1,000 per Trust Security plus accrued and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"). If such Liquidation Distribution can be paid only in part because the Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then subject to the next succeeding sentence, the amounts payable directly by the Trust on the Trust Securities shall be paid on a pro rata basis. The holder of the Common Securities will be entitled to receive distributions upon any such dissolution pro rata with the holders of the Preferred Securities, except that if an Indenture Event of Default has occurred and is continuing, the holders of Preferred Securities shall have a preference over the holders of Common Securities.

Certain Covenants

For so long as Trust Securities remain outstanding, the Company agrees:

- to maintain 100% direct ownership of the Common Securities of the Trust, except as otherwise provided below under *Description of the Subordinated Debt Securities—Consolidation, Merger, Sale of Assets and Other Transactions*; and
- to use all reasonable efforts, consistent with the terms and provisions of the Declaration, to cause the Trust (i) to maintain its existence as a statutory trust, except in connection with a distribution of the Subordinated Debt Securities, with the redemption, purchase or other acquisition and retirement of all Trust Securities or with certain mergers, consolidations or other business combinations, in each case as permitted by the Declaration, and (ii) to otherwise continue not to be treated as an association taxable as a corporation for United States federal income tax purposes.

During any Extension Period, or for so long as an Indenture Event of Default relating to the payment of principal, premium, if any, or interest, if any, or any payment default under the Guarantee has occurred and is continuing, the Company will also agree that it will not, except in limited circumstances, (1) declare or pay any dividend on, make any distribution or liquidation payment with respect to, or redeem, purchase or exchange any of its capital stock, (2) make any payment of principal, premium, if any, or interest, if any, on or repay, repurchase or redeem any debt securities that rank pari passu with or junior in right of payment to the Subordinated Debt Securities, or (3) make any guarantee payments with respect to the foregoing (other than pursuant to the Guarantee); *provided, however*, that nothing herein shall be deemed to prohibit:

- dividends or distributions payable in shares of the Company's capital stock, or in the form of warrants, options or other rights, where the dividend or distributed stock issuable upon exercise of the warrants, options or other rights are the same stock as that on which the dividend is being paid or is pari passu or junior to the stock;
- reclassification of the Company's capital stock or exchange or conversion of shares of one class or series of the Company's capital stock into shares of another class or series of the Company's capital stock;
- purchases or other acquisitions of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of the capital stock or the security being converted or exchanged;
- redemption, purchases, or other acquisition of shares of the Company's capital stock in connection with the satisfaction by the Company of its obligations under provisions of the Company's Restated Articles of Incorporation, as amended, under any direct purchase, dividend reinvestment, customer purchase or employee

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benefit plans or under any contract or security requiring the Company to purchase shares of its capital stock; and

- payments under any guarantee of trust securities executed and delivered by the Company concurrently with the issuance of any trust preferred securities.

Events of Default

Any one of the following events constitutes an Event of Default under the Declaration (each, a "Declaration Event of Default") with respect to the Preferred Securities issued thereunder:

- default by the Trust in the payment of any Distribution when it becomes due and payable, and continuation of the default for a period of 60 days;
- default by the Trust in the payment of the Preferred Securities Redemption Price when it becomes due and payable;

- default in the performance, or breach, in any material respect, of any covenant or warranty of the Institutional Trustee and the Delaware Trustee in the Declaration, other than as described above, and continuation of the default or breach for a period of 60 days after there has been given, by registered or certified mail, to the appropriate Securities Trustees and to the Company by the holders of at least 33% in aggregate liquidation amount of the outstanding Preferred Securities, a written notice specifying the default or breach and requiring it to be remedied and stating that the notice is a “Notice of Default” under the Declaration;
- the occurrence of certain events of bankruptcy or insolvency with respect to the Institutional Trustee or all or substantially all of its property if a successor Institutional Trustee has not been appointed within 90 days of the occurrence;
- the occurrence of an “Event of Default” under Section 701 of the Indenture (an “Indenture Event of Default”) (see *Description of the Subordinated Debt Securities—Indenture Events of Default*); or
- the occurrence of certain events of bankruptcy or insolvency with respect to the Trust.

Within 90 days after the occurrence of any Declaration Event of Default, the Institutional Trustee shall transmit notice of any default known to the Institutional Trustee to holders of Trust Securities, the Regular Trustees and the Company, unless the Declaration Event of Default has been cured or waived.

If a Declaration Event of Default occurs and is continuing, then, pursuant to the Declaration, holders of a majority in aggregate liquidation amount of Preferred Securities have the right to direct the exercise of any trust or power conferred upon the Institutional Trustee under the Declaration, including the right to direct the Institutional Trustee under the Declaration to exercise the remedies available to it as holder of the Subordinated Debt Securities. If the Institutional Trustee fails to enforce its rights under the Subordinated Debt Securities, a holder of Preferred Securities may, to the fullest extent permitted by applicable law, institute a legal proceeding directly against the Company to enforce its rights under the Declaration without first instituting any legal proceeding against the Institutional Trustee or the Trust. Notwithstanding the foregoing, a holder of Preferred Securities may institute a legal proceeding directly against the Company, without first instituting a legal proceeding against the Institutional Trustee or any other person or entity, for enforcement of payment to such holder of principal of or interest on the Subordinated Debt Securities having a principal amount equal to the aggregate stated liquidation amount of the Preferred Securities of such holder on or after the due dates specified in the Subordinated Debt Securities. See *Relationship Among the Preferred Securities, the Subordinated Debt Securities and the Guarantee* herein and *Description of the Guarantees—Events of Default*.

The holders of at least a majority in aggregate liquidation amount of the Preferred Securities may waive any past default under the Declaration except:

- a default in the payment of any Distribution, when it becomes due and payable, or the Preferred Securities Redemption Price;
- a default with respect to certain covenants and provisions of the Declaration that cannot be modified or amended without consent of the holder of each outstanding Preferred Security; and
- an Indenture Event of Default that the holders of a majority in liquidation amount of the Preferred Securities would not be entitled to waive under the Declaration.

The Company must furnish annually to the Institutional Trustee a statement by an appropriate officer as to that officer’s knowledge of the Company’s compliance with all conditions and covenants under the Declaration. Also, the Regular Trustees for the Trust must file, on behalf of the Trust, a statement as to its compliance with all conditions and covenants under the Declaration.

If an Indenture Event of Default has occurred and is continuing, the holders of Preferred Securities shall have a preference over the holders of Common Securities with respect to payments of any amounts in respect of the Trust as described above. See —*Termination of Trust; Liquidation Distribution*.

Voting Rights; Amendment of the Declaration

Except as provided below and under *Description of the Guarantee—Modification of the Guarantee; Assignment* and as otherwise required by law and the Declaration, the holders of the Preferred Securities will have no voting rights.

The Declaration may be amended from time to time by the holders of a majority in liquidation amount of its Common Securities and the Institutional Trustee, without the consent of the holders of the Preferred Securities:

- to cure any ambiguity, to correct or supplement any provisions in the Declaration which may be defective or inconsistent with any other provision therein, or to make other changes to the provisions thereof or to add other provisions with respect to matters or questions arising under the Declaration, so long as such other changes or additions do not adversely affect in any material respect the interests of any holder of Trust Securities;
- to facilitate the tendering, remarketing and settlement of the Preferred Securities, as contemplated in the Declaration;
- to modify, eliminate or add to any provisions of the Declaration to the extent as may be necessary to ensure that a trust will not be taxable other than as a grantor trust for United States federal income tax purposes at any time that any Trust Securities are outstanding or to ensure that a trust will not be required to register as an investment company under the 1940 Act; or
- to reflect the appointment of a successor trustee.

Without limiting the generality of the foregoing, if the 1939 Act is amended after the date of the Declaration in such a way as to require changes to the Declaration or the incorporation therein of additional provisions or so as to permit changes to, or the elimination of, provisions which, at the date of the Declaration or at any time thereafter, were required by the 1939 Act to be contained in the Declaration, the Declaration will be deemed to have been amended so as to conform to such amendment or to effect such changes or elimination, and the Company and the Securities Trustees may, without the consent of any holders of Trust Securities, amend the Declaration to evidence or effect such amendment.

The Declaration may be amended by the holders of a majority in aggregate liquidation amount of the Common Securities and the Institutional Trustee with the consent of holders representing not less than a majority in aggregate liquidation amount of the outstanding Preferred Securities and receipt by the Institutional Trustee and the Delaware Trustee of an opinion of counsel to the effect that the amendment or the exercise of any power granted to the trustees in accordance with the amendment will not affect the trust’s not being taxable other than as a grantor trust for United States federal income tax purposes or the trust’s exemption from status as an investment company under the 1940 Act.

Without the consent of each holder of Preferred Securities affected by the amendment or related exercise of power, the Declaration may not be amended to change the amount or timing of any distribution on the Trust Securities or otherwise adversely affect the amount of any distribution required to be made in respect of the Trust Securities as of a specified date, restrict the right of a holder of Trust Securities to institute suit for the enforcement of any payment due or change the consent required to amend the Declaration.

So long as the Subordinated Debt Securities are held by the Trust, the Institutional Trustee will not:

- direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee under the Indenture, or execute any trust or power conferred on the Institutional Trustee with respect to the Subordinated Debt Securities;
- waive any past default that is waivable under the Indenture;

- exercise any right to rescind or annul a declaration that the Subordinated Debt Securities shall be due and payable; or

- consent to any amendment, modification or termination of the Indenture or the Subordinated Debt Securities, where consent shall be required;

without, in each case, obtaining the prior approval of the holders of at least a majority in aggregate liquidation amount of the Preferred Securities, except that, if a consent under the Indenture would require the consent of each holder of Subordinated Debt Securities affected by the consent, no consent will be given by the Institutional Trustee without the prior written consent of each holder of the Preferred Securities.

The Institutional Trustee may not revoke any action previously authorized or approved by a vote of the holders of the Preferred Securities issued by the Trust except by subsequent vote of the holders of the Preferred Securities. The Institutional Trustee will notify each holder of Preferred Securities of any notice of default with respect to the Subordinated Debt Securities. In addition, before taking any of the foregoing actions, the Institutional Trustee will obtain an opinion of counsel experienced in relevant matters to the effect that the trust will not be taxable other than as a grantor trust for United States federal income tax purposes on account of the action.

Any required approval of holders of Preferred Securities may be given at a meeting of holders of those Preferred Securities convened for the purpose or pursuant to written consent. The Regular Trustees will cause a notice of any meeting at which holders of Preferred Securities are entitled to vote to be given to each registered holder of Preferred Securities in the manner set forth in the Declaration.

No vote or consent of the holders of Preferred Securities will be required to redeem and cancel those Preferred Securities in accordance with the Declaration. See—*Redemption* above.

Notwithstanding that holders of Preferred Securities are entitled to vote or consent under any of the circumstances described above, any of those Preferred Securities that are owned by the Company, the Institutional Trustee or Delaware Trustee, or any affiliate of the Company or the Trust or either trustee, will, for purposes of the vote or consent, be treated as if they were not outstanding.

Enforcement of Certain Rights by Holders of Trust Preferred Securities

If an Indenture Event of Default has occurred and is continuing, and the Indenture Trustee and the holders of the Subordinated Debt Securities have failed to declare the principal of the Subordinated Debt Securities to be immediately due and payable, the holders of at least 33% in aggregate liquidation amount of the Preferred Securities will have the right to make such declaration.

As described above under —*Events of Default*, a holder of Preferred Securities may institute a legal proceeding directly against the Company, without first instituting a legal proceeding against the Institutional Trustee or any other person or entity, for enforcement of payment to such holder of principal or interest on the Subordinated Debt Securities having a principal amount equal to the aggregate stated liquidation amount of the Preferred Securities of such holder on or after the due dates specified in the Subordinated Debt Securities.

Resignation, Removal of Institutional Trustee and Delaware Trustee; Appointment of Successors

The Institutional Trustee or the Delaware Trustee may resign at any time by giving written notice to the holders of Preferred Securities, the Company and the other Securities Trustees. So long as an Indenture Event of Default has not occurred and is continuing, the Institutional Trustee or the Delaware Trustee may be removed at any time by the Company. If an Indenture Event of Default has occurred and is continuing, the Institutional Trustee or Delaware Trustee may be removed by an action of the holders of a majority in liquidation amount of the outstanding Preferred Securities delivered to the trustee to be removed. No resignation or removal of any trustee will become effective until a successor trustee accepts appointment in accordance with the requirements of the Declaration.

Mergers, Consolidations, Amalgamations or Replacements of a Trust

The Trust may not merge with or into, consolidate, amalgamate, or be replaced by, or convey, transfer or lease its properties and assets substantially as an entirety to any entity, except as described below or as otherwise set forth in the Declaration. The Trust may, at the request of the holders of its Common Securities and without the consent of the

holders of the outstanding Preferred Securities, merge with or into, consolidate, amalgamate, or be replaced by or convey, transfer or lease its properties and assets substantially as an entirety to a trust organized as such under the laws of any state, so long as:

- the successor entity either expressly assumes all the obligations of the Trust with respect to its Preferred Securities or substitutes for the Preferred Securities other securities having substantially the same terms as the Preferred Securities, which are referred to in this Prospectus as the successor securities, so long as the successor securities have the same priority as the Preferred Securities with respect to distributions and payments upon liquidation, redemption and otherwise;
- a trustee of the successor entity, possessing the same powers and duties as the Institutional Trustee, is appointed to hold the Subordinated Debt Securities;
- the merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not cause the Preferred Securities, including any successor securities, to be downgraded by any nationally recognized statistical rating organization;
- the Preferred Securities or any successor securities are listed or quoted, or any successor securities will be listed or quoted upon notification of issuance, on any national securities exchange or with another organization on which the Preferred Securities are then listed or quoted;
- the merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the holders of the Preferred Securities, including any successor securities, in any material respect;
- the successor entity has a purpose substantially identical to that of the Trust;
- prior to the merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, the Institutional Trustee has received an opinion from independent counsel experienced in relevant matters to the effect that such transaction does not adversely affect the rights, preferences and privileges of the holders of the Preferred Securities, including any successor securities, in any material respect and following such transaction, neither the Trust nor the successor entity will be required to register as an investment company under the 1940 Act; and
- the Company or any permitted successor or assignee owns all the Common Securities of the successor entity and guarantees the obligations of the successor entity under the successor securities at least to the extent provided by the Guarantee.

Notwithstanding the foregoing, the Trust may not, except with the consent of holders of 100% in aggregate liquidation amount of the Preferred Securities, consolidate, amalgamate, merge with or into, or be replaced by or convey, transfer or lease its properties and assets substantially as an entirety to, any other entity or permit any other entity to consolidate, amalgamate, merge with or into, or replace it if the consolidation, amalgamation, merger, replacement, conveyance, transfer or lease would cause the Trust or the successor entity to be taxable other than as a grantor trust for United States federal income tax purposes.

Co-Institutional Trustees and Separate Institutional Trustee

At any time or times, for the purpose of meeting the legal requirements of the 1939 Act or of any jurisdiction in which any part of the Trust Property may at the time be located, the holder of the Common Securities and the Institutional Trustee shall have power to appoint, and upon the written request of the Institutional Trustee, the Company, as Sponsor, shall for such purpose join with the Institutional Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint, one or more persons approved by the Institutional Trustee either to act as co-institutional trustee, jointly with the Institutional Trustee, of all or any part of such Trust Property, or to act as separate trustee of any such property, in either case with such powers as may be provided in the instrument of appointment, and to vest in such person or persons in such capacity, any property, title, right or power deemed necessary or desirable, subject to the provisions of the Declaration. If the Company, as Sponsor, does not join in such appointment within 15 days after the receipt by it of a request so to do, or in case a Indenture Event of Default has occurred and is continuing, the Institutional Trustee alone shall have power to make such appointment.

The Preferred Securities will be issued initially in the form of one or more global securities, in registered form, without coupons, as described under *Book-Entry Only Issuance—The Depository Trust Company*. However, if the Company issues certificates, they will be registered in the names of the beneficial owners, as directed by DTC and/or its Direct and Indirect Participants.

Preferred Securities will be exchangeable for other Preferred Securities of the same series of any authorized denominations of a like aggregate liquidation amount and tenor. Subject to the terms of the Declaration and the limitations applicable to global securities, Preferred Securities may be presented for exchange or registration of transfer—duly endorsed or accompanied by a duly executed instrument of transfer—at the office of the Institutional Trustee, without service charges but upon payment of any taxes and other governmental charges as described in the Declaration. Such transfer or exchange will be effected upon the Institutional Trustee being satisfied with the documents of title and identity of the person making the request.

Payment and Paying Agent

Distributions and other payments on the Preferred Securities issued in book-entry form will be paid in the manner described under *Book-Entry Only Issuance—The Depository Trust Company*.

The paying agent initially will be the Institutional Trustee and any co-paying agent chosen by the Institutional Trustee and acceptable to the Regular Trustees and the Company. If the Institutional Trustee is no longer the paying agent, the Institutional Trustee will appoint a successor, which must be a bank or trust company reasonably acceptable to the Regular Trustees, to act as paying agent. Such paying agent will be permitted to resign as paying agent upon 30 days' written notice to the Institutional Trustee and the Regular Trustees at which time the paying agent will return all unclaimed funds and all other funds in its possession to the Institutional Trustee.

Registrar and Transfer Agent

It is anticipated that the Institutional Trustee, or one of its affiliates, will act as registrar and transfer agent (the "Securities Registrar") for the Preferred Securities.

Registration of transfers of Preferred Securities will be effected without charge by or on behalf of the Trust, but upon payment in respect of any tax or other governmental charges which may be imposed in relation to it.

The Securities Registrar will not be required to register or cause to be registered any transfer of Preferred Securities after they have been called for redemption.

Information Concerning the Institutional Trustee

The Institutional Trustee, other than during the occurrence and continuance of an Event of Default, undertakes to perform only the duties as are specifically set forth in the Declaration and, after an Event of Default, must exercise the same degree of care and skill as a prudent person would exercise or use in the conduct of his or her own affairs. Subject to these provisions, the Institutional Trustee is under no obligation to exercise any of the powers vested in it by the Declaration at the request of any holder of Preferred Securities, unless offered reasonable indemnity by such holder against the costs, expenses and liabilities which might be incurred thereby.

Union Bank of California, N.A., the Institutional Trustee, also serves as Indenture Trustee and Guarantee Trustee. Union Bank of California, N.A. is a lender under the Company's \$245.0 million committed line of credit and serves as trustee of the Company's Investment and Employee Stock Ownership Plan.

Governing Law

The Declaration and the Trust Securities will be governed by, and construed in accordance with, the internal laws of the State of Delaware.

Miscellaneous

The Regular Trustees are authorized and directed to operate the Trust so that the Trust will not be deemed to be an investment company required to be registered under the 1940 Act or taxed as other than a grantor trust for federal

income tax purposes and so that the Subordinated Debt Securities will be treated as indebtedness of the Company for federal income tax purposes. In this connection, the Regular Trustees and the Company are authorized to take any action, not inconsistent with applicable law, the Trust's certificate of trust or the Declaration, that the Regular Trustees and the Company determine in their discretion to be necessary or desirable for such purposes, as long as such action does not materially and adversely affect the interests of the holders of the Preferred Securities.

If at any time the Company or its affiliate is the owner or holder of any Preferred Securities, then effective on any Distribution Payment Date, the Company or such affiliate will have the right to deliver to the Institutional Trustee all or a portion of the Preferred Securities in exchange for a corresponding amount of Subordinated Debt Securities.

Holders of the Preferred Securities have no preemptive or similar rights.

The Trust may not borrow money or issue debt or mortgage or pledge any of its assets.

DESCRIPTION OF THE GUARANTEE

Set forth below is a summary of information concerning the Guarantee which will be executed and delivered by the Company for the benefit of the holders of Preferred Securities. The Guarantee will be qualified as an indenture under the 1939 Act. Union Bank of California, N.A. will act as Guarantee Trustee. The terms of the Guarantee will be those set forth in the Guarantee and those made part of the Guarantee by the 1939 Act. The summary of the material terms of the Guarantee does not purport to be complete and is subject in all respects to the provisions of, and is qualified in its entirety by reference to, the Guarantee and the 1939 Act. The form of Guarantee is filed as an exhibit to the Registration Statement of which this Prospectus forms a part. The Guarantee will be held by the Guarantee Trustee for the benefit of the holders of the Trust Securities.

General

Pursuant to the Guarantee, the Company will irrevocably and unconditionally agree, to the extent set forth therein, to pay in full to the holders of the Preferred Securities issued by the Trust, the Guarantee Payments (as defined herein) (except to the extent paid by the Trust), as and when due, regardless of any defense, right of set-off or counterclaim which the Trust or the Company may have or assert, other than the defense of payment. The following payments or distributions with respect to Preferred Securities, to the extent not paid by the Trust (the "Guarantee Payments"), will be subject to the Guarantee thereon (without duplication): (i) any accrued and unpaid Distributions that are required to be paid on the Preferred Securities, to the extent that the Trust shall have funds available therefor; (ii) the Preferred Securities Redemption Price with respect to any Preferred Securities called for redemption by the Trust, to the extent the Trust shall have funds available therefor, and (iii) upon a voluntary or involuntary dissolution, winding-up, liquidation or termination of the Trust (other than in connection with the distribution of Subordinated Debt Securities to the holders of Preferred Securities or the redemption of all of the Preferred Securities of the Trust), the lesser of (a) the aggregate of the liquidation amount and all accrued and unpaid distributions on the Preferred Securities of the Trust to the date of payment, to the extent the Trust has funds available therefor and (b) the amount of assets of the Trust remaining available for distribution to holders of the Preferred Securities of the Trust in liquidation of the Trust. The Company's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Company to the holders of Preferred Securities or by causing the Trust to pay such amounts to such holders.

If the Company does not make interest payments on the Subordinated Debt Securities purchased by a Trust, such Trust will not pay Distributions on the Preferred Securities and will not have funds available therefore. See *Description of the Subordinated Debt Securities—Certain Covenants of the Company* below. The Guarantee, when taken together with the Company's obligations under the Subordinated Debt Securities, the Indenture, the Declaration and the Agreement as to Expenses and Liabilities, will effectively provide a full, irrevocable and unconditional guarantee, on a subordinated basis, by the Company of payments due on the Preferred Securities.

Status of the Guarantee

The Guarantee will constitute an unsecured obligation of the Company and will rank (i) subordinate and junior in right of payment to all other liabilities of the Company, including the Subordinated Debt Securities, except those obligations and liabilities made *pari passu* or subordinate by their terms and (ii) *pari passu* with the most senior preferred or preference stock of the Company now or hereafter issued by the Company and with any guarantee now or hereafter entered into by the Company with respect to any preferred or preference securities of any affiliate of the Company

and (iii) senior to all common stock of the Company. The Guarantee does not place a limitation on the amount of additional Senior Indebtedness that may be incurred by the Company.

The Guarantee will constitute a guarantee of payment and not of collection (that is, the guaranteed party may institute a legal proceeding directly against the Company to enforce its rights under the Guarantee without instituting a legal proceeding against any other person or entity). The Guarantee will be held by the Guarantee Trustee for the benefit of the holders of the Preferred Securities.

Modification of the Guarantee; Assignment

Except with respect to any changes which do not materially adversely affect the rights of holders of Preferred Securities (in which case no vote will be required), the Guarantee may be amended only with the prior approval of the holders of a majority in liquidation amount of the outstanding Preferred Securities. The manner of obtaining any such approval of holders of such Preferred Securities will be as set forth under *Description of the Preferred Securities—Voting Rights; Amendment of the Declaration*. All guarantees and agreements contained in the Guarantee shall bind the successors, assigns, receivers, trustees and representatives of the Company and shall inure to the benefit of the holders of the Preferred Securities of the Trust then outstanding. Except in connection with a consolidation, merger, conveyance, transfer or lease involving the Company that is permitted under the Indenture, the Company shall not assign its obligations under the Guarantee.

Termination

The Guarantee will terminate as to the Preferred Securities (a) upon full payment of the Preferred Securities Redemption Price of all Preferred Securities of the Trust, (b) upon distribution of the Subordinated Debt Securities held by the Trust to the holders of the Preferred Securities of the Trust or (c) upon full payment of the amounts payable in accordance with the Declaration of the Trust upon liquidation of the Trust. The Guarantee will continue to be effective or will be reinstated, as the case may be, if at any time any holder of Preferred Securities issued by the Trust must restore payment of any sums paid under the Preferred Securities or the Guarantee.

Events of Default

An event of default under the Guarantee will occur upon the failure of the Company to perform any of its payment obligations under the Guarantee, or to perform any other obligations thereunder if such default remains unremedied for 30 days.

The holders of a majority in liquidation amount of the Preferred Securities relating to the Guarantee have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee in respect of the Guarantee or to direct the exercise of any trust or power conferred upon the Guarantee Trustee under the Guarantee. Any holder of Preferred Securities may institute a legal proceeding directly against the Company to enforce its rights under the Guarantee without first instituting a legal proceeding against the Guarantee Trustee or any other person or entity.

The Company, as guarantor, is required to file annually with the Guarantee Trustee a certificate as to whether or not the Company is in compliance with all the conditions and covenants applicable to it under the Guarantee.

Information Concerning the Guarantee Trustee

The Guarantee Trustee, other than during the occurrence and continuance of a default with respect to the Guarantee, undertakes to perform only such duties as are specifically set forth in the Guarantee and, after a default with respect to the Guarantee, shall exercise the same degree of care as a prudent individual would exercise in the conduct of his or her own affairs. Subject to this provision, the Guarantee Trustee is under no obligation to exercise any of the powers vested in it by the Guarantee at the request of any holder of Preferred Securities, unless offered reasonable indemnity against the costs, expenses and liabilities which might be incurred thereby.

Governing Law

The Guarantee will be governed by and construed in accordance with the laws of the State of New York.

Agreement as to Expenses and Liabilities

Pursuant to the Agreement as to Expenses and Liabilities entered into by the Company under the Declaration, the Company agrees with the Trust, and with each person or entity to whom the Trust becomes indebted or liable (“Beneficiaries”), that the Company will make full payment, when and as due, of any and all Expenses to such Beneficiaries and will reimburse the Trust for any Expenses paid by it. As used in this paragraph, “Expenses” means any expenses, indebtedness or liabilities of the Trust, including, without limitation, any and all taxes, duties, assessments or other governmental charges of whatever nature (other than United States federal withholding taxes) imposed by the United States or any other taxing authority, so that the net amounts received and retained by the Trust after paying all Expenses will be equal to the amounts the Trust would have received and retained had no such Expenses been incurred by or imposed on the Trust. “Expenses” does not include the amounts to be distributed to the holders of the Trust Securities pursuant to the terms of the Trust Securities or such other similar interests, as the case may be.

DESCRIPTION OF THE SUBORDINATED DEBT SECURITIES

The Subordinated Debt Securities will be issued under the Indenture. The terms of the Subordinated Debt Securities will include those stated in the Indenture and those made part of the Indenture by the 1939 Act. The Subordinated Debt Securities, together with all other subordinated debt securities that may be issued under the Indenture, are hereinafter called, collectively, the “Indenture Securities”. The following description does not purport to be complete and is subject to, and is qualified in its entirety by reference to, the Indenture, the form of which is filed as an exhibit to the Registration Statement of which this Prospectus forms a part. Capitalized terms used under this heading which are not otherwise defined in this Prospectus have the meanings set forth in the Indenture.

General

The Subordinated Debt Securities will be issued as a series of Indenture Securities under the Indenture. The Subordinated Debt Securities will be limited in aggregate principal amount to \$ _____, such amount being the approximate aggregate liquidation amount of the Trust Securities. The Indenture does not limit the incurrence or issuance of other secured or unsecured debt of the Company, whether under the Indenture, any other indenture that the Company may enter into in the future or otherwise.

The entire principal amount of the Subordinated Debt Securities will mature and become due and payable, together with any accrued and unpaid interest thereon, on _____. The Subordinated Debt Securities are not subject to any sinking fund provision.

The terms of the Subordinated Debt Securities correspond to those of the Preferred Securities, as described herein.

Interest

Each Subordinated Debt Security will bear interest at a rate equal to the Distribution Rate payable on the Preferred Securities (the “Interest Rate”). The periods for which interest is payable shall be the same as the semiannual or quarterly Distribution Periods for the Preferred Securities (each, an “Interest Period”). Interest shall be payable on the same dates as Distributions are payable on the Preferred Securities (each, an “Interest Payment Date”) to the person in whose name such Subordinated Debt Security is registered on the Record Date. The Interest Rate payable on each Interest Payment Date and the length of each Interest Period shall be determined and shall be computed in the same manner as Distributions and Distribution Periods are computed for the Preferred Securities.

Option to Extend Interest Payment Period

So long as no Indenture Event of Default has occurred and is continuing, the Company will have the right at any time, and from time to time, to defer payments of interest on the Subordinated Debt Securities by extending the interest payment period for up to five years, but not beyond the stated maturity date. During any Extension Period, Distributions and interest will continue to accrue on the Preferred Securities and the Subordinated Debt Securities. If the Company elects to defer interest during a Fixed Rate Period, interest will continue to accrue at the Fixed Rate until the expiration of the Fixed Rate Period. Upon expiration of such Fixed Rate Period and any Fixed Rate Period during the Extension Period, the Company and the Trust will have the option to remarket the Preferred Securities for a new Fixed Rate Period. If the Company and the Trust do not remarket the Preferred Securities, the Floating Rate during the Extension Period shall not be less than the Fixed Rate for the Fixed Rate Period just ended. If the Company elects

to defer interest during a Floating Rate Period, interest will continue to accrue at the applicable Floating Rate, reset quarterly, subject to the right of the Company and the Trust to remarket the Preferred Securities prior to any Interest Payment Date in order to establish a new Fixed Rate for a new Fixed Rate Period.

If the Company decides to defer interest payments on the Subordinated Debt Securities, the Extension Period will not exceed five years. An Extension Period shall not extend beyond the stated maturity of the Subordinated Debt Securities. Prior to the termination of any Extension Period, the Company may further defer payments of interest, provided that the Extension Period, together with all such previous and further extensions thereof, may not exceed five years. The Company may only terminate an Extension Period on an Interest Payment Date. Upon the termination of any Extension Period and the payment of all amounts then due, the Company may select a new Extension Period, subject to the above requirements. There could be multiple Extension Periods of varying lengths throughout the term of the Subordinated Debt Securities.

At the end of an Extension Period, the Company will pay all interest then accrued and unpaid (together with interest thereon at the prevailing Interest Rate, to the extent permitted by law, compounded on each Interest Payment Date). For a description of certain restrictions on the Company during an Extension Period, see *Description of the Preferred Securities—Certain Covenants*.

The Company has no present intention of exercising its rights to defer payments of interest by extending the interest payment period on the Subordinated Debt Securities. See *Certain United States Federal Income Tax Consequence—Payments of Interest*.

The Company will give the holder or holders of the Subordinated Debt Securities, the Indenture Trustee, the Remarketing Agent and the Calculation Agent notice of its selection or extension of an Extension Period at least one Business Day prior to the earlier of (i) the Record Date relating to the Interest Payment Date on which the Extension Period is to commence or relating to the Interest Payment Date on which an Extension Period that is being extended would otherwise terminate, or (ii) the date the Company or the Trust is required to give notice to any applicable self-regulatory organization of the Record Date or the date such interest or Distributions are payable.

Payment and Paying Agents

The Company will pay interest, if any, on each Subordinated Debt Security on each Interest Payment Date to the person in whose name such Subordinated Debt Security is registered (for the purposes of this section of the Prospectus, the registered holder of any Indenture Security is herein referred to as a “Holder”) as of the close of business on the regular Record Date relating to such Interest Payment Date; *provided, however*, that the Company will pay interest at maturity (whether at stated maturity, upon redemption or otherwise, hereinafter “Maturity”) to the person to whom principal is paid. However, if there has been a default in the payment of interest on any Subordinated Debt Security, such defaulted interest may be payable to the Holder of such Subordinated Debt Security as of the close of business on a date selected by the Indenture Trustee which is not more than 30 days and not less than 10 days before the date proposed by the Company for payment of such defaulted interest or in any other lawful manner, if the Indenture Trustee deems such manner of payment practicable.

The Company will pay the principal of and premium, if any, and interest, if any, on the Subordinated Debt Securities at maturity upon presentation of the Subordinated Debt Securities at the corporate trust office of Union Bank of California, N.A., as paying agent for the Company. The Company may change the place of payment of the Subordinated Debt Securities, may appoint one or more additional paying agents (including the Company) and may remove any paying agent, all at its discretion.

Registration and Transfer

Holders may register the transfer of Subordinated Debt Securities, and may exchange Subordinated Debt Securities for other Subordinated Debt Securities of the same series and tranche, of authorized denominations and having the same terms and aggregate principal amount, at the corporate trust office of Union Bank of California, N.A., in San Francisco, California, as security registrar for the Subordinated Debt Securities. The Company may change the place for registration of transfer and exchange of the Subordinated Debt Securities, may appoint one or more additional security registrars (including the Company) and may remove any security registrar, all at its discretion.

No service charge will be made for any transfer or exchange of the Subordinated Debt Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of the Subordinated Debt Securities. The Company will not be required to execute or to provide for the registration of transfer or the exchange of (a) any Subordinated Debt Security during a period of 15 days before giving any notice of redemption or (b) any Subordinated Debt Security selected for redemption in whole or in part, except the unredeemed portion of any Subordinated Debt Security being redeemed in part.

Redemption

The Company shall have the right to redeem the Subordinated Debt Securities, in whole, but not in part, without premium, from time to time, on the last Interest Payment Date relating to the Initial Fixed Rate Period, on such dates with respect to any other Fixed Rate Period as the Company and the Trust may determine prior to the remarketing establishing such Fixed Rate Period, or any Interest Payment Date relating to a Floating Rate Period or upon the occurrence of a Special Event as described under *Description of the Preferred Securities—Special Event Redemption; Distribution of Subordinated Debt Securities*, upon not less than 30 nor more than 60 days’ notice, at the Debt Securities Redemption Price.

Any notice of redemption at the option of the Company may state that such redemption will be conditional upon receipt by the paying agent or agents, on or before the date fixed for such redemption, of money sufficient to pay the principal of and premium, if any, and interest, if any, on such Subordinated Debt Securities and that if such money has not been so received, such notice will be of no force or effect and the Company will not be required to redeem such Subordinated Debt Securities.

Subordination

In the Indenture, the Company has covenanted and agreed that the payment of principal of and premium, if any, and interest, if any, on each and all of the Subordinated Debt Securities is expressly subordinated and subject to the extent and in the manner set forth in the Indenture, in right of payment to the prior payment in full of all Senior Indebtedness of the Company. In the event:

- of any insolvency or bankruptcy proceedings or any receivership, liquidation, reorganization or other similar proceedings in respect of the Company or a substantial part of its property, or of any proceedings for liquidation, dissolution or other winding-up of the Company, whether or not involving insolvency or bankruptcy; or
- subject to the provisions of the Indenture, (i) a default shall have occurred with respect to the payment of principal of or interest on or other monetary amounts due and payable on any Senior Indebtedness of the Company, or (ii) there shall have occurred a default (other than a default in the payment of principal or interest or other monetary amounts due and payable) in respect of any Senior Indebtedness, as defined therein or in the instrument under which the same is outstanding, permitting the holder or holders thereof to accelerate the maturity thereof (with notice or lapse of time, or both), and such default shall have continued beyond the period of grace, if any, in respect thereof, and, in the case of clause (i) and (ii) of this bulleted paragraph, such default shall not have been cured or waived or shall not have ceased to exist; or
- that the principal of and accrued interest on the Subordinated Debt Securities shall have been declared due and payable pursuant to Section 701 of the Indenture and such declaration shall not have been rescinded and annulled, then:

(1) the holders of all Senior Indebtedness of the Company shall first be entitled to receive payment of the full amount due thereon, or provision shall be made for such payment in money or money’s worth, before the Holders of any Subordinated Debt Securities are entitled to receive a payment on account of the principal of or interest on the indebtedness evidenced by the Securities, including, without limitation, any payments made pursuant to a redemption of the Subordinated Debt Securities;

(2) any payment by, or distribution of assets of, the Company of any kind or character, whether in cash, property or securities, to which any Holder of Subordinated Debt Securities or the Indenture Trustee would be entitled except for the subordination provisions of the Indenture, shall be paid or delivered by the Person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or oth-

erwise, directly to the holders of such Senior Indebtedness of the Company or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Indebtedness of the Company may have been issued, ratably according to the aggregate amounts remaining unpaid on account of such Senior Indebtedness of the Company held or represented by each, to the extent necessary to make payment in full of all Senior Indebtedness of the Company remaining unpaid after giving effect to any concurrent payment or distribution (or provision therefor) to the holders of such Senior Indebtedness of the Company, before any payment or distribution is made to the Holders of the indebtedness evidenced by the Subordinated Debt Securities or to the Indenture Trustee under the Indenture; and

(3) in the event that, notwithstanding the foregoing, any payment by, or distribution of assets of, the Company of any kind or character, whether in cash, property or securities, in respect of principal of or interest on the Subordinated Debt Securities or in connection with any repurchase by the Company of the Subordinated Debt Securities, shall be received by the Indenture Trustee or any Holder before all Senior Indebtedness of the Company is paid in full, or provision is made for such payment in money or money's worth, such payment or distribution in respect of principal of or interest on the Subordinated Debt Securities or in connection with any repurchase by the Company of the Subordinated Debt Securities shall be paid over to the holders of such Senior Indebtedness of the Company or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any such Senior Indebtedness of the Company may have been issued, ratably as aforesaid, for application to the payment of all Senior Indebtedness of the Company remaining unpaid until all such Senior Indebtedness of the Company shall have been paid in full, after giving effect to any concurrent payment or distribution (or provision therefor) to the holders of such Senior Indebtedness of the Company.

The term Senior Indebtedness is defined in the Indenture to mean, with respect to any Person, (a) indebtedness (including premium, if any, and interest, if any, thereon) of such Person for money borrowed or for the deferred purchase price of property or services in transactions not in the ordinary course of business; (b) all other indebtedness (including premium, if any, and interest, if any, thereon) evidenced by bonds, debentures, notes or other similar instruments (other than Subordinated Debt Securities) issued by such Person; (c) all obligations of such Person under lease agreements designating such person as lessee, irrespective of the treatment of any such lease agreement for accounting, tax or other purposes; (d) all obligations of such person for reimbursement (including premium, if any, and interest, if any, thereon) in respect of any letter of credit, banker's acceptance, security purchase facility or similar credit transaction; (e) all obligations of the character referred to in clauses (a) through (d) above of other persons for the payment of which such Person is responsible or liable as obligor, guarantor or otherwise; and (f) all obligations of the character referred to in clauses (a) through (d) above of other Persons secured by any lien on any property or asset of such person (whether or not such obligation is assumed by such Person); *provided, however*, that Senior Indebtedness shall not include (x) any such indebtedness that is by its terms subordinated to or *pari passu* with the Subordinated Debt Securities; (y) any indebtedness between or among such Person and its affiliates, including all other debt securities and guarantees in respect of such debt securities, issued to (i) the Trust or (ii) any other trust, or a trustee of such trust, partnership or other entity which is a financing vehicle of such Person in connection with the issuance by such financing vehicle of preferred securities or (z) indebtedness for goods or materials purchased in the ordinary course of business or for services obtained in the ordinary course of business or indebtedness consisting of trade payables.

The Indenture places no limitation on the amount of additional Senior Indebtedness that may be incurred by the Company. The Company expects from time to time to incur additional indebtedness constituting Senior Indebtedness.

Satisfaction and Discharge

Any Indenture Securities, or any portion of the principal amount thereof, will be deemed to have been paid for purposes of the Indenture and, at the Company's election, the entire indebtedness of the Company in respect thereof will be deemed to have been satisfied and discharged, if there shall have been irrevocably deposited in trust with the Indenture Trustee or any paying agent (other than the Company):

(a) money in an amount which will be sufficient; or

(b) in the case of a deposit made before the maturity of such Indenture Securities, Eligible Obligations (as defined below), which do not contain provisions permitting the redemption or other prepayment thereof at the option of the issuer thereof, the principal of and the interest on which when due, without any regard to reinvestment thereof, will

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provide moneys which, together with the money, if any, deposited with or held by the Indenture Trustee or such paying agent, will be sufficient; or

(c) a combination of (a) and (b) which will be sufficient;

to pay when due the principal of and premium, if any, and interest, if any, due and to become due on such Indenture Securities. For this purpose, Eligible Obligations include direct obligations of, or obligations unconditionally guaranteed by, the United States entitled to the benefit of the full faith and credit thereof and certificates, depositary receipts or other instruments which evidence a direct ownership interest in such obligations or in any specific interest or principal payments due in respect thereof.

The Indenture will be deemed to have been satisfied and discharged when no Indenture Securities remain outstanding thereunder and the Company has paid or caused to be paid all other sums payable by the Company under the Indenture.

Indenture Events of Default

Any one or more of the following events with respect to the Indenture Securities that has occurred and is continuing will constitute an "Indenture Event of Default" with respect to such series of Indenture Securities:

- failure to pay interest on any Indenture Security of such series within 60 days after the same becomes due and payable; *provided, however*, that no such failure will constitute an Indenture Event of Default if the Company has made a valid extension of the interest payment period with respect to the Indenture Securities of such series if so provided with respect to such series;
- failure to pay the principal of or premium, if any, on any Indenture Security within 3 Business Days after its maturity; *provided, however*, that no such failure will constitute an Indenture Event of Default if the Company has made a valid extension of the Maturity of the Indenture Securities of such series, if so provided with respect to such series;
- failure to perform, or breach of, any covenant or warranty of the Company contained in the Indenture for 90 days after written notice to the Company from the Indenture Trustee or to the Company and the Indenture Trustee by the holders of at least 33% in principal amount of the outstanding Indenture Securities of such series as provided in the Indenture unless the Indenture Trustee, or the Indenture Trustee and the Holders of a principal amount of Indenture Securities of such series not less than the principal amount of Indenture Securities the Holders of which gave such notice, as the case may be, agree in writing to an extension of such period before its expiration; *provided, however*, that the Indenture Trustee, or the Indenture Trustee and the Holders of such principal amount of Indenture Securities of such series, as the case may be, will be deemed to have agreed to an extension of such period if corrective action is initiated by the Company within such period and is being diligently pursued;
- the voluntary or involuntary dissolution, winding up or termination of the Trust, except in connection with the distribution of Subordinated Debt Securities to holders of Preferred Securities in liquidation of the Trust, the redemption of all or the outstanding Preferred Securities of the Trust, or certain mergers, consolidations or amalgamations, each as permitted by the Declaration; or
- certain events in bankruptcy, insolvency or reorganization of the Company.

Remedies

Acceleration of Maturity

If an Indenture Event of Default applicable to the Indenture Securities of any series occurs and is continuing, then either the Indenture Trustee or the Holders of not less than 33% in aggregate principal amount of the outstanding Indenture Securities of such series may declare the principal amount (or, if any of the outstanding Indenture Securities of such series are Discount Securities (as defined in the Indenture), such portion of the principal amount thereof as may be specified in the terms thereof) of all of the outstanding Indenture Securities of such series to be due and payable immediately (subject to the subordination provisions of the Indenture) by written notice to the Company (and to the Indenture Trustee if given by the Holders); *provided, however*, that if an Indenture Event of Default occurs and is continuing with respect to more than one series of Indenture Securities, the Indenture Trustee or the Holders of not less than 33% in

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aggregate principal amount of the outstanding Indenture Securities of all such series, considered as one class, may make such declaration of acceleration and not the Holders of any one such series.

At any time after such a declaration of acceleration with respect to the Indenture Securities of any series has been made, but before a judgment or decree for payment of the money due has been obtained, such declaration and its consequences will, without further act, be deemed to have been rescinded and annulled, if

- the Company has paid or deposited with the Indenture Trustee a sum sufficient to pay
 - all overdue interest, if any, on all Indenture Securities of such series;
 - the principal of and premium, if any, on any Indenture Securities or such series which have become due otherwise than by such declaration of acceleration and interest, if any, thereon at the rate or rates prescribed therefor in such Indenture Securities;
 - interest, if any, upon overdue interest, if any, at the rate or rates prescribed therefor in such Indenture Securities, to the extent that payment of such interest is lawful; and
 - all amounts due to the Indenture Trustee under the Indenture in respect of compensation and reimbursement of expenses; and
- all Indenture Events of Default with respect to Indenture Securities of such series, other than the non-payment of the principal of the Indenture Securities of such series which has become due solely by such declaration of acceleration, have been cured or waived as provided in the Indenture.

Right to Direct Proceedings

If an Indenture Event of Default with respect to the Indenture Securities of any series occurs and is continuing, the Holders of a majority in principal amount of the outstanding Indenture Securities of such series will have the right to direct the time, method and place of conducting any proceedings for any remedy available to the Indenture Trustee in exercising any trust or power conferred on the Indenture Trustee; *provided, however*, that if an Indenture Event of Default occurs and is continuing with respect to more than one series of Indenture Securities, the Holders of a majority in aggregate principal amount of the outstanding Indenture Securities of all such series, considered as one class, will have the right to make such direction, and not the Holders of any one of such series; and *provided, further*, that (a) such direction does not conflict with any rule of law or with the Indenture, and could not involve the Indenture Trustee in personal liability in circumstances where indemnity would not, in the Indenture Trustee's sole discretion, be adequate and (b) the Indenture Trustee may take any other action deemed proper by the Indenture Trustee which is not inconsistent with such direction.

Limitation on Right to Institute Proceedings

No Holder will have any right to institute any proceeding, judicial or otherwise, with respect to the Indenture or for the appointment of a receiver or for any other remedy thereunder unless:

- such Holder has previously given to the Indenture Trustee written notice of a continuing Indenture Event of Default with respect to the Indenture Securities of any one or more series;
- the Holders of a majority in aggregate principal amount of the outstanding Indenture Securities of all series in respect of which such Indenture Event of Default has occurred, considered as one class, have made written request to the Indenture Trustee to institute proceedings in respect of such Indenture Event of Default and have offered the Indenture Trustee reasonable indemnity against costs and liabilities to be incurred in complying with such request; and
- for 60 days after receipt of such notice, the Indenture Trustee has failed to institute any such proceeding and no direction inconsistent with such request has been given to the Indenture Trustee during such 60 day period by the Holders of a majority in aggregate principal amount of Indenture Securities then outstanding.

Furthermore, no Holder of any series will be entitled to institute any such action if and to the extent that such action would disturb or prejudice the rights of other Holders of such series.

No Impairment of Right to Receive Payment

Notwithstanding that the right of a Holder to institute a proceeding with respect to the Indenture is subject to certain conditions precedent, each Holder will have the right, which is absolute and unconditional, to receive payment of the principal of and premium, if any, and interest, if any, on such Indenture Security when due and to institute suit for the enforcement of any such payment. Such rights may not be impaired or affected without the consent of such Holder.

Notice of Default

The Indenture Trustee is required to give the Holders notice of any default under the Indenture to the extent required by the 1939 Act, unless such default shall have been cured or waived, except that no such notice to Holders of a default of the character described in the third bulleted paragraph under *—Indenture Events of Default* may be given until at least 75 days after the occurrence thereof. For purposes of the preceding sentence, the term "default" means any event which is, or after notice or lapse of time, or both, would become, an Indenture Event of Default. The 1939 Act currently permits the Indenture Trustee to withhold notices of default (except for certain payment defaults) if the Indenture Trustee in good faith determines the withholding of such notice to be in the interests of the Holders.

Action by Holders of Preferred Securities

If the Subordinated Debt Securities shall be held by the Institutional Trustee of the Trust and if such Institutional Trustee, as such holder, shall have failed to exercise any of the rights and remedies available under the Indenture to the holders of such Subordinated Debt Securities, the holders of the Preferred Securities of the Trust shall have and may exercise all such rights and remedies, to the same extent as if such holders of such Preferred Securities held a principal amount of Subordinated Debt Securities equal to the liquidation amount of such Preferred Securities, without first proceeding against such trustee or trust. Notwithstanding the foregoing, in the case of an Indenture Event of Default described above in the first or second bulleted paragraphs under *—Indenture Events of Default*, each holder of such Preferred Securities shall have and may exercise all rights available to the Institutional Trustee as the holder of such Subordinated Debt Securities. If action shall have been taken by both the holder of such Subordinated Debt Securities and the holders of such Preferred Securities to exercise such rights, the action taken by the holders of the Preferred Securities shall control.

Consolidation, Merger, Sale of Assets and Other Transactions

The Company may not consolidate with or merge into any other Person, or convey or otherwise transfer, or lease, all of its properties, as or substantially as an entirety, to any Person, unless:

- the Person formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or other transfer, or which leases (for a term extending beyond the last Stated Maturity of the Indenture Securities then outstanding), all of the properties of the Company, as or substantially as an entirety, shall be a Person organized and existing under the laws of the United States, any State or Territory thereof or the District of Columbia; and
- such Person shall expressly assume the due and punctual payment of the principal of and premium, if any, and interest, if any, on all the Indenture Securities then outstanding and the performance and observance of every covenant and condition of the Indenture to be performed or observed by the Company.

In the case of the conveyance or other transfer of all of the properties of the Company, as or substantially as an entirety, to any person as contemplated above, the Company would be released and discharged from all obligations under the Indenture and on all Indenture Securities then outstanding unless the Company elects to waive such release and discharge. Upon any such consolidation or merger or any such conveyance or other transfer of properties of the Company, the successor, transferee or lessee would succeed to, and be substituted for, and would be entitled to exercise every power and right of, the Company under the Indenture.

For purposes of the Indenture, the conveyance, transfer or lease by the Company of all of its facilities (a) for the generation of electric energy, (b) for the transmission of electric energy, (c) for the distribution of electric energy and/or natural gas, in each case considered alone, (d) all of its facilities described in clauses (a) and (b), considered together, or (e) all of its facilities described in clauses (b) and (c), considered together, shall in no event be deemed to constitute a conveyance or other transfer of all the properties of the Company, as or substantially as an entirety, unless, immedi-

ately following such conveyance, transfer or lease, the Company owns no unleased properties in the other such categories of property not so conveyed or otherwise transferred or leased.

The Indenture will not prevent or restrict:

- any consolidation or merger after the consummation of which the Company would be the surviving or resulting entity or
- any conveyance or other transfer, or lease, of any part of the properties of the Company which does not constitute the entirety, or substantially the entirety, thereof.

If the Company conveys or otherwise transfers any part of its properties which does not constitute the entirety, or substantially the entirety, thereof to another Person meeting the requirements set forth in the first paragraph under this heading, and if:

- such transferee expressly assumes the due and punctual payment of the principal of and premium, if any, and interest, if any, on all Indenture Securities then outstanding and the performance and observance of every covenant and condition of the Indenture to be performed or observed by the Company;
- there is delivered to the Indenture Trustee an independent expert's certificate (i) describing the property so conveyed or transferred and identifying the same as facilities for the generation, transmission or distribution of electric energy or for the storage, transportation or distribution of natural gas and (ii) stating that the aggregate principal amount of the Indenture Securities then outstanding does not exceed 70% of the fair value of such property; *provided, however*, that there shall be excluded from the property so evaluated any property subject to any mortgage, deed of trust, security interest or other lien which secures indebtedness for borrowed money or for the deferred purchase price of property; and
- the Company shall assign or otherwise transfer all Common Securities then outstanding to such transferee;

then the Company would be released and discharged from all obligations and covenants under the Indenture and on all Indenture Securities then outstanding unless the Company elects to waive such release and discharge. In such event, the transferee would succeed to, and be substituted for, and would be entitled to exercise every right and power of, the Company under the Indenture.

Modification of Indenture

Modifications Without Consent

The Company and the Indenture Trustee may enter into one or more supplemental indentures, without the consent of any Holders, for any of the following purposes:

- to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants of the Company in the Indenture and in the Indenture Securities;
- to add one or more covenants of the Company or other provisions for the benefit of all Holders or for the benefit of the Holders of, or to remain in effect only so long as there shall be outstanding, Indenture Securities of one or more specified series, or one or more tranches thereof, or to surrender any right or power conferred upon the Company by the Indenture;
- to change or eliminate any provisions of the Indenture or to add any new provisions to the Indenture, provided that if such change, elimination or addition adversely affects the interests of the Holders of the Indenture Securities of any series or tranche in any material respect, such change, elimination or addition will become effective with respect to such series or tranche only when no Indenture Security of such series or tranche remains outstanding;
- to provide collateral security for the Indenture Securities or any series thereof;
- to establish the form or terms of the Indenture Securities of any series or tranche as permitted by the Indenture;
- to provide for the authentication and delivery of bearer securities and coupons appertaining thereto representing interest, if any, thereon and for the procedures for the registration, exchange and replacement thereof and for

the giving of notice to, and the solicitation of the vote or consent of, the Holders thereof, and for any and all other matters incidental thereto;

- to evidence and provide for the acceptance of appointment by a successor trustee with respect to the Indenture Securities of one or more series;
- to provide for the procedures required to permit the utilization of a non-certificated system of registration for all, or any series or tranche of, the Indenture Securities;
- to change any place or places where (a) the principal of and premium, if any, and interest, if any, on all or any series of Indenture Securities, or any tranche thereof, will be payable, (b) all or any series of Indenture Securities, or any tranche thereof, may be surrendered for registration of transfer, (c) all or any series of Indenture Securities, or any tranche thereof, may be surrendered for exchange and (d) notices and demands to or upon the Company in respect of all or any series of Indenture Securities, or any tranche thereof, and the Indenture may be served; or
- to cure any ambiguity, to correct or supplement any provision therein which may be defective or inconsistent with any other provision therein, or to make any other changes to the provisions thereof or to add other provisions with respect to matters and questions arising under the Indenture, so long as such other changes or additions do not adversely affect the interests of the Holders of any series or tranche in any material respect.

Without limiting the generality of the foregoing, if the 1939 Act is amended after the date of the Indenture in such a way as to require changes to the Indenture or the incorporation therein of additional provisions or so as to permit changes to, or the elimination of, provisions which, at the date of the Indenture or at any time thereafter, were required by the 1939 Act to be contained in the Indenture, the Indenture will be deemed to have been amended so as to conform to such amendment or to effect such changes or elimination, and the Company and the Indenture Trustee may, without the consent of any Holders, enter into one or more supplemental indentures to evidence or effect such amendment.

Modifications Requiring Consent

Except as provided above, the consent of the Holders of a majority in aggregate principal amount of the Indenture Securities of all series then outstanding, considered as one class, is required for the purpose of adding any provisions to, or changing in any manner, or eliminating any of the provisions of, the Indenture pursuant to one or more supplemental indentures; *provided, however*, that if less than all of the series of Indenture Securities outstanding are directly affected by a proposed supplemental indenture, then the consent only of the Holders of a majority in aggregate principal amount of outstanding Indenture Securities of all series so directly affected, considered as one class, will be required; and *provided, further*, that if the Indenture Securities of any series have been issued in more than one tranche and if the proposed supplemental indenture directly affects the rights of the Holders of one or more, but less than all, such tranches, then the consent only of the Holders of a majority in aggregate principal amount of the outstanding Indenture Securities of all tranches so directly affected, considered as one class, will be required; and *provided, further*, that no such amendment or modification may:

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

- reduce the percentage in principal amount of the outstanding Indenture Securities of any series, or any tranche thereof, the consent of the Holders of which is required for any such supplemental indenture, or the consent of the Holders of which is required for any waiver of compliance with any provision of the Indenture or of any default thereunder and its consequences;

- reduce the requirements for quorum or voting, without, in any such case, the consent of the Holder of each outstanding Indenture Debt Security of such series or tranche; or
- modify certain of the provisions of the Indenture relating to supplemental indentures, waivers of certain covenants and waivers of past defaults with respect to the Indenture Securities of any series, or any tranche thereof, without the consent of the Holder of each outstanding Indenture Security of such series or tranche.

A supplemental indenture which changes or eliminates any covenant or other provision of the Indenture which has expressly been included solely for the benefit of the Holders of, or which is to remain in effect only so long as there shall be outstanding, Indenture Securities of one or more specified series, or one or more tranches thereof, or modifies the rights of the Holders of such series or tranches with respect to such covenant or other provision, will be deemed not to affect the rights under the Indenture of the Holders of any other series or tranche.

Notwithstanding the foregoing, so long as the Subordinated Debt Securities are held by the Trust, the Indenture Trustee may not consent to a supplemental indenture contemplated in the second preceding paragraph without the prior consent, obtained as provided in the Declaration of the holders of a majority in aggregate liquidation amount of all Preferred Securities, or, in the case of changes described in the bulleted paragraphs above, of each holder of outstanding Preferred Securities.

Certain Covenants of the Company

If at any time (a) there shall have occurred and be continuing a payment default with respect to Indenture Securities of a series, (b) the Company shall have given notice of its election of an Extension Period as provided in the Indenture with respect to the Indenture Securities of a series, and any such period, as so extended, shall be continuing, or (c) the Company shall be in default with respect to its payment or other obligations under the Guarantee relating to the Trust to which Indenture Securities of a series have been issued, then the Company shall not:

- declare or pay any dividend on, make any distribution or liquidation payment with respect to, or redeem, purchase or exchange any of its capital stock;
- make any payment of principal, premium, if any, or interest, if any, on or repay, repurchase or redeem any debt securities (including other Indenture Securities) issued by the Company that rank *pari passu* with or junior in right of payment to the Indenture Securities; or
- make any guarantee payments with respect to the foregoing (other than pursuant to the Guarantee);

provided, however, that nothing herein shall be deemed to prohibit (i) dividends or distributions payable in shares of the Company's capital stock, or in the form of warrants, options or other rights, where the dividend or distributed stock issuable upon exercise of the warrants, options or other rights are the same stock as that on which the dividend is being paid or is *pari passu* or junior to the stock, (ii) reclassification of the Company's capital stock or exchange or conversion of shares of one class or series of the Company's capital stock into shares of another class or series of the Company's capital stock, (iii) purchases or other acquisitions of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of the capital stock or the security being converted or exchanged, (iv) redemption, purchases or other acquisitions of shares of the Company's capital stock in connection with the satisfaction by the Company of its obligations under provisions of the Company's Restated Articles of Incorporation, as amended, under any direct purchase, dividend reinvestment, customer purchase or employee benefit plans or under any contract or security requiring the Company to purchase shares of its capital stock, or (v) payments under any trust securities guarantee executed and delivered by the Company concurrently with the issuance of any preferred securities.

So long as the Trust Securities remain outstanding the Company will (a) maintain 100% direct ownership of the Common Securities of the Trust by the Company or any affiliate thereof, except as otherwise provided below under —*Consolidation, Merger, Sale of Assets and Other Transactions*, and (b) use all reasonable efforts to cause the Trust (i) to maintain its existence as a statutory trust, except in connection with a distribution of Subordinated Debt Securities, with the redemption, purchase or other acquisition and retirement of all Trust Securities of such trust or with certain mergers, consolidations or other business combinations, in each case as permitted by the Declaration, and (ii) to otherwise continue not to be treated as an association taxable as a corporation for United States federal income tax purposes.

The Indenture provides that the Company will cause (or, with respect to property owned in common with others, make reasonable effort to cause) all its properties used or useful in the conduct of its businesses, considered as

a whole, to be maintained and kept in good condition, repair and working order and shall cause (or, with respect to property owned in common with others, make reasonable effort to cause) to be made such repairs, renewals, replacements, betterments and improvements thereof, as, in the judgment of the Company, may be necessary in order that the operation of such properties, considered as a whole, may be conducted in accordance with common industry practice; provided, however, that nothing in the Indenture shall prevent the Company from selling, transferring or otherwise disposing of, or causing the sale, transfer or other disposition of, any of its properties.

Book-Entry and Issuance

If distributed to holders of Trust Securities in connection with the voluntary or involuntary dissolution, winding-up or liquidation of the Trust, the Subordinated Debt Securities are expected to be issued in the form of one or more global certificates registered in the name of the securities depository or its nominee. In such event, the procedures applicable to the transfer and payment of the Subordinated Debt Securities are expected to be substantially similar to those described with respect to the Preferred Securities in *Description of the Preferred Securities—Book-Entry Only Issuance—The Depository Trust Company*.

Duties of the Indenture Trustee; Resignation; Removal

The Indenture Trustee will have, and will be subject to, all the duties and responsibilities specified with respect to an indenture trustee under the 1939 Act. Subject to such provisions, the Indenture Trustee will be under no obligation to exercise any of the powers vested in it by the Indenture at the request of any Holder, unless such Holder offers it reasonable indemnity against the costs, expenses and liabilities which might be incurred thereby. The Indenture Trustee will not be required to expend or risk its own funds or otherwise incur personal financial liability in the performance of its duties if the Indenture Trustee reasonably believes that repayment or adequate indemnity is not reasonably assured to it.

The Indenture Trustee may resign at any time with respect to the Indenture Securities of one or more series by giving written notice thereof to the Company or may be removed at any time with respect to the Indenture Securities of one or more series by act of the Holders of a majority in principal amount of the outstanding Indenture Securities of such series delivered to the Indenture Trustee and the Company. No resignation or removal of the Indenture Trustee and no appointment of a successor trustee will become effective until the acceptance of appointment by a successor trustee in accordance with the requirements of the Indenture. So long as no Indenture Event of Default or event which, after notice or lapse of time, or both, would become an Indenture Event of Default has occurred and is continuing, if the Company has delivered to the Indenture Trustee with respect to one or more series an instrument executed by an authorized officer of the Company appointing a successor trustee with respect to that or those series and such successor has accepted such appointment in accordance with the terms of the Indenture, the Indenture Trustee with respect to that or those series will be deemed to have resigned and the successor will be deemed to have been appointed as trustee in accordance with the Indenture.

Evidence of Compliance

Compliance with the Indenture provisions is evidenced by written statements of Company officers or persons selected by the Company. In certain cases, the Company must furnish opinions of counsel and certifications of an engineer, appraiser or other expert (who in some cases must be independent). In addition, the Indenture requires that the Company give the Indenture Trustee, not less than annually, a brief statement as to the Company's compliance with the conditions and covenants under the Indenture.

Governing Law

RELATIONSHIP AMONG THE PREFERRED SECURITIES, THE SUBORDINATED DEBT SECURITIES AND THE GUARANTEE

As long as payments of interest and other payments are made when due on the Subordinated Debt Securities, such payments will be sufficient to cover Distributions and payments due on the Trust Securities primarily because (i) the aggregate principal amount of Subordinated Debt Securities will be equal to the sum of the aggregate stated liquidation amount of the Trust Securities; (ii) the interest rate and interest and other payment dates on the Subordinated Debt Securities will match the Distribution Rate and distribution and other payment dates for the Preferred Securities; (iii) the Company will pay for all costs and expenses of the Trust pursuant to the Agreement as to Expenses and Liabilities; and (iv) the Declaration provides that the Securities Trustees shall not cause or permit the Trust to, among other things, engage in any activity that is not consistent with the purposes of the Trust.

Payments of Distributions (to the extent funds therefor are on hand available) and other payments due on the Preferred Securities (to the extent funds therefor are on hand available) are guaranteed by the Company as and to the extent set forth under *Description of the Guarantee*. If the Company does not make interest payments on the Subordinated Debt Securities, it is not expected that the Trust will have sufficient funds to pay Distributions on the Preferred Securities. The Guarantee is a guarantee from the time of its issuance, but does not apply to any payment of Distributions unless and until the Trust has sufficient funds on hand available for the payment of such Distributions.

If the Company fails to make interest or other payments on the Subordinated Debt Securities when due (taking into account any Extension Period), the Declaration provides a mechanism whereby the holders of the Preferred Securities may appoint a substitute Institutional Trustee. Such holders may also direct the Institutional Trustee to enforce its rights under the Subordinated Debt Securities, including proceeding directly against the Company to enforce the Subordinated Debt Securities. If the Institutional Trustee fails to enforce its rights under the Subordinated Debt Securities, to the fullest extent permitted by applicable law, any holder of Preferred Securities may institute a legal proceeding directly against the Company to enforce the Institutional Trustee's rights under the Subordinated Debt Securities without first instituting any legal proceeding against the Institutional Trustee or any other person or entity. Notwithstanding the foregoing, a holder of Preferred Securities may institute a legal proceeding directly against the Company, without first instituting a legal proceeding against the Institutional Trustee or any other person or entity, for enforcement of payment to such holder of principal of or interest on the Subordinated Debt Securities having a principal amount equal to the aggregate stated liquidation amount of the Preferred Securities of such holder on or after the due dates specified in the Subordinated Debt Securities.

If the Company fails to make payments under the Guarantee, the Guarantee provides a mechanism whereby the holders of the Preferred Securities may direct the Guarantee Trustee to enforce its rights thereunder. In addition, any holder of Preferred Securities may institute a legal proceeding directly against the Company to enforce the Guarantee Trustee's rights under the Guarantee without first instituting a legal proceeding against the Guarantee Trustee or any other person or entity.

The Guarantee, the Indenture, the Subordinated Debt Securities, the Declaration and the Agreement as to Expenses and Liabilities, taken together, collectively, constitute a full and unconditional guarantee by the Company, on a subordinated basis, of the payments due on the Preferred Securities.

Upon any voluntary or involuntary dissolution, winding-up or termination of the Trust, unless the Subordinated Debt Securities are distributed in connection therewith, the holders of Preferred Securities will be entitled to receive, out of assets legally available for distribution to holders, the Liquidation Distribution in cash. See *Description of the Preferred Securities—Termination of Trust; Liquidation Distribution*.

Upon any voluntary or involuntary liquidation or bankruptcy of the Company, the Institutional Trustee, as holder of the Subordinated Debt Securities, would be a subordinated creditor of the Company, subordinated in right of payment to all Senior Indebtedness, but entitled to receive payment in full of principal and interest, before any stockholders of the Company receive payments or distributions. Because the Company is guarantor under the Guarantee and has agreed to pay for all costs, expenses and liabilities of the Trust (other than the Trust's obligation to holders of the Preferred Securities) pursuant to the Agreement as to Expenses and Liabilities, the positions of a holder of Preferred Securities and a holder of Subordinated Debt Securities relative to other creditors and to stockholders of the Company in the event of liquidation or bankruptcy of the Company would be substantially the same.

A default or event of default under any Senior Indebtedness would not constitute a default or Indenture Event of Default. However, in the event of payment defaults under, or acceleration of, Senior Indebtedness, the subordination provisions of the Subordinated Debt Securities provide that no payments may be made in respect of the Subordinated Debt Securities until such Senior Indebtedness has been paid in full or any payment default thereunder has been cured or waived. Failure to make required payments on the Subordinated Debt Securities would constitute an Indenture Event of Default, except that failure to make interest payments on the Subordinated Debt Securities will not be an Indenture Event of Default during an Extension Period; *provided, however*, that any Extension Period may not exceed five years or extend beyond the stated maturity of the Subordinated Debt Securities.

CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES

The following is a discussion of the material U.S. federal income tax considerations to a holder with respect to the purchase, ownership and disposition of the Preferred Securities. This discussion is based on current provisions of the Internal Revenue Code of 1986, as amended (the "Code"), Treasury regulations promulgated thereunder, and administrative and judicial interpretations thereof, all as in effect on the date hereof and all of which are subject to change, possibly on a retroactive basis. The authorities on which this discussion is based are subject to various interpretations, and it is therefore possible that the U.S. federal income tax treatment of the ownership and disposition of the Preferred Securities may differ from the treatment described below. This discussion does not address the tax consequences arising under any state, local or foreign law.

This discussion applies only to initial beneficial owners that purchase Preferred Securities upon original issuance at the initial offering price and that hold Preferred Securities as capital assets (generally, property held for investment). This discussion does not address all of the U.S. federal income tax consequences that may be important to particular beneficial owners in light of their individual circumstances, or to certain types of beneficial owners. Such beneficial owners may include banks and other financial institutions, insurance companies, tax-exempt entities, dealers in securities, traders in securities who elect to use a mark-to-market method of accounting, holders subject to the U.S. federal alternative minimum tax, certain former citizens or former long-term residents of the United States, beneficial owners that are not "U.S. holders," partnerships or other entities classified as partnerships or flow-through entities for U.S. federal income tax purposes, certain trusts, hybrid entities, persons holding the Preferred Securities as part of a hedging or conversion transaction, a straddle or other risk reduction transaction for U.S. federal income tax purposes or "U.S. holders" that have a functional currency other than the U.S. dollar.

As used herein, the term "U.S. holder" means a beneficial owner of Preferred Securities that is, for U.S. federal income tax purposes, a citizen or resident of the United States, a corporation, or other entity taxable as a corporation for U.S. federal income tax purposes, created or organized in or under the laws of the United States or any State thereof, or the District of Columbia, or an estate or trust that is a United States person as defined in the Code.

If a partnership is the beneficial owner of Preferred Securities, the treatment of a partner in the partnership will generally depend upon the status of the partner and the activities of the partnership. A beneficial owner of Preferred Securities that is a partnership and partners in such a partnership should consult their tax advisors about the U.S. federal, state, local, foreign, and other tax consequences of the acquisition, ownership and disposition of the Preferred Securities.

Prospective purchasers are urged to consult their own tax advisors as to the particular U.S. federal income and estate tax consequences to them of the acquisition, ownership and disposition of the Preferred Securities as well as any tax consequences under state, local and foreign tax laws, and the possible effects of changes in tax laws.

Classification of the Subordinated Debt Securities

The Company will treat the Subordinated Debt Securities as indebtedness of the Company for U.S. federal income tax purposes under current law, and each holder, by acceptance of a beneficial ownership interest in the Preferred Securities, covenants to treat the Subordinated Debt Securities as indebtedness, and to treat the Preferred Securities as evidence of an indirect beneficial ownership interest in the Subordinated Debt Securities. No assurance can be given, however, that the classification of the Subordinated Debt Securities as debt will not be challenged by the Internal Revenue Service (the "IRS") or that any such challenge will not be successful. The discussion herein assumes that the Subordinated Debt Securities will be classified as indebtedness of the Company for U.S. federal income tax purposes.

Classification of the Trust

It is a condition to the issuance of the Preferred Securities that Dewey Ballantine LLP, tax counsel to the Company, renders its opinion generally to the effect that under then current U.S. federal income tax law, and assuming full compliance with the Declaration and based on certain facts and assumptions contained in such opinion, the Trust will be classified as a grantor trust and will not be classified as an association taxable as a corporation for U.S. federal income tax purposes. Accordingly, for U.S. federal income tax purposes, each holder of Preferred Securities generally will be considered the owner of an undivided interest in the Subordinated Debt Securities, and each holder will be required to include in its gross income any interest with respect to its allocable share of those Subordinated Debt Securities.

Payments of Interest

Under the Indenture, the Company has the right to defer the payment of interest on the Subordinated Debt Securities at any time or from time to time for one or more deferral periods not exceeding five years, provided that no deferral period shall end on a date other than an interest payment date or extend beyond the stated maturity of the Subordinated Debt Securities (or the date on which they are redeemed). Under applicable Treasury regulations, debt instruments such as the Subordinated Debt Securities which are issued at face value generally will not be considered issued with OID, even if the issuer can defer payment of the interest, if the likelihood of deferral is “remote.” The Company does not presently intend to exercise its right to deferral, and believes the likelihood of deferral is remote. Accordingly, the Company intends to take the position that the Subordinated Debt Securities will not be issued with OID and, accordingly, stated interest on the Subordinated Debt Securities generally will be taxable to a U.S. holder as ordinary income at the time it is paid or accrued in accordance with such U.S. holder’s method of accounting.

The regulations have not yet been addressed in any rulings or other interpretations by the IRS, and the IRS could take the position that the likelihood of deferral of interest payments is not remote, or that the Subordinated Debt Securities are otherwise issued with OID. Under OID principles, a holder generally is required to include OID in gross income for U.S. federal income tax purposes in advance of the receipt of the cash payment to which such income is attributable. In particular, if the IRS were to assert successfully that the stated interest on the Subordinated Debt Securities were OID regardless of whether the Company exercises its right to defer payments of interest on such Subordinated Debt Securities, a holder would be required to include the OID on the Subordinated Debt Securities in ordinary income on a daily economic accrual basis, regardless of the holder’s method of tax accounting and in advance of receipt of the cash attributable to such interest income. Under the OID economic accrual rules, a holder would accrue an amount of interest income each year that approximates the stated interest payments called for under the Subordinated Debt Securities, and actual cash payments of interest on the Subordinated Debt Securities would not be reported separately as taxable income. Similarly, even if the IRS were not to take such a view, but the Company nonetheless were actually to exercise its rights to defer interest payments, the Subordinated Debt Securities would be treated for U.S. federal income tax purposes as “reissued” with OID on the date of the exercise of such rights, and the results would be the same as those discussed above.

In addition, it is possible that the IRS could disagree with the treatment described above and take the position that the Subordinated Debt Securities are contingent payment debt instruments, or become contingent payment debt instruments upon a deferral of interest payments. In such case, the amount, timing and character of income you recognize may be substantially different than as discussed above. In particular, you may be required to recognize taxable income in each year significantly in excess of interest payments actually received in that year and to recognize ordinary income on the gain, if any, realized on a sale, exchange or other disposition of the Preferred Securities. You should consult your own tax advisor in this regard.

A U.S. holder of Preferred Securities will not be entitled to a dividends received deduction with respect to any income earned on the Preferred Securities.

Sales of Preferred Securities

Upon a sale, exchange or other disposition of the Preferred Securities (including a distribution of cash in redemption of a U.S. holder’s Preferred Securities upon redemption or repayment of the underlying Subordinated Debt Securities, but excluding the distribution of Subordinated Debt Securities), the U.S. holder will be considered to have disposed of all or part of its pro rata share of the Subordinated Debt Securities, and will recognize gain or loss equal to the difference between the amount realized and the U.S. holder’s adjusted tax basis in its pro rata share of the under-

lying Subordinated Debt Securities deemed disposed of. The amount realized will be equal to the amount of cash and the fair market value of any other property received (other than amounts representing accrued but unpaid interest, which will be treated as interest and taxable as provided under —*Payments of Interest*). Such gain or loss will be capital gain or loss and generally will be long-term capital gain or loss if the Preferred Securities have been held for more than one year. Long-term capital gains of noncorporate taxpayers are generally taxed at a lower maximum marginal tax rate than the maximum marginal tax rate applicable to ordinary income. The deductibility of capital losses is subject to limitations.

Distribution of the Subordinated Debt Securities to a U.S. Holder of Preferred Securities

Under current law, and assuming the treatment of the Trust as a grantor trust is respected, a distribution by the Trust of the Subordinated Debt Securities as described under the caption *Description of the Preferred Securities—Special Event Redemption; Distribution of Subordinated Debt Securities* will be non-taxable and will result in a U.S. holder’s receiving directly its pro rata share of the Subordinated Debt Securities previously held indirectly through the Trust, with a holding period and tax basis equal to the holding period and adjusted tax basis such U.S. holder was considered to have had in its pro rata share of the underlying Subordinated Debt Securities prior to such distribution. If, however, the exchange is caused by a Tax Event that has occurred and is continuing, which results in the Trust being treated as an association taxable as a corporation, the distribution would likely constitute a taxable event to the Trust and a U.S. holder of the Preferred Securities.

Backup Withholding and Information Reporting

In general, a U.S. holder will be subject to U.S. federal backup withholding tax at the applicable rate with respect to interest, principal, or premium, if any, paid on Preferred Securities and the proceeds from the sale, exchange, redemption, or other disposition of Preferred Securities if the U.S. holder fails to provide its taxpayer identification number to the paying agent and comply with certain certification procedures or otherwise establish an exemption from backup withholding. In addition, such payments of interest, principal or premium and the proceeds of a sale, redemption, or other disposition by the U.S. holder will generally be subject to information reporting requirements. The amount of any backup withholding from a payment to the U.S. holder will be allowed as a credit against such U.S. holder’s U.S. federal income tax liability and may entitle such U.S. holder to a refund, provided the required information is furnished to the IRS.

This discussion of material U.S. federal income tax considerations is for general information only and is not tax advice. Accordingly, holders should consult their own tax advisors as to the particular tax consequences to them of the acquisition, ownership and disposition of the Preferred Securities including the applicability and effect of any state, local or foreign tax laws, and of any proposed changes in applicable laws.

CERTAIN ERISA CONSIDERATIONS

The following is a summary of certain considerations associated with the purchase of the Preferred Securities by employee benefit plans that are subject to Title I of the U.S. Employee Retirement Income Security Act of 1974, as amended (“ERISA”), plans, individual retirement accounts and other arrangements that are subject to Section 4975 of the Code or provisions under any federal, state, local, non-U.S. or other laws or regulations that are similar to such provisions of the Code or ERISA (collectively, “Similar Laws”), and entities whose underlying assets are considered to include “plan assets” of such plans, accounts and arrangements (each, a “Plan”).

General Fiduciary Matters

ERISA and the Code impose certain duties on persons who are fiduciaries of a Plan subject to Title I of ERISA or Section 4975 of the Code (an “ERISA Plan”) and prohibit certain transactions involving the assets of an ERISA Plan and its fiduciaries or other interested parties. Under ERISA and the Code, any person who exercises any discretionary authority or control over the administration of such an ERISA Plan or the management or disposition of the assets of such an ERISA Plan, or who renders investment advice for a fee or other compensation to such a Plan, is generally considered to be a fiduciary of the ERISA Plan.

In considering an investment of a portion of the assets of any Plan in the Preferred Securities, a fiduciary should determine whether the investment is in accordance with the documents and instruments governing the Plan and the applicable provisions of ERISA, the Code or any Similar Law relating to a fiduciary’s duties to the Plan including, with-

out limitation, the prudence, diversification, delegation of control and prohibited transaction provisions of ERISA, the Code and any other applicable Similar Laws.

Prohibited Transaction Issues

Section 406 of ERISA and Section 4975 of the Code prohibit ERISA Plans from engaging in specified transactions involving plan assets with persons or entities who are “parties in interest,” within the meaning of ERISA, or “disqualified persons,” within the meaning of Section 4975 of the Code, unless an exemption is available. A party in interest or disqualified person who engaged in a non-exempt prohibited transaction may be subject to excise taxes and other penalties and liabilities under ERISA and the Code. In addition, the fiduciary of the ERISA Plan that engaged in such a non-exempt prohibited transaction may be subject to penalties and liabilities under ERISA and the Code.

Whether or not the underlying assets of the Trust were deemed to include “plan assets,” as described below, the acquisition, holding and/or participation in the remarketing of the Preferred Securities by an ERISA Plan with respect to which the Trust, the Company, the Indenture Trustee, the Guarantee Trustee or any of the Securities Trustees is considered a party in interest or a disqualified person may constitute or result in a direct or indirect prohibited transaction under Section 406 of ERISA and/or Section 4975 of the Code, unless the investment is acquired and is held in accordance with an applicable statutory, class or individual prohibited transaction exemption. In this regard, the U.S. Department of Labor (the “DOL”) has issued prohibited transaction class exemptions (“PTCE”) that may apply to the acquisition, holding and remarketing of the Preferred Securities. These class exemptions include, without limitation, PTCE 84-14 respecting transactions determined by independent qualified professional asset managers, PTCE 90-1 respecting insurance company pooled separate accounts, PTCE 91-38 respecting bank collective investment funds, PTCE 95-60 respecting life insurance company general accounts and PTCE 96-23 respecting transactions determined by in-house asset managers, although there can be no assurance that all of the conditions of any such exemptions will be satisfied with respect to the acquisition, holding and remarketing of the Preferred Securities.

Plan Asset Issues

ERISA and the Code do not define “plan assets.” However, regulations (the “Plan Asset Regulations”) promulgated under ERISA by the DOL generally provide that when an ERISA Plan acquires an equity interest in an entity that is neither a “publicly-offered security” nor a security issued by an investment company registered under the Investment Company Act, the ERISA Plan’s assets include both the equity interest and an undivided interest in each of the underlying assets of the entity unless it is established either that equity participation in the entity by “benefit plan investors” is not significant or that the entity is an “operating company,” in each case as defined in the Plan Asset Regulations. The Plan Asset Regulations define an “equity interest” as any interest in an entity, including a beneficial interest in a trust, other than an instrument that is treated as indebtedness under applicable local law and which has no substantial equity features. Although for U.S. Federal income tax purposes the Company will treat the Preferred Securities as indebtedness, it is possible that the Preferred Securities could be deemed equity interests for purposes of the Plan Asset Regulations.

It is not anticipated that the Preferred Securities would qualify as “publicly offered” securities for purposes of the Plan Asset Regulations. Also for purposes of the Plan Asset Regulations, equity participation in an entity by benefit plan investors will not be significant if they hold, in the aggregate, less than 25% of the value of any class of such entity’s equity, excluding equity interests held by persons (other than benefit plan investors) with discretionary authority or control over the assets of the entity or who provide investment advice for a fee (direct or indirect) with respect to such assets, and any affiliates thereof. For purposes of this 25% test, “benefit plan investors” include all employee benefit plans, whether or not subject to ERISA or the Code, including “Keogh” plans, individual retirement accounts and pension plans maintained by foreign corporations, as well as any entity whose underlying assets are deemed to include “plan assets” under the Plan Asset Regulations (e.g., an entity of which 25% or more of the value of any class of equity interests is held by benefit plan investors and which does not satisfy another exception under the Plan Asset Regulations). There can be no assurance that equity participation by benefit plan investors in the Trust will not be significant, and it is not anticipated that the Trust will qualify as an operating company.

Plan Asset Consequences

If the assets of the Trust were deemed to be “plan assets” under ERISA, this would result, among other things, in (i) the application of the prudence and other fiduciary responsibility standards of ERISA to investments made by the Trust, and (ii) the possibility that certain transactions in which the Trust might seek to engage could constitute “pro-

hibited transactions” under ERISA and the Code. Because of the foregoing, the Preferred Securities should not be purchased or held by any person investing “plan assets” of any Plan, unless such purchase and/or holding is (and participation in any remarketing will be) eligible for the exemptive relief available under PTCE 96-23 (for certain transactions determined by in-house asset managers), PTCE 95-60 (for certain transactions involving insurance company general accounts), PTCE 91-38 (for certain transactions involving bank collective investment funds), PTCE 90-1 (for certain transactions involving insurance company separate accounts) or PTCE 84-14 (for certain transactions determined by independent qualified professional asset managers).

Representation

Accordingly, by acceptance of the Preferred Securities, each purchaser and subsequent transferee of the Preferred Securities will be deemed to have represented and warranted that either (i) no portion of the assets used by such purchaser or transferee to acquire and hold the Preferred Securities (or interest therein) constitutes assets of any Plan, or (ii) the purchase and holding of the Preferred Securities (or interest therein) by such purchaser or transferee is (and the participation in any remarketing of the Preferred Securities will be) eligible for the exemptive relief available under PTCE 96-23, 95-60, 91-38, 90-1 or 84-14.

The foregoing discussion is general in nature and is not intended to be all-inclusive. Due to the complexity of these rules and the penalties that may be imposed upon persons involved in non-exempt prohibited transactions, it is particularly important that fiduciaries, or other persons considering purchasing the Preferred Securities on behalf of, or with the assets of, any Plan, consult with their counsel regarding the potential applicability of ERISA, Section 4975 of the Code and any Similar Laws to such investment and whether an exemption would be applicable to the purchase, holding and remarketing of the Preferred Securities. Employee benefit plans which are governmental plans (as defined in Section 3(32) of ERISA) and certain church plans (as defined in Section 3(33) of ERISA) generally are not subject to ERISA requirements but may be subject to comparable requirements.

WHERE YOU CAN FIND MORE INFORMATION

The Company is subject to the informational reporting requirements of the Securities Exchange Act of 1934, as amended. The Company files annual, quarterly and special reports, proxy statements and other documents with the SEC (File No. 1-3701). These documents contain important business and financial information. You may read and copy any materials the Company files with the SEC at the SEC’s public reference room at 450 Fifth Street, N.W., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. The Company’s SEC filings are also available to the public from the SEC’s website at <http://www.sec.gov>. However, information on this website does not constitute a part of this Prospectus.

Incorporation of Documents by Reference

The SEC allows the Company to incorporate by reference the information that it files with the SEC. This allows the Company to disclose important information to you by referring you to those documents rather than repeating them in full in this Prospectus. The Company is incorporating into this Prospectus by reference:

- The Company’s Annual Report on Form 10-K for the year ended December 31, 2003 filed with the SEC pursuant to the Exchange Act and
- all other documents filed by the Company with the SEC pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the filing of the Company’s most recent Annual Report and prior to the termination of the offering made by this Prospectus,
- and all of those documents are deemed to be a part of this Prospectus from the date of filing such documents. The documents incorporated into this Prospectus by reference are referred to as the “Incorporated Documents”. Any statement contained in an Incorporated Document may be modified or superseded by a statement in this Prospectus (if such Incorporated Document was filed prior to the date of this Prospectus) or in any subsequently filed Incorporated Document.

You may request copies of any of the Incorporated Documents, at no cost, by contacting the Company at the address or telephone number provided on page 1 of this Prospectus. The Company maintains an Internet site at <http://www.avistacorp.com> which contains information concerning the Company and its affiliates. The information contained at the

UNDERWRITING

The Company and the Trust have entered into an underwriting agreement (the “Underwriting Agreement”) with Lehman Brothers Inc. as representative (the “Representative”) of the several underwriters named below (the “Underwriters”). In the Underwriting Agreement, each Underwriter has severally, but not jointly, agreed, subject to the terms and conditions set forth therein, to purchase all of the Preferred Securities set opposite its name below if any of the Preferred Securities are purchased.

Name	Number of Preferred Securities
Lehman Brothers Inc.	
McDonald Investments Inc.	
Piper Jaffray & Co.	
Total	60,000

Because the Trust will invest the proceeds from the sale of the Preferred Securities in the Subordinated Debt Securities issued by the Company, the Underwriting Agreement provides that the Company will pay an underwriting commission of \$ _____ per Preferred Security (or \$ _____ for all Preferred Securities) to the Representative for the account of the several Underwriters, as compensation.

The Underwriters propose to offer the Preferred Securities directly to the public at the initial public offering price set forth on the cover page of this Prospectus and may offer them to certain securities dealers at such price less a concession not in excess of _____ % of the liquidation amount per Preferred Security. The Underwriters may allow, and such dealers may realow, a concession not in excess of _____ % of the liquidation amount per Preferred Security to certain brokers and dealers. After the Preferred Securities are released for sale to the public, the offering price and other selling terms may from time to time be varied by the Underwriters.

Prior to this offering, there has been no public market for the Preferred Securities. The Preferred Securities will not be listed on a securities exchange. The Representative has advised the Company that the Underwriters intend to make a market in the Preferred Securities. The Underwriters will have no obligation to make a market in the Preferred Securities, however, and may cease market making activities, if commenced, at any time.

The Company has agreed to indemnify the Underwriters against certain liabilities, including liabilities under the Securities Act or contribute to payments that each Underwriter may be required to make in respect thereof.

The Company’s expenses associated with the offer and sale of the Preferred Securities are estimated to be \$ _____.

In order to facilitate the offering of the Preferred Securities, the Underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the Preferred Securities. Specifically, the Underwriters may over-allot in connection with the offering, creating short positions in the Preferred Securities for their own account. In addition, to cover over-allotments or to stabilize the price of the Preferred Securities, the Underwriters may bid for, and purchase, Preferred Securities in the open market. The Underwriters may reclaim selling concessions allowed to an Underwriter or dealer for distributing Preferred Securities in the offering, if the Underwriters repurchase previously distributed Preferred Securities in transactions to cover short positions, in stabilization transactions or otherwise. Any of these activities may stabilize or maintain the market price of the Preferred Securities above independent market levels. The Underwriters are not required to engage in these activities, and may end any of these activities at any time.

In general, purchases of a security for the purpose of stabilization or to reduce a short position could cause the price of the security to be higher than it might be in the absence of such purchases. The imposition of a penalty bid might also have an effect on the price of a security to the extent that it were to discourage resales of the security.

Neither the Company, the Trust nor the Underwriters makes any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of the Preferred Securities. In addition, neither the Company, the Trust nor the Underwriters makes any representation that the Underwriters will engage in such transactions or that such transactions once commenced will not be discontinued without notice.

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The offering is being made in compliance with Rule 2810 of the Conduct Rules of the National Association of Securities Dealers, Inc. (the “NASD”). The Preferred Securities will be sold in compliance with the suitability requirements of NASD Rule 2310.

The Underwriters and their affiliates engage in transactions with, and from time to time, have performed services for, the Company and its affiliates in the ordinary course of business.

LEGAL OPINIONS

Certain matters of Delaware law relating to the validity of the Preferred Securities, the enforceability of the Declaration and the creation of the Trust will be passed upon on behalf of the Trust by Richards, Layton & Finger, P.A., Wilmington, Delaware, special Delaware counsel to the Company and the Trust. Certain matters of New York law and of federal securities laws relating to the validity of the Subordinated Debt Securities and the Guarantee and certain matters relating thereto will be passed upon for the Company by Dewey Ballantine LLP, New York, New York, counsel to the Company, and by David J. Meyer, Esq., Vice President and Chief Counsel for Regulatory and Governmental Affairs of the Company. Certain matters of Washington corporate law and matters relating to public utility regulatory approvals under Washington, Idaho, Montana, Oregon and California law relating to the authorization of the Subordinated Debt Securities and the Guarantee will be passed upon for the Company by Heller Ehrman White & McAuliffe LLP, counsel for the Company. Certain United States federal income taxation matters will be passed upon for the Company and the Trust by Dewey Ballantine LLP, counsel to the Company and the Trust. The validity of the Preferred Securities will be passed upon for the Underwriters by Sullivan & Cromwell LLP, New York, New York. In giving their opinions Dewey Ballantine LLP and Sullivan & Cromwell LLP may assume the conclusions of Washington, California, Idaho, Montana and Oregon law set forth in the opinion of Heller Ehrman White & McAuliffe LLP and the conclusions of Delaware law set forth in the opinion of Richards, Layton & Finger, P.A.

EXPERTS

The financial statements and the related financial statement schedules incorporated in this Prospectus by reference from the Company’s most recent Annual Report on Form 10-K have been audited by Deloitte & Touche LLP, independent auditors, as stated in their report, which is incorporated herein by reference, and have been so incorporated in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

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GLOSSARY OF TERMS USED IN THE PROSPECTUS

Term	Defined on Page
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1939 Act	16
1940 Act	22
3-month LIBOR Rate	19
30-year Treasury CMT	20
Adjustable Rate	2
Agreement as to Expenses and Liabilities	4
Avista Advantage	14
Avista Energy	15
Avista Power	15
Benchmark Rates	19

Beneficial Owner	26
Beneficiaries	36
Business Day	21
Calculation Agent	21
Code	48
Common Securities	1
Company	1
Coyote Springs 2	15
CT	15
Debt Securities Redemption Price	4
Declaration	16
Declaration Event of Default	29
Delaware Trustee	1
Designated CMT Maturity Index	21
Direct Participants	26
Distribution Payment Date	3
Distribution Period	2
Distribution Rate	1
Distributions	1
DOL	51
DTC	5
DTCC	26
Election Date	2
ERISA	50
ERISA Plan	50
ERM	10
Expenses	36
Extension Period	3
FERC	10
Fixed Rate	1
Fixed Rate Period	1
Floating Rate	2
Floating Rate Determination Date	21
Floating Rate Period	2
Guarantee	1
Guarantee Payments	34
Guarantee Trustee	1
Holder	37
Incorporated Documents	52
Indenture	1
Indenture Event of Default	29
Indenture Securities	36
Indenture Trustee	1
Indirect Participants	26
Initial Credit Spread	2
Initial Distribution Rate	1
Initial Fixed Rate Period	1
Institutional Trustee	1
Interest Payment Date	36
Interest Period	36
Interest Rate	36
Investment Company Act Event	22
IPUC	10
IRS	48
Issue Date	1
Liquidation Distribution	28
London Business Day	21
Maturity	37
NASD	54
Notice of Election	24
OID	3
Participants	26
PCA	10
Plan	50
Plan Asset Regulations	51
Preferred Securities	1
Preferred Securities Redemption Price	7
PTCE	51
Record Date	19
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Subordinated Debt Securities	1
Tax Event	22
Telerate Page 3750	21
Telerate Page 7051	21
Treasury Debentures	20
Trust	1
Trust Property	16
Trust Securities	4
U.S. holder	48
Underwriters	53
Underwriting Agreement	53
WUTC	10

60,000 Preferred Securities



AVISTA CORPORATION
AVA Capital Trust III
Flexible Trust Preferred Securities
(T-FLEXSM)
(Five Year Initial Fixed Rate Period)
(Liquidation Amount \$1,000 per Preferred Security)
Fully and unconditionally guaranteed, as described herein

PROSPECTUS

, 2004

LEHMAN BROTHERS

MCDONALD INVESTMENTS INC.

PIPER JAFFRAY

PART II

Item 14. Other Expenses of Issuance and Distribution (estimated).

The expenses in connection with the issuance and distribution of the securities being registered are estimated as follows:

Filing fee – Securities and Exchange Commission	\$2,534
Fees of state regulatory authorities	1,000
Legal counsel fees	300,000

Trustees' fees	25,000
Auditors' fees	25,000
Fees of rating agencies	100,000
Printing expenses	25,000
Miscellaneous expenses	21,466

Total Estimated Expenses \$500,000

Item 15. Indemnification of Directors and Officers.

Article Seventh of the Company's Restated Articles of Incorporation ("Articles") provides, in part, as follows:

"The Corporation shall, to the full extent permitted by applicable law, as from time to time in effect, indemnify any person made a party to, or otherwise involved in, any proceeding by reason of the fact that he or she is or was a director of the Corporation against judgments, penalties, fines, settlements and reasonable expenses actually incurred by him or her in connection with any such proceeding. The Corporation shall pay any reasonable expenses incurred by a director in connection with any such proceeding in advance of the final determination thereof upon receipt from such director of such undertakings for repayment as may be required by applicable law and a written affirmation by such director that he or she has met the standard of conduct necessary for indemnification, but without any prior determination, which would otherwise be required by Washington law, that such standard of conduct has been met. The Corporation may enter into agreements with each director obligating the Corporation to make such indemnification and advances of expenses as are contemplated herein. Notwithstanding the foregoing, the Corporation shall not make any indemnification or advance which is prohibited by applicable law. The rights to indemnity and advancement of expenses granted herein shall continue as to any person who has ceased to be a director and shall inure to the benefit of the heirs, executors and administrators of such a person".

The Company has entered into indemnification agreements with each director as contemplated in Article Seventh of the Articles.

Reference is made to Revised Code of Washington 23B.08.510, which sets forth the extent to which indemnification is permitted under the laws of the State of Washington.

Article IX of the Company's Bylaws contains an indemnification provision similar to that contained in the Articles and, in addition, provides in part as follows:

"Section 2. Liability Insurance. The Corporation shall have the power to purchase and maintain insurance on behalf of any person who is, or was a director, officer, employee, or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the laws of the State of Washington".

Insurance is maintained on a regular basis (and not specifically in connection with this offering) against liabilities arising on the part of directors and officers out of their performance in such capacities or arising on the part of the Registrant out of its foregoing indemnification provisions, subject to certain exclusions and to the policy limits.

Section 8.06 of the Declaration provides with respect to the Trust established thereby that the Company agrees:

(c) to indemnify each of the Trustees for, and to hold each of the Trustees harmless against, any and all loss, damage, claims, liability or expense incurred without willful misconduct, negligence (gross negligence, in the case of the Delaware Trustee) or bad faith on their part, arising out of or in connection with the accep

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tance or administration of this Declaration, including the costs and expenses of defending themselves against any claim (whether by the Sponsor, any Securityholder or any other person) or liability in connection with the exercise or performance of any of their powers or duties hereunder.

The obligation to indemnify as set forth in Section 8.06 will survive the termination of the Declaration.

Section 3.03 of the Guarantee Agreement provides with respect to the Trust that the Company agrees:

(c) to indemnify the Trustee for, and to hold the Trustee harmless against, any and all loss, damage, claims, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this Guarantee Agreement, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

The obligation to indemnify as set forth in Section 3.03 will survive the termination of the Guarantee Agreement.

Item 16. Exhibits.

Reference is made to the Exhibit Index on p. II-6 hereof.

Item 17. Undertakings.

Each of the undersigned Registrants hereby undertakes that:

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

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

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

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

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POWER OF ATTORNEY

The Registrant hereby appoints each Agent for Service named in this Registration Statement as its attorney-in-fact to sign in their name and behalf, and to file with the Securities and Exchange Commission any and all amendments, including post-effective amendments, to this Registration Statement, and each director and/or officer of the Registrant whose signature appears below hereby appoints each such Agent for Service as his attorney-in-fact with like authority to sign in his name and behalf, in any and all capacities stated below, and to file with the Securities and Exchange Commission, any and all such amendments.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Spokane and State of Washington on the 11th day of March, 2004.

AVISTA CORPORATION

By /s/ MALYN K. MALQUIST

**Malyn K. Malquist
Senior Vice President
and Principal Financial Officer**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

Signature	Title	Date
/s/ GARY G. ELY	Principal Executive Officer	March 11, 2004
Gary G. Ely Chairman of the Board President and Principal Executive Officer		
/s/ MALYN K. MALQUIST	Principal Financial and Accounting Officer	
Malyn K. Malquist Senior Vice President and Principal Financial Officer		
/s/ ERIK J. ANDERSON	Director	March 11, 2004
Erik J. Anderson		
/s/ KRISTIANNE BLAKE	Director	March 11, 2004
Kristianne Blake		
/s/ DAVID A. CLACK	Director	March 11, 2004
David A. Clack		
/s/ ROY LEWIS EIGUREN	Director	March 11, 2004
Roy Lewis Eiguren		
/s/ JACK W. GUSTAVEL	Director	March 11, 2004
Jack W. Gustavel		
/s/ JOHN F. KELLY	Director	March 11, 2004
John F. Kelly		
/s/ JESSIE J. KNIGHT, JR.	Director	March 11, 2004
Jessie J. Knight, Jr.		
/s/ MICHAEL L. NOËL	Director	March 11, 2004
Michael L. Noël		
/s/ LURA J. POWELL, PH.D.	Director	March 11, 2004
Lura J. Powell, Ph.D.		
/s/ R. JOHN TAYLOR	Director	March 11, 2004
R. John Taylor		

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, AVA Capital Trust III certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on their behalf by the undersigned, thereunto duly authorized, in the City of Spokane and State of Washington on the 11th day of March, 2004.

AVA CAPITAL TRUST III

By: **AVISTA CORPORATION**, as Sponsor

 Malyn K. Malquist
 Senior Vice President and
 Principal Financial Officer

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EXHIBIT INDEX

Exhibit	Description
1	Form of Underwriting Agreement for Preferred Securities.
4(a)(1)	Amended and Restated Certificate of Trust of Washington Water Power Capital III.
4(a)(2)	Declaration of Trust of Washington Water Power Capital III (filed with Registration number 333-16353)
4(a)(3)	Removal and Appointment of Trustees and Amendment of Declaration of Trust of Washington Water Power Capital III.
4(a)(4)	Form of Amended and Restated Declaration of Trust of AVA Capital Trust III.
4(b)(1)	Form of Indenture between Avista Corporation and Union Bank of California, N.A., as Trustee.
4(b)(2)	Form of Officer's Certificate to be used in connection with the issuance of Subordinated Debt Securities.
4(c)	Form of Preferred Security (contained in Exhibit 4(a)(4)).
4(d)	Form of Subordinated Debt Security (contained in Exhibit 4(b)(2)).
4(e)	Form of Guarantee issued by Avista Corporation for the benefit of the holders of the Securities of AVA Capital Trust III.
4(f)	Form of Agreement as to Expenses and Liabilities between Avista Corporation and AVA Capital Trust III (contained in Exhibit in 4(a)(4)).
5(a)	Opinion and Consent of Heller Ehrman White & McAuliffe LLP.
5(b)	Opinion and Consent of Dewey Ballantine LLP.
5(c)	Opinion and Consent of Richards, Layton & Finger, P.A.
8	Tax Opinion of Dewey Ballantine LLP (contained in Exhibit 5(b)).
12	Computation of Ratio of Earnings to Fixed Charges of Avista Corporation (contained in Incorporated Documents).
23(a)	Consent of Heller Ehrman White & McAuliffe LLP (contained in Exhibit 5(a)).
23(b)	Consent of Dewey Ballantine LLP (contained in Exhibit 5(b)).
23(c)	Consent of Richards, Layton & Finger, P.A. (contained in Exhibit 5(c)).
23(d)	Consent of Deloitte & Touche LLP.
24	Power of Attorney (included on page II-3).
25(a)	Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of Union Bank of California, N.A., as Trustee under the Indenture.
25(b)	Statement of Eligibility under the Trust Indenture Act of 1939, as amended, Union Bank of California, N.A., as Trustee under the Amended and Restated Declaration of Trust for AVA Capital Trust III.
25(c)	Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of Union Bank of California, N.A., as Guarantee Trustee under the Securities Guarantee issued by Avista Corporation for the benefit of the holders of the Securities of AVA Capital Trust III.

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AVA CAPITAL TRUST III
(A DELAWARE STATUTORY TRUST)

FLEXIBLE TRUST PREFERRED SECURITIES
(FIVE YEAR INITIAL FIXED RATE PERIOD)
(LIQUIDATION AMOUNT \$1,000 PER PREFERRED SECURITY)

UNDERWRITING AGREEMENT

March __, 2004

Lehman Brothers Inc.

As Representative of the several Underwriters
named in Schedule I hereto,
745 7th Avenue
New York, NY 10019

Ladies and Gentlemen:

AVA CAPITAL TRUST III, a statutory trust (the "Trust") organized under the Delaware Statutory Trust Act, 12 DEL. C. ss.3801, ET SEQ. (the "Delaware Act"), and Avista Corporation, a Washington corporation (the "Company", and together with the Trust, the "Offerors"), propose, subject to the terms and conditions stated herein, to issue and sell to the Underwriters named in Schedule I hereto (collectively, the "Underwriters") for whom you are acting as representative (in such capacity, the "Representative"), with respect to the sale by the Trust and the purchase by the Underwriters, acting severally and not jointly, of the respective numbers of Flexible Trust Preferred Securities (liquidation amount \$1,000 per Preferred Security) of the Trust (the "Preferred Securities") set forth in Schedule I.

The Preferred Securities will be guaranteed by the Company with respect to distributions and payments upon liquidation, redemption and otherwise (to the extent that the Trust shall have funds available therefor) (the "Guarantee") pursuant to the Guarantee Agreement, to be dated as of March __, 2004 (the "Guarantee Agreement"), between the Company and Union Bank of California, N.A. a California banking corporation, as trustee (the "Guarantee Trustee") (the Preferred Securities and the related Guarantee under the Guarantee Agreement being hereinafter called, collectively, the "Securities"); and

The entire net proceeds from the sale of the Securities will be combined with the entire net proceeds from the sale by the Trust to the Company of its common securities (the "Common Securities") and will be used by the Trust to purchase

\$_____,000 aggregate principal amount of Subordinated Debt Securities, Series __ (the "Subordinated Debt Securities") to be issued by the Company; and

The Preferred Securities and the Common Securities will be issued pursuant to the Amended and Restated Declaration of Trust, to be dated as of March __, 2004 (the "Declaration of Trust"), among the Company, as Sponsor, Malyn K. Malquist and Diane C. Thoren (the "Regular Trustees"), SunTrust Delaware Trust Company (the "Delaware Trustee"), Union Bank of California, N.A. a national banking association duly organized under the laws of the United States of America (the "Institutional Trustee" and, together with the Delaware Trustee and the Regular Trustees, the "Trustees") and the holders, from time to time, of undivided beneficial interests in the assets of the Trust; and

The Subordinated Debt Securities will be issued pursuant to an Indenture, dated as of March __, 2004 between the Company and Union Bank of California, N.A., as trustee (the "Indenture Trustee"), as supplemented by an Officer's Certificate to be dated as of March __, 2004 setting forth the terms of the Subordinated Debt Securities (such Indenture, as so supplemented, being hereinafter called the "Indenture") between the Company and the Indenture Trustee; and

The Company and the Trust will enter into an Agreement as to Expenses and Liabilities, to be dated as of March __, 2004 (the "Agreement as to Expenses and Liabilities"), pursuant to which the Company will guarantee on a subordinated basis to each person or entity to which the Trust may be indebted or liable, the full payment of such obligations; and

The Company and the Trust will enter into a Remarketing Agreement, to be dated as of March __, 2004 (the "Remarketing Agreement") with Lehman Brothers Inc. as remarketing agent (the "Remarketing Agent"), pursuant to which, among other things, the Remarketing Agent will conduct certain remarketing procedures relating to the Preferred Securities; and

The Company and the Trust will enter into a Calculation Agent Agreement, to be dated as of March __, 2004 (the "Calculation Agent Agreement") with _____, as calculation agent (the "Calculation Agent"), pursuant to which, among other things, the Calculation Agent will conduct certain procedures relating to the Preferred Securities; and

In connection with the foregoing, the Offerors have filed with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-3 (registration no. 333-_____) for the registration under the Securities Act of 1933, as amended (the "Act"), of the Securities, and the Subordinated Debt Securities. A prospectus setting forth the terms of the Securities and the Subordinated Debt Securities and of their sale and

distribution has been or will be prepared and will be filed or transmitted for filing pursuant to Rule 424 under the Act. Such registration statement (as amended, if applicable) and the prospectus constituting a part thereof, as from time to time amended or supplemented pursuant to the Act, the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise, are hereinafter referred to as the

"Registration Statement" and the "Prospectus", respectively. Any reference herein to the Registration Statement or the Prospectus shall be deemed to refer to and include, in each case, all documents incorporated or deemed to be incorporated by reference therein pursuant to Item 12 of Form S-3 under the Act and the information, if any, deemed to be part thereof pursuant to Rule 430A(b) under the Act; except that, if any revised prospectus shall be provided to the Underwriters by the Offerors for use in connection with the offering of the Preferred Securities which differs from the Prospectus on file at the Commission at the time the Registration Statement becomes effective (whether or not such revised prospectus is required to be filed by the Offerors pursuant to Rule 424(b) under the Act), the term "Prospectus" shall refer to such revised prospectus from and after the time it is first provided to the Underwriters for such use.

Pursuant to Rule 429 under the Act, the Prospectus will be used as a combined prospectus relating to the Registration Statement and to the registration statement filed by the Company with the Commission on November 19, 1996 (registration no. 333-16353) which, as subsequently amended, became effective on January 9, 1997; unless the context otherwise requires, all references in this Agreement to the Registration Statement shall be deemed to include such prior registration statement.

1. The Offerors jointly and severally represent and warrant to, and agree with, each of the Underwriters that:

(a) (i) The Registration Statement has been prepared and filed in accordance with the provisions of the Act, with the Commission; such Registration Statement has been declared effective by the Commission, and no other document with respect to the Registration Statement or documents incorporated by reference therein has heretofore been filed or transmitted for filing with the Commission (other than prospectuses filed pursuant to Rule 424(b) of the rules and regulations of the Commission under the Act, each in the form heretofore delivered to the Underwriters);

(ii) Any reference herein to the Registration Statement or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Act, as of the effective date or the date thereof, as the case may be; any reference to any amendment to the Registration Statement shall be deemed to refer to and include any annual report of the Company filed pursuant to Section 13(a) or 15(d) of the Exchange Act after the effective date of the Registration Statement that is incorporated by reference in the Registration Statement; and any reference to any amendment or supplement to the Prospectus shall be deemed to refer to and include any documents filed after the date of such Prospectus, under the Exchange Act, and incorporated by reference in such Prospectus;

(b) No stop order suspending the effectiveness of the Registration Statement has been issued and no proceeding for that purpose has been initiated or, to the best knowledge of the Offerors, threatened by the Commission; and no

order preventing or suspending the use of any preliminary prospectus or the Prospectus has been issued by the Commission;

(c) The Registration Statement, when it became effective, conformed, and any further amendments thereto, when they become effective, will conform, in all material respects to the requirements of the Act and the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"), and the Prospectus and any amendments or supplements thereto, when filed with the Commission, will conform in all material respects to the requirements of the Act and the Trust Indenture Act;

(d) The Registration Statement, when it became effective, and any further amendments thereto when they become effective, did not and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and the Prospectus and any amendments and supplements thereto, when they are filed or transmitted for filing with the Commission and at the Time of Delivery, will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; provided, however, that the representations and warranties contained in this subsection (d) shall not apply to statements or omissions made in reliance upon and in conformity with information furnished in writing by an Underwriter through the Representative expressly for use in the Registration Statement, the Prospectus or any amendment or supplement to either thereof;

(e) The documents incorporated by reference in the Prospectus, when they were filed with the Commission, and any further documents so filed and incorporated by reference, when they are filed with the Commission or become effective, as the case may be, (i) conformed and will conform in all material respects to the requirements of the Exchange Act or the Act, as the case may be, and the rules and regulations of the Commission thereunder and (ii) did not and will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(f) Except as set forth in or contemplated by the Prospectus, (i) since the respective dates as of which information is given in the Registration Statement and the Prospectus, there has not been (A) any material adverse change in or affecting the business, financial condition, shareholders' equity or results of operations of the Company and its subsidiaries, considered as a whole, or any development reasonably expected to result in such a material adverse change (in each case, a "Material Adverse Change"), (B) any transaction entered into by the Company or any subsidiary thereof which is material to the Company and its subsidiaries as a whole other than transactions in the ordinary course of business, and (C) any change in the capital stock or long-term debt of the Company or any of its subsidiaries (except for shares of common stock issued under the

Company's Dividend-Reinvestment and Stock Purchase Plan and employee stock plans and except for scheduled maturities of long-term debt) and (ii) neither the Company nor any of its subsidiaries has any contingent obligation which is material to the Company and its subsidiaries as a whole;

(g) The Company has been duly incorporated and is validly existing in good standing as a corporation under the laws of the State of Washington, is duly qualified to do business and in good standing as a foreign corporation under the laws of the States of California, Idaho, Montana and Oregon, and has corporate and other power and authority and has all material required approvals and authorizations to own, lease and operate its properties, and to transact an electric and/or gas public utility business in such jurisdictions;

(h) Each of Avista Capital, Avista Energy, Inc. and Avista Advantage, Inc. is duly incorporated and validly existing in good standing under the laws of the State of Washington;

(i) The Company has an authorized capitalization as set forth in the Prospectus, and all of the issued shares of capital stock of the Company have been duly and validly authorized and issued, are fully paid and non-assessable;

(j) The Subordinated Debt Securities have been duly authorized by all necessary corporate action on the part of the Company, and have been duly executed by the Company and, when duly authenticated and delivered by the Indenture Trustee under the Indenture, and issued, delivered and paid for in accordance with this Agreement, will be duly authenticated, issued and delivered by the Company and will constitute valid and binding obligations of the Company, entitled to the benefits provided by the Indenture and enforceable against the Company in accordance with their terms, subject, as to enforcement, (i) to bankruptcy, insolvency, reorganization, arrangement, moratorium and other laws of general applicability relating to or affecting creditors' rights, and (ii) by general principles of equity, whether such enforceability is considered a proceeding in equity or at law, and by rules of law governing specific performance, injunction relief, foreclosure, receivership and other equitable remedies (the "Enforceability Exceptions"), and are entitled to the benefits provided by the Indenture; the Subordinated Debt Securities will be substantially in the form previously delivered to the Representative; and the Subordinated Debt Securities will conform in all material respects to the description thereof contained in the Prospectus;

(k) The Indenture has been duly authorized and the Indenture has been duly executed, delivered and recorded, and constitutes a valid and legally binding instrument, enforceable in accordance with its terms, subject to the Enforceability Exceptions; the Indenture has been duly qualified under the Trust Indenture Act; and the Indenture will conform in all material respect to the description thereof contained in the Prospectus;

(l) The issue and sale of the Securities, the Common Securities and the Subordinated Debt Securities and the compliance by the Offerors with all of the provisions of the Securities, the Common Securities, the Subordinated Debt Securities, the Declaration of Trust, the Guarantee Agreement, the Indenture, the Remarketing Agreement, the Calculation Agent Agreement, the Agreement as to Expenses and Liabilities and this Agreement and the consummation by the Offerors of the transactions herein and therein contemplated will not (i) violate (A) the Company's Restated Articles of Incorporation, as amended, or By-laws, as amended, or (B) the Declaration of Trust or certificate of trust of the Trust, filed with the Secretary of State of the State of Delaware on November 4, 1996, as amended and restated on March [], 2004 (the "Certificate of Trust") or (ii) result in a breach or violation of any of the terms or provisions of, or constitute a default under, (A) any statute or, to the knowledge of the Offerors, any order, rule or regulation of any court or any federal or state regulatory authority or other governmental agency or body having jurisdiction over the Offerors or any of its subsidiaries or any of their properties, or (B) any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which each of the Offerors or any of the Company's subsidiaries is a party or by which each of the Offerors or any of the Company's subsidiaries is bound or to which any of the property or assets of each of the Offerors or any of the Company's subsidiaries is subject, which breach, violation or default referred to in this clause (ii) would individually, or in the aggregate, have, or would be reasonably expected to have, a material adverse effect on the business, financial condition, shareholders' equity or results of operations of the Company and its subsidiaries considered as a whole (in each case, a "Material Adverse Effect");

(m) No consent, approval, authorization, order, registration or qualification of or with any court or governmental agency or body is required for the issue and sale of the Common Securities or the issue, sale and offering of the Securities or the Subordinated Debt Securities or the consummation by the Offerors of the transactions contemplated by this Agreement, the Indenture, the Declaration, the Guarantee Agreement, the Agreement as to Expenses and Liabilities, the Remarketing Agreement or the Calculation Agent Agreement, except the registration under the Act of the Securities and such consents, approvals, authorizations, registrations or qualifications as may be required under state securities or Blue Sky laws in connection with the purchase and distribution of the Securities by the Underwriters, and such consents, approvals, authorizations, filings or registrations as may be required by the Washington Utilities and Transportation Commission (the "WUTC"), the California Public Utilities Commission (the "CPUC"), the Idaho Public Utilities Commission (the "IPUC"), the Public Service Commission of the State of Montana (the "MPSC") and the Public Utility Commission of Oregon (the "OPUC"), in each case in the manner contemplated hereby;

(n) None of the Offerors, Avista Energy, Inc. and Avista Advantage, Inc. is currently in violation of its Restated Articles of Incorporation, as amended, or By-laws, as amended, or Declaration of Trust or the Certificate of Trust, as the

case may be, or in default in the performance or observance of any material obligation, agreement, covenant or condition contained in any material indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound, except for the performance or observance of any such obligation, agreement, covenant or condition that has been waived in accordance with the applicable agreement;

(o) Other than as set forth in the Prospectus, neither the Company nor any of its subsidiaries (i) is in violation of any statute, or any rule, regulation, decision or order of any governmental agency or body or any court relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environmental or human exposure to hazardous or toxic substances (collectively, "environmental laws"), (ii) does not own or operate any real property which to its knowledge is contaminated with any substance that is subject to any environmental laws, (iii) is not to its knowledge liable for any off-site disposal or contamination pursuant to any environmental laws, and (iv) is not subject to any claim relating to any environmental laws and the Company is not aware of any pending investigation which could reasonably be expected to lead to such a claim, which, in the case of (i), (ii), (iii), or (iv), would reasonably be expected to result in a Material Adverse Effect;

(p) The statements set forth in the Prospectus under the caption "Description of the Preferred Securities" insofar as it purports to constitute a summary of the terms of the Preferred Securities, under the caption "Description of the Subordinated Debt Securities," insofar as it purports to constitute a summary of the terms of the Subordinated Debt Securities, under the caption "Description of the Guarantee," insofar as it purports to constitute a summary of the terms of the Guarantee, and under the caption "Underwriting", insofar as it purports to describe the provisions of the laws and documents referred to therein, are accurate and fairly present the information purported to be given;

(q) Other than as set forth in the Prospectus, there are no legal or governmental proceedings pending to which the Offerors or any of the Company's subsidiaries is a party or of which any property of the Offerors or any of the Company's subsidiaries is the subject, which, if determined adversely to the Offerors or any of the Company's subsidiaries, would individually or in the aggregate have a Material Adverse Effect; and, to the best of the Offerors' knowledge, no such proceedings are threatened or contemplated by governmental authorities or threatened by others;

(r) The Offerors are not, and, after giving effect to the offering and sale of the Securities, will not be "investment companies" or an entity "controlled" by an "investment company", as such terms are defined in the United States Investment Company Act of 1940, as amended (the "Investment Company Act");

(s) The Offerors are subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act;

(t) Deloitte & Touche LLP, who have certified certain financial statements of the Company and its subsidiaries, are independent public accountants as required by the Act and the rules and regulations of the Commission thereunder;

(u) The Trust has been duly created and is validly existing and in good standing as a statutory trust under the Delaware Act with the power and authority to own property and to conduct its business as described in the Registration Statement and Prospectus and to enter into and perform its obligations under this Agreement and the Declaration of Trust; the Trust has no subsidiaries and is duly qualified to transact business as a foreign company and is in good standing in any other jurisdiction in which such qualification is necessary, except to the extent that the failure to so qualify or be in good standing would not have a Material Adverse Effect on the Trust; the Trust is not a party to or otherwise bound by any agreement other than those described in the Prospectus; the Trust is and will be classified for United States federal income tax purposes as a grantor trust and not as an association taxable as a corporation; and the Trust is and will be accounted for pursuant to generally accepted accounting principles;

(v) The Declaration of Trust has been duly authorized by the Company and, at the Time of Delivery, will have been duly executed and delivered by the Company and the Regular Trustees, and assuming due authorization, execution and delivery of the Declaration of Trust by the Delaware Trustee and the Institutional Trustee, the Declaration of Trust will, at the Time of Delivery, be a valid and binding obligation of the Company and the Regular Trustees, enforceable against the Company and the Regular Trustees in accordance with its terms, except to the extent that enforcement thereof may be limited by the Enforceability Exceptions and will conform in all material respects to all statements relating thereto in the Prospectus; and, at the Time of Delivery, the Declaration of Trust will have been duly qualified under the Trust Indenture Act;

(w) The Preferred Securities have been duly authorized by the Declaration of Trust and, when issued and delivered by the Trust pursuant to this Agreement against payment of the consideration set forth herein, will be validly issued and (subject to the terms of the Declaration of Trust) fully paid and non-assessable undivided beneficial interests in the assets of the Trust, will be entitled to the benefits of the Declaration of Trust and will conform in all material respects to all statements relating thereto contained in the Prospectus; the issuance of the Preferred Securities is not subject to preemptive or other similar rights; (subject to the terms of the Declaration of Trust) holders of Preferred Securities will be entitled to the same limitation of personal liability under Delaware law as extended to stockholders of private corporations for profit;

(x) The Common Securities have been duly authorized by the Declaration of Trust and, when issued and delivered by the Trust to the Company against payment therefor as described in the Registration Statement and Prospectus, will be validly issued and (subject to the terms of the Declaration of Trust) fully paid undivided beneficial interests in the Trust and will conform in all material respects to all statements relating thereto contained in the Prospectus; the issuance of the Common Securities is not subject to preemptive or other similar rights; and, at the Time of Delivery, all of the issued and outstanding Common Securities of the Trust will be directly owned by the Company, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equitable right;

(y) The Guarantee Agreement, the Remarketing Agreement, the Calculation Agent Agreement and the Agreement as to Expenses and Liabilities have been duly authorized by the Company and, at the Time of Delivery, will have been duly executed and delivered by the Company, and, assuming due authorization, execution and delivery of the Guarantee Agreement, the Remarketing Agreement, the Calculation Agent Agreement and the Agreement as to Expenses and Liabilities by the other respective parties thereto, each of the Guarantee Agreement, Remarketing Agreement, the Calculation Agent Agreement and the Agreement as to Expenses and Liabilities will, at the Time of Delivery, constitute a valid and binding obligation of the Company, enforceable against the Company in accordance with their respective terms except to the extent that enforcement thereof may be limited by the Enforceability Exceptions, and each of the Guarantee, the Guarantee Agreement, Remarketing Agreement, the Calculation Agent Agreement and the Agreement as to Expenses and Liabilities will conform in all material respects to all statements relating thereto contained in the Prospectus; and, at the Time of Delivery, the Guarantee Agreement will have been duly qualified under the Trust Indenture Act;

(z) The Company's obligations under the Guarantee (i) are subordinate and junior in right of payment to all liabilities of the Company, except those obligations or liabilities made PARI PASSU or subordinate by their terms, (ii) are PARI PASSU with the most senior preferred or preference stock issued by the Company and with any guarantee entered into by the Company with respect to any preferred or preference securities of any affiliate of the Company and (iii) are senior to all common stock of the Company;

(aa) The Subordinated Debt Securities are subordinated and junior in right of payment to all "Senior Indebtedness" (as defined in the Indenture) of the Company; and

(bb) Each of the Regular Trustees of the Trust is an officer of the Company and has been duly authorized by the Company to execute and deliver the Declaration of Trust;

2. Subject to the terms and conditions herein set forth, the Trust agrees to sell to each of the Underwriters, severally and not jointly, and each of the Underwriters agrees, severally and not jointly, to purchase from the Trust, the number of Preferred Securities set forth opposite the name of such Underwriter in Schedule I hereto at a price per security equal to the public offering price set forth in Schedule II hereto.

As compensation to the Underwriters for their commitments hereunder and in view of the fact that the proceeds of the sale of the Preferred Securities will be used to purchase the Subordinated Debt Securities of the Company, the Company hereby agrees to pay at the Time of Delivery (as defined below) to the Representative, for the accounts of the several Underwriters, a commission per Preferred Security as set forth on Schedule II for the Preferred Securities to be delivered by the Trust hereunder at the Time of Delivery.

3. Upon the authorization by the Representative of the release of the Securities, the several Underwriters propose to offer the Securities for sale upon the terms and conditions set forth in this Agreement and the Prospectus.

4. (a) The Preferred Securities to be purchased by each Underwriter hereunder will be represented by one or more definitive global securities in book-entry form to be deposited with The Depository Trust Company ("DTC") or its designated custodian and will have the Guarantee duly endorsed thereon. The Trust will deliver the global securities to DTC or such custodian to be credited to the account of the Representative, for the account of each Underwriter, against payment by or on behalf of such Underwriter of the purchase price therefore by wire transfer of Federal (same day) funds. The Trust will cause the certificates representing the Securities to be made available to the Representative for checking at least twenty-four hours prior to the Time of Delivery (as defined below) at the office of DTC or its designated custodian (the "Designated Office"). The time and date of such delivery and payment shall be ___ a.m., New York City time, on _____, 2004 or such other time and date as the Offerors and the Representative may agree upon in writing. Such time and date are herein called the "Time of Delivery";

(b) The documents to be delivered at the Time of Delivery by or on behalf of the parties hereto pursuant to Section 7 hereof, including the cross receipt for the Securities and any additional documents requested by the Underwriters pursuant to Section 7(m) hereof, will be delivered at the offices of Dewey Ballantine LLP, 1301 Avenue of the Americas, New York, New York 10019 (the "Closing Location"), and the Securities will be delivered at the Designated Office, all at the Time of Delivery. A meeting will be held at the Closing Location at ___ p.m., New York City time, on the New York Business Day next preceding such Time of Delivery, at which meeting the final drafts of the documents to be delivered pursuant to the preceding sentence will be available for review by the parties hereto. For the purposes of this Agreement, "New York Business Day" shall mean each Monday, Tuesday, Wednesday, Thursday and Friday, which is not a day on which banking institutions in New York are generally authorized or obligated by law or executive order to close.

5. The Offerors agree with each of the Underwriters:

(a) To prepare the Prospectus in a form approved by the Representative and to file such Prospectus pursuant to Rule 424(b) under the Act not later than the Commission's close of business on the second business day following the execution and delivery of this Agreement; to make no further amendment or any supplement to the Registration Statement or Prospectus prior to the last Time of Delivery which shall be reasonably disapproved by the Representative promptly after reasonable notice thereof; to advise the Representative, promptly after it receives notice thereof, of the time when any amendment to the Registration Statement has been filed or becomes effective or any supplement to the Prospectus or any amended Prospectus has been filed and to furnish the Representative with copies thereof; to file promptly all reports and any definitive proxy or information statements required to be filed by the Offerors with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of the Prospectus and for so long as the delivery of a prospectus is required in connection with the offering or sale of the Securities; to advise the Representative, promptly after it receives notice thereof, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of any prospectus, of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose, or of any request by the Commission for the amending or supplementing of the Registration Statement or the Prospectus or for additional information; and, in the event of the issuance of any stop order or of any order preventing or suspending the use of any prospectus or suspending any such qualification, promptly to use its best efforts to obtain the withdrawal of such order;

(b) Promptly from time to time to take such action as the Representative may reasonably request to qualify the Securities for offering and sale under the securities laws of such jurisdictions as the Representative may request and to comply with such laws so as to permit the continuance of sales and dealings therein in such jurisdictions for as long as may be necessary to complete the distribution of the Securities, provided that in connection therewith the Offerors shall not be required to qualify as foreign corporations or to file general consents to service of process in any jurisdiction;

(c) Prior to 10:00 a.m., New York City time, on the New York business day succeeding the date of this Agreement, or as soon thereafter as may be reasonably practicable, to furnish the Underwriters with written and electronic copies of the Prospectus in such quantities as the Representative may from time to time reasonably request, and, if the delivery of a prospectus is required at any time prior to the expiration of nine months after the time of issue of the Prospectus in connection with the offering or sale of the Securities and if at such time any event shall have occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein,

in the light of the circumstances under which they were made when such Prospectus is delivered, not misleading, or, if for any other reason it shall be necessary during such period to amend or supplement the Prospectus or to file under the Exchange Act any document incorporated by reference in the Prospectus in order to comply with the Act, the Exchange Act or the Trust Indenture Act, to notify the Representative and upon their reasonable request to file such document and to prepare and furnish without charge to each Underwriter and to any dealer in securities as many written and electronic copies as the Representative may from time to time reasonably request of an amended Prospectus or a supplement to the Prospectus which will correct such statement or omission or effect such compliance, and in case any Underwriter is required to deliver a prospectus in connection with sales of any of the Securities at any time nine months or more after the time of issue of the Prospectus, upon their request but at the expense of such Underwriter, to prepare and deliver to such Underwriter as many written and electronic copies as such Underwriter may request of an amended or supplemented Prospectus complying with Section 10(a)(3) of the Act;

(d) To make generally available to its securityholders as soon as practicable, but in any event not later than eighteen months after the effective date of the Registration Statement (as defined in Rule 158(c) under the Act), an earnings statement of the Company and its subsidiaries (which need not be audited) covering a period of at least 12 months beginning after the later of (i) the effective date of the Registration Statement or of the most recent post-effective amendment to the Registration Statement to become effective prior to the date of this Agreement, whichever is later, and (ii) the date of the Company's most recent Annual Report on Form 10-K filed with the Commission prior to the date of this Agreement, which will satisfy the provisions of Section 11(a) of the Act and the rules and regulations thereunder including Rule 158;

(e) During the period beginning from the date hereof and continuing to and including the later of (i) the completion of the distribution of the Securities, as shall be promptly notified to the Offerors by the Representative upon such completion, but in no event shall such period exceed 90 days from the Time of Delivery, and (ii) the Time of Delivery, not to offer, sell, contract to sell or otherwise dispose of, except as provided hereunder, any securities of the Company that are substantially similar to the Securities, without the prior written consent of the Representative (it being understood that this paragraph shall not prohibit the issuance of commercial paper or other debt securities with scheduled maturities of less than one year, debt securities issued in connection with any credit facility, or debt securities issued as collateral for other obligations);

(f) To use the net proceeds received by it from the sale of the Securities pursuant to this Agreement in the manner specified in the Prospectus under the caption "Use of Proceeds".

6. The Company hereby covenants and agrees with the several Underwriters that the Company will pay or cause to be paid the following: (i) the fees, disbursements

and expenses of the Company's counsel and accountants in connection with the registration of the Securities under the Act and all other expenses in connection with the preparation, printing and filing of the Registration Statement, any preliminary prospectus and the Prospectus and amendments and supplements thereto and the mailing and delivering of copies thereof to the Underwriters and dealers; (ii) the cost of printing or producing any agreement among Underwriters, this Agreement, the Indenture, the Declaration, the Guarantee Agreement, the Agreement as to Expenses and Liabilities, the Remarketing Agreement, the Calculation Agent Agreement, the Blue Sky Memorandum, closing documents (including any compilations thereof) and any other documents in connection with the offering, purchase, sale and delivery of the Securities; (iii) any expenses in connection with the qualification of the Securities for offering and sale under state securities laws as provided in Section 5(b) hereof, including the fees and disbursements of counsel for the Underwriters in connection with such qualification and in connection with the Blue Sky survey, if any; (iv) any fees charged by securities rating services for rating the Securities; (v) any filing fees incident to, and the fees and disbursements of counsel for the Underwriters in connection with any required review by the National Association of Securities Dealers, Inc. of the terms of the sale of the Securities; (vi) the cost of preparing the Securities; and (vii) the fees and expenses of the Trustees and any agent of the Trustees and the fees and disbursements of counsel for the Trustees, and (viii) all other costs and expenses incident to the performance of its obligations hereunder which are not otherwise specifically provided for in this Section. It is understood, however, that, except as provided in this Section, and Sections 8 and 11 hereof, the Underwriters will pay all of their own costs and expenses, including the fees of their counsel, transfer taxes on resale of any of the Securities by them, and any advertising expenses connected with any offers they may make.

7. The obligations of the Underwriters hereunder shall be subject, in the discretion of the Representative, to the condition that all representations and warranties and other statements of the Offerors herein are, at and as of the Time of Delivery, true and correct, the condition that the Offerors shall have performed all of their obligations hereunder theretofore to be performed, and the following additional conditions:

(a) The Prospectus shall have been filed with the Commission pursuant to Rule 424(b) under the Act within the applicable time period prescribed for such filing by the rules and regulations under the Act and in accordance with Section 5(a) hereof; no stop order suspending the effectiveness of the Registration Statement or any part thereof shall have been issued and no proceeding for that purpose shall have been initiated or threatened by the Commission; and all requests for additional information on the part of the Commission shall have been complied with to the reasonable satisfaction of the Representative;

(b) There shall have been issued and there shall be in full force and effect, (i) appropriate orders of the WUTC, the IPUC and the OPUC permitting the issuance and sale of the Securities on the terms herein set forth or contemplated, and containing no provision reasonably unacceptable to the Representatives, it being understood that no such order in effect on the date of this

Agreement contains any such unacceptable provision, and (ii) appropriate exemptive orders of the MPSC and the CPUC;

(c) Sullivan & Cromwell LLP, counsel for the Underwriters, shall have furnished to the Representative such written opinion or opinions, dated the Time of Delivery, with respect to the incorporation of the Company and the formation of the Trust, the Declaration of Trust, the Guarantee Agreement and the Securities, the Indenture, the Registration Statement and the Prospectus, as well as such other related matters as the Representative may reasonably request, and such counsel shall have received such papers and information as they may reasonably request to enable them to pass upon such matters. In rendering such opinion or opinions, Sullivan & Cromwell LLP may rely, as to the incorporation of the Company and as to all other matters governed by Washington, California, Idaho, Montana or Oregon law, upon the opinion of Heller Ehrman White & McAuliffe LLP referred to below and as to the creation of the Trust and as to other matters governed by Delaware law, upon the opinion of Richards, Layton & Finger, P.A., referred to below;

(d) David J. Meyer, Senior Vice President and Chief Counsel for Regulatory and Governmental Affairs for the Company, shall have furnished to the Representative his written opinion or opinions, dated the Time of Delivery, to the effect set forth in Exhibit A hereto;

(e) At the Time of Delivery, Heller Ehrman White & McAuliffe LLP and Dewey Ballantine LLP shall have furnished to the Representative opinions, each dated as of the Time of Delivery, to the effect set forth in Exhibit A hereto;

(f) At the Time of Delivery, Richards, Layton & Finger, P.A., Delaware counsel for the Trust, shall have furnished to the Representative opinions, each dated as of the Time of Delivery as the Representative may reasonably request to the effect set forth in Exhibit B hereto;

(g) At the Time of Delivery, _____, Delaware counsel for the Delaware Trustee, shall have furnished to the Representative opinions, each dated as of the Time of Delivery as the Representative may reasonably request to the effect set forth in Exhibit C hereto;

(h) At the Time of Delivery, Seed Mackall LLP, counsel to the Institutional Trustee, the Guarantee Trustee, the Indenture Trustee and the Calculation Agent, shall have furnished to the Representative opinions, each dated as of the Time of Delivery as the Representative may reasonably request to the effect set forth in Exhibit D hereto;

(i) On the date of the Prospectus at a time prior to the execution of this Agreement and at the Time of Delivery, Deloitte & Touche LLP shall have furnished to the Representative a letter or letters, dated the respective dates of delivery thereof, in form and substance satisfactory to the Representative;

(j) Except as set forth in or contemplated by the Prospectus, (i) since the respective dates as of which information is given in the Prospectus there shall not have been (A) any Material Adverse Change, (B) any transaction entered into by the Company or any subsidiary thereof which is material to the Company and its subsidiaries as a whole other than transactions in the ordinary course of business, or (C) any change in the capital stock or long-term debt of the Company or any of its subsidiaries (except for shares of common stock issued under the Company's Dividend-Reinvestment and Stock Purchase Plan and employee stock plans and except for scheduled maturities of long-term debt) and (ii) neither the Company nor any of its subsidiaries shall have any contingent obligation which is material to the Company and its subsidiaries as a whole, the effect of which, in the case of any such event specified in clauses (i) or (ii) above, is in the judgment of the Representative so material and adverse as to make it impracticable or inadvisable to proceed with the public offering or delivery of the Preferred Securities on the terms and in the manner contemplated in this Agreement or in the Prospectus;

(k) On or after the date hereof (i) no downgrading shall have occurred in the rating accorded the Company's debt securities or preferred securities by any "nationally recognized statistical rating organization", as such term is defined by the Commission for purposes of Rule 436(g)(2) under the Act, and (ii) no such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the Company's debt securities or preferred securities;

(l) On or after the date hereof there shall not have occurred any of the following: (i) a suspension or material limitation in trading in securities generally on the New York Stock Exchange or on the Pacific Stock Exchange; (ii) a suspension or material limitation in trading in the Company's securities on any securities exchange or in any over-the-counter market; (iii) a general moratorium on commercial banking activities in New York declared by either Federal or New York State authorities or a material disruption in commercial banking or securities settlement or clearance services in the United States; or (iv) the outbreak of hostilities or the escalation of existing hostilities involving the United States or the declaration by the United States of a national emergency or war, or the occurrence of any other national or international calamity or crises, including without limitation, acts of terrorism, or any change in financial, political or economic conditions in the United States or elsewhere, if the effect of any such event specified in this clause (iv) in the judgment of the Representative, makes it impracticable or inadvisable to proceed with the public offering or delivery of the Securities on the terms and in the manner contemplated in the Prospectus;

(m) The Offerors shall have complied with the provisions of Section 5(c) hereof with respect to the furnishing of prospectuses; and

(n) The Offerors shall have furnished or caused to be furnished to the Representative at the Time of Delivery certificates of officers of the Offerors

satisfactory to the Representative as to the accuracy of the representations and warranties of the Offerors herein at and as of the Time of Delivery, as to the performance by the Offerors of all of their obligations hereunder to be performed at or prior to the Time of Delivery, as to the matters set forth in subsection (a) and (i) of this Section and as to such other matters as the Representative may reasonably request.

8. (a) The Company will indemnify and hold harmless each Underwriter against any losses, claims, damages or liabilities, joint or several, to which such Underwriter may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus, the Registration Statement or the Prospectus, or any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each Underwriter for any legal or other expenses reasonably incurred by such Underwriter in connection with investigating or defending any such action or claim as such expenses are incurred; PROVIDED, HOWEVER, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in any preliminary prospectus, the Registration Statement or the Prospectus or any such amendment or supplement in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representative expressly for use therein and PROVIDED, FURTHER, that the Company shall not be liable to any Underwriter under this subsection in respect of any such loss, claim, damage or liability arising out of or based upon an untrue statement or alleged untrue statement in, or an omission or alleged omission from, any preliminary prospectus if (i) such Underwriter sold securities to a person to whom it delivered a copy of such preliminary prospectus, (ii) no copy of the Prospectus was delivered to such person with or prior to the written confirmation of the sale involved, (iii) the Company had previously furnished copies of the Prospectus in sufficient quantities and sufficiently in advance of the Time of Delivery to allow for the distribution thereof prior to the Time of Delivery and (iv) the defect in such preliminary prospectus was corrected in the Prospectus;

(b) Each Underwriter will indemnify and hold harmless the Offerors against any losses, claims, damages or liabilities to which the Offerors may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus, the Registration Statement or the Prospectus, or any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in any preliminary prospectus, the Registration Statement or the Prospectus or any such amendment or supplement in reliance upon and in conformity with written information furnished to the

Offerors by such Underwriter through the Representative expressly for use therein; and will reimburse the Offerors for any legal or other expenses reasonably incurred by the Offerors in connection with investigating or defending any such action or claim as such expenses are incurred;

(c) Promptly after receipt by an indemnified party under subsection (a) or (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve it from any liability which it may have to any indemnified party otherwise than under such subsection. In case any such action shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such subsection for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation. Notwithstanding the foregoing, in any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. The indemnifying party shall not, without the written consent of the indemnified party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (i) includes an unconditional release of the indemnified party from all liability arising out of such action or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any indemnified party. The indemnified party shall not, without the written consent of the indemnifying party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any such pending or threatened action or claim;

(d) If the indemnification provided for in this Section 8 is unavailable to or insufficient to hold harmless an indemnified party under subsection (a) or (b) above in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the

relative benefits received by the Company on the one hand and the Underwriters on the other from the offering of the Securities. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law or if the indemnified party failed to give the notice required under subsection (c) above, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the table on the cover page of the Prospectus. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or the Underwriters on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this subsection (d) were determined by PRO RATA allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection (d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above in this subsection (d) shall, except as limited by subsection (c) above, be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (d), no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this subsection (d) to contribute are several in proportion to their respective underwriting obligations and not joint;

(e) The obligations of the Company under this Section 8 shall be in addition to any liability which the Company may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls any Underwriter within the meaning of the Act; and the obligations of the Underwriters under this Section 8 shall be in addition to any liability which the respective Underwriters may otherwise have and shall extend, upon the same terms and conditions, to each officer and director of the Offerors and to each person, if any, who controls the Offerors within the meaning of the Act.

9. (a) If any Underwriter shall default in its obligation to purchase the Securities which it has agreed to purchase hereunder at a Time of Delivery, the Representative may in their discretion arrange for themselves or another party or other parties to purchase such Securities on the terms contained herein. If within thirty-six hours after such default by any Underwriter the Representative does not arrange for the purchase of such Securities, then the Offerors shall be entitled to a further period of thirty-six hours within which to procure another party or other parties reasonably satisfactory to the Representative to purchase such Securities on such terms. In the event that, within the respective prescribed periods, the Representative notifies the Offerors that they have so arranged for the purchase of such Securities, or the Offerors notify the Representative that it has so arranged for the purchase of such Securities, the Representative or the Offerors shall have the right to postpone the Time of Delivery for a period of not more than seven days, in order to effect whatever changes may thereby be made necessary in the Registration Statement or the Prospectus, or in any other documents or arrangements, and the Offerors agree to file promptly any amendments to the Registration Statement or the Prospectus which, in the reasonable judgment of the Representative, may thereby be made necessary. The term "Underwriter" as used in this Agreement shall include any person substituted under this Section 9 with like effect as if such person had originally been a party to this Agreement with respect to such Securities;

(b) If, after giving effect to any arrangements for the purchase of the Securities of a defaulting Underwriter or Underwriters by the Representative and the Offerors as provided in subsection (a) above, the aggregate principal amount of such Securities which remains unpurchased does not exceed one-tenth of the aggregate principal amount of all the Securities to be purchased at the Time of Delivery, then the Offerors shall have the right to require each non-defaulting Underwriter to purchase the principal amount of Securities which such Underwriter agreed to purchase hereunder at the Time of Delivery and, in addition, to require each non-defaulting Underwriter to purchase its PRO RATA share (based on the principal amount of Securities which such Underwriter agreed to purchase hereunder) of the Securities of such defaulting Underwriter or Underwriters for which such arrangements have not been made; but nothing herein shall relieve a defaulting Underwriter from liability for its default;

(c) If, after giving effect to any arrangements for the purchase of the Securities of a defaulting Underwriter or Underwriters by the Representative and the Offerors as provided in subsection (a) above, the aggregate principal amount of such Securities which remains unpurchased exceeds one-tenth of the aggregate principal amount of all the Securities to be purchased at the Time of Delivery, or if the Offerors shall not exercise the right described in subsection (b) above to require non-defaulting Underwriters to purchase Securities of a defaulting Underwriter or Underwriters, then this Agreement shall thereupon terminate, without liability on the part of any non-defaulting Underwriter or the Offerors, except for the expenses to be borne by the Offerors and the Underwriters as provided in Section 6 hereof and the indemnity and contribution agreements in Section 8 hereof; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

10. The respective indemnities, agreements, representations, warranties and other statements of the Offerors and the several Underwriters, as set forth in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement, shall remain in full force and effect, regardless of any investigation (or any statement as to the results thereof) made by or on behalf of any Underwriter or any controlling person of any Underwriter, or the Offerors, or any officer or director or controlling person of the Offerors, and shall survive delivery of and payment for the Securities.

11. If this Agreement shall be terminated pursuant to Section 9 hereof, the Offerors shall not then be under any liability to any Underwriter except as provided in Sections 6 and 8 hereof; but, if this Agreement is not consummated for any other reason, the Offerors will reimburse the Underwriters through the Representative for all out-of-pocket expenses approved in writing by the Representative, including fees and disbursements of counsel, reasonably incurred by the Underwriters in making preparations for the purchase, sale and delivery of the Securities not so delivered, but the Offerors shall then be under no further liability to any Underwriter except as provided in Sections 6 and 8 hereof.

12. In all dealings hereunder, the Representative shall act on behalf of each of the Underwriters, and the parties hereto shall be entitled to act and rely upon any statement, request, notice or agreement on behalf of any Underwriter made or given by such Representative.

All statements, requests, notices and agreements hereunder shall be in writing, and if to the Underwriters shall be delivered or sent by mail, telex or facsimile transmission to the Representative at 745 7th Avenue, New York, NY 10019, Attention: Debt Capital Markets, Power Group (with a copy to the General Counsel at the same address); and if to the Offerors shall be delivered or sent by mail to the address of the Offerors set forth in the Registration Statement, Attention: Treasurer. Any such statements, requests, notices or agreements shall take effect upon receipt thereof.

13. This Agreement shall be binding upon, and inure solely to the benefit of, the Underwriters, the Offerors and, to the extent provided in Sections 8 and 10 hereof, the officers and directors of the Offerors and each person who controls the Offerors or any Underwriter, and their respective heirs, executors, administrators, successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement. No purchaser of any of the Securities from any Underwriter shall be deemed a successor or assign by reason merely of such purchase.

14. Time shall be of the essence of this Agreement.

15. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

16. This Agreement may be executed by any one or more of the parties hereto in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

If the foregoing is in accordance with your understanding, please sign and return to us 8 counterparts hereof, and upon the acceptance hereof by you, on behalf of each of the Underwriters, this Agreement and such acceptance hereof shall constitute a binding agreement between each of the Underwriters and the Offerors. It is understood that the acceptance by you of this letter on behalf of each of the Underwriters is pursuant to the authority set forth in the Agreement Among Underwriters, a copy of which shall be submitted to the Offerors for examination, but without warranty on the part of the Representative as to the authority of the signers thereof (other than the Representative).

Very truly yours,

AVA CAPITAL TRUST III

By: Avista Corporation, as Sponsor

By: -----
Name:
Title:

AVISTA CORPORATION

By: -----
Name: Malyn K. Malquist
Title: Senior Vice President and Chief Financial Officer

Accepted as of the date hereof:

LEHMAN BROTHERS INC.

By: -----
Name:
Title:

On behalf of each of the Underwriters

SCHEDULE I

UNDERWRITER	NUMBER OF PREFERRED SECURITIES TO BE PURCHASED
Lehman Brothers Inc.....	-----
McDonald Investments, Inc.....	
Piper Jaffray & Co.....	
Total.....	

SCHEDULE II

Initial public offering price per Preferred Security (and purchase price per security to be paid by the several Underwriters): \$_____

Compensation per Preferred Security to be paid by the Company to the several Underwriters in respect of their commitments: \$_____ per Preferred Security

EXHIBIT A
CONTENTS OF OPINIONS OF COUNSEL

AMENDED AND RESTATED
CERTIFICATE OF TRUST
OF
WASHINGTON WATER POWER CAPITAL III

THIS Amended and Restated Certificate of Trust of Washington Water Power Capital III (the "Trust") is being duly executed and filed by the undersigned, as trustee of the Trust, to amend and restate the original Certificate of Trust of the Trust (the "Certificate of Trust"), which was filed with the Secretary of State of the State of Delaware (the "Secretary of State") on November 4, 1996, under the Delaware Statutory Trust Act (12 DEL. C.ss.3801, ET SEQ.) (the "Act").

1. NAME. The name of the statutory trust is AVA Capital Trust III.

2. DELAWARE TRUSTEE. The name and business address of the trustee of the Trust in the State of Delaware are SunTrust Delaware Trust Company, 1011 Centre Road, Suite 205, Wilmington, DE 19805.

3. EFFECTIVE DATE. This Amended and Restated Certificate of Trust shall be effective upon the date and time of filing.

4. COUNTERPARTS. This Certificate of Trust may be executed in one or more counterparts.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned, being a trustee of the Trust, has duly executed this Amended and Restated Certificate of Trust in accordance with Section 3811(a) of the Act.

MALYN K. MALQUIST, as Regular Trustee

/S/ MALYN K. MALQUIST

REMOVAL AND APPOINTMENT OF TRUSTEES
AND
AMENDMENT OF DECLARATION OF TRUST
OF
WASHINGTON WATER POWER CAPITAL III

This Removal and Appointment of Trustees and Amendment of Declaration of Trust of Washington Water Power Capital III (the "Trust") is made as of March 9, 2004 (this "Appointment and Amendment"), among Avista Corporation, a Washington corporation, as successor in interest to The Washington Water Power Company, as sponsor (the "Sponsor"), Malyn K. Malquist and Diane C. Thoren, as Regular Trustees (the "Regular Trustees"), Union Bank of California, N.A., a national banking association ("Union Bank"), in its capacity as Institutional Trustee (the "Institutional Trustee"), and SunTrust Delaware Trust Company, a Delaware limited purpose trust company ("SunTrust"), in its capacity as Delaware Trustee (the "Delaware Trustee").

WHEREAS, the Trust was created pursuant to the filing of a Certificate of Trust of the Trust in the office of the Secretary of State of the State of Delaware (the "Secretary of State") on November 4, 1996, and by the entering into of a Declaration of Trust, dated as of November 4, 1996 (the "Declaration");

WHEREAS, the Sponsor desires to remove Wilmington Trust Company as a trustee of the Trust and to appoint Union Bank, as Institutional Trustee and SunTrust, as Delaware Trustee;

WHEREAS, Dorothy K. Mercer is not, and never has been, a trustee of the Trust;

WHEREAS, Union Bank desires to become the Institutional Trustee and SunTrust desires to become the Delaware Trustee; and, immediately following such appointments, Wilmington Trust Company shall be removed as a trustee of the Trust;

WHEREAS, the Sponsor desires to remove Lawrence J. Pierce, as Regular Trustee, and to appoint Malyn K. Malquist and Diane C. Thoren, as Regular Trustees;

WHEREAS, Malyn K. Malquist and Diane C. Thoren desire to become Regular Trustees and, immediately following such appointments, Lawrence J. Pierce shall be removed as a trustee of the Trust; and

WHEREAS, the parties hereto desire to change the name of the Trust to "AVA Capital Trust III."

NOW, THEREFORE, in consideration of the mutual promises and obligations contained herein, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Pursuant to Section 6 of the Declaration, the Sponsor hereby appoints Union Bank as the Institutional Trustee and SunTrust as the Delaware Trustee of the Trust.

Union Bank and SunTrust hereby accept such appointments and agree to be trustees of the Trust pursuant to the Declaration.

2. Immediately following the appointment by the Sponsor of Union Bank and SunTrust as trustees of the Trust pursuant to Section 1 hereof, the Sponsor hereby removes Wilmington Trust Company from the Trust as a trustee of the Trust. Wilmington Trust Company's removal shall be deemed effective immediately following the appointment by the Sponsor of Union Bank as Institutional Trustee and SunTrust as Delaware Trustee of the Trust, and their acceptance of such appointments pursuant to Section 1 hereof.

3. Pursuant to Section 6 of the Declaration, the Sponsor hereby appoints Malyn K. Malquist and Diane C. Thoren as Regular Trustees of the Trust. Malyn K. Malquist and Diane C. Thoren hereby accept such appointments and agree to be trustees of the Trust pursuant to the Declaration.

4. Immediately following the appointment by the Sponsor of Malyn K. Malquist and Diane C. Thoren as trustees of the Trust pursuant to Section 3 hereof, the Sponsor hereby removes Lawrence J. Pierce from the Trust as a trustee of the Trust. Lawrence J. Pierce's removal shall be deemed effective immediately following the appointment by the Sponsor of Malyn K. Malquist and Diane C. Thoren as Regular Trustees of the Trust, and their acceptance of such appointments pursuant to Section 3 hereof.

5. All references in the Declaration to the term "Trustees" are deemed to include a reference to Union Bank, SunTrust, Malyn K. Malquist and Diane C. Thoren as trustees of the Trust.

6. Each reference in the Declaration to "Wilmington Trust Company" shall be deemed a reference to Union Bank and SunTrust except with respect to such reference in Section 7 of the Declaration. The reference in Section 7 of the Declaration to "Wilmington Trust Company" shall be deemed a reference to SunTrust.

7. Each reference in the Declaration to "Lawrence J. Pierce" or "Lawrence J. Pierce and Dorothy K. Mercer" shall be deemed a reference to Malyn K. Malquist and Diane C. Thoren.

8. Section 1 of the Declaration is hereby amended and restated in its entirety as follows:

1. The trust created hereby shall be known as "AVA Capital Trust III" (the "Trust"), in which name the Trustees, or the Sponsor to the extent provided herein, may conduct the business of the Trust, make and execute contracts, and sue and be sued.

9. Each reference in the Declaration to the "Business Trust Act" shall be deemed to be a reference to the "Statutory Trust Act." Each reference in the Declaration to "business trust" shall be deemed to be a reference to "statutory trust."

10. Each reference in the Declaration to "Merrill Lynch, Pierce, Fenner & Smith Incorporated" shall be deemed a reference to Lehman Brothers, Inc.

11. Each Regular Trustee, acting singly or jointly, is hereby authorized and directed to execute and file an Amended and Restated Certificate of Trust of the Trust in the office of the Secretary of State of the State of Delaware changing the name of the Trust to "AVA Capital Trust III" and changing the name and address of the Delaware Trustee.

12. This Appointment and Amendment may be executed in one or more counterparts.

13. Except to the extent that it is expressly modified by this Appointment and Amendment, the Declaration shall continue in full force and effect.

14. This Appointment and Amendment shall be governed by, and construed in accordance with, the laws of the State of Delaware (without regard to conflict of laws principles).

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Appointment and Amendment to be duly executed as of the date and year first above written.

AVISTA CORPORATION, as Sponsor

By: /s/ MALYN K. MALQUIST

Name:
Title

UNION BANK OF CALIFORNIA, N.A., as
Institutional Trustee

By: /s/ SONIA N. FLORES

Name: Sonia N. Flores
Title Vice President

SUNTRUST DELAWARE TRUST COMPANY,
as Delaware Trustee

By: /s/ SUSAN D. TINSLEY

Name: Susan D. Tinsley
Title Assistant Vice President

Malyn K. Malquist, as Regular Trustee

/s/ MALYN K. MALQUIST

Diane C. Thoren, as Regular Trustee

/s/ DIANE C. THOREN

AVA CAPITAL TRUST III

AMENDED AND RESTATED

DECLARATION OF TRUST

AMONG

AVISTA CORPORATION, AS SPONSOR,
 UNION BANK OF CALIFORNIA, N.A., AS INSTITUTIONAL TRUSTEE,
 SUNTRUST DELAWARE TRUST COMPANY, AS DELAWARE TRUSTEE,

AND

MALYN K. MALQUIST AND DIANE C. THOREN,
 AS REGULAR TRUSTEES

DATED AS OF _____, 2004

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AVA CAPITAL TRUST III

Certain Sections of this Declaration of Trust relating to
 Sections 310 through 318 of the
 Trust Indenture Act of 1939:

TRUST INDENTURE ACT SECTION	DECLARATION OF TRUST SECTION

Section 310(a)(1)	8.07
(a)(2)	8.07
(a)(3)	8.09
(a)(4)	Not Applicable
(b)	8.08
Section 311(a)	8.13
(b)	8.13
Section 312(a)	5.07
(b)	5.07
(c)	5.07
Section 313(a)	8.14(a)
(a)(4)	8.14(b)
(b)	8.14(b)
(c)	8.14(a)
(d)	8.14(a), 8.14(b)
Section 314(a)	8.15
(b)	Not Applicable
(c)(1)	8.15, 8.16
(c)(2)	8.16
(c)(3)	8.16
(d)	Not Applicable
(e)	8.16
Section 315(a)	8.01
(b)	8.02, 8.14(b)
(c)	8.01(a)
(d)	8.01, 8.03
(e)	Not Applicable
Section 316(a)	Not Applicable
(a)(1)(A)	8.19
(a)(1)(B)	8.19
(a)(2)	Not Applicable
(b)	Not Applicable
(c)	Not Applicable
Section 317(a)(1)	Not Applicable
(a)(2)	Not Applicable
(b)	5.09
Section 318(a)	11.10

 Note: This Cross Reference Table does not constitute part of the Declaration and shall not affect the interpretation of any of its terms and provisions.

AMENDED AND RESTATED DECLARATION OF TRUST

THIS AMENDED AND RESTATED DECLARATION OF TRUST ("Declaration") is made as of _____, 2004, by and among (i) Avista Corporation, a Washington corporation (the "Sponsor" or the "Company"); (ii) Union Bank of California, N.A., banking corporation duly organized and existing under the laws of the United States of America, as trustee (the "Institutional Trustee" and, in its separate corporate capacity and not in its capacity as Trustee, the "Bank"); (iii) SunTrust Delaware Trust Company, a banking corporation duly organized and existing under the laws of the State of Delaware, as Delaware trustee (the "Delaware Trustee" and, in its separate corporate capacity and not in its capacity as Delaware Trustee, the "Delaware Bank"); (iv) Malyn K. Malquist, an individual, and Diane C. Thoren, an individual, as regular trustees (each a "Regular Trustee" and together the "Regular Trustees") (the Institutional Trustee, the Delaware Trustee and the Regular Trustees referred to collectively as the "Trustees"); and (v) the several Holders, as hereinafter defined.

W I T N E S S E T H :

WHEREAS, a statutory trust has been declared and established pursuant to the Delaware Statutory Trust Act by entering into that certain Declaration of Trust, dated as of November 4, 1996 (the "1996 Declaration"), and by the execution and filing by the Trustees with the Secretary of State of the State of Delaware of the Certificate of Trust, dated November 4, 1996;

WHEREAS, pursuant to the Removal and Appointment of Trustee and Amendment of the Declaration of Trust of the Trust, entered into by the Sponsor, the Bank, the Delaware Bank and a Regular Trustee, dated as of _____, 2004, (i) the Sponsor removed Wilmington Trust Company as a trustee of the Trust and appointed the Bank and the Delaware Bank as trustees of the Trust; (ii) the Sponsor removed Lawrence J. Pierce as a trustee of the Trust and appointed Malyn K. Malquist and Diane C. Thoren as trustees of the Trust; and (iii) the 1996 Declaration was amended by changing the name of the Trust from Washington Water Power Capital III to AVA Capital Trust III. The 1996 Declaration, as amended by the Removal and Appointment of Trustee and Amendment of the Declaration of Trust is referred to as the "Original Declaration."

WHEREAS, _____ executed and filed the Amended and Restated Certificate of Trust of the Trust with the Secretary of State of the State of Delaware on _____, 2004;

WHEREAS, the parties hereto desire to amend and restate the Original Declaration in its entirety as set forth herein to provide for, among other things, (i) the acquisition by the Trust from the Sponsor of all of the right, title and interest in the Subordinated Debt Securities; (ii) the issuance of the Common Securities by the Trust to the Sponsor; and (iii) the issuance and sale of the Preferred Securities by the Trust pursuant to the Underwriting Agreement.

NOW THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, each party, for the benefit of the other parties and for the benefit of the Securityholders, hereby amends and restates the Original Declaration in its entirety and agrees as follows:

ARTICLE I
DEFINED TERMS

SECTION 1.01. DEFINITIONS

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

(a) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;

(b) all other terms used herein that are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;

(c) unless the context otherwise requires, any reference to an "Article" or a "Section" refers to an Article or a Section, as the case may be, of this Declaration; and

(d) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Declaration as a whole and not to any particular Article, Section or other subdivision.

"Act" has the meaning specified in Section 6.08.

"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.

"Bank" has the meaning specified in the preamble to this Declaration.

"Bankruptcy Event" means, with respect to any Person:

(i) the entry of a decree or order by a court having jurisdiction in the premises judging such Person a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjudication or composition of or in respect of such Person under federal bankruptcy law or any other applicable federal or state law, or appointing a receiver, liquidator, assignee, trustee, sequestrator or other similar official of such Person or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of such decree or order unstayed and in effect for a period of 60 consecutive days; or

(ii) the institution by such Person 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 federal bankruptcy law or any other applicable federal or state law, or the consent by it to the filing of such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or similar official of such Person 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 action by such Person in furtherance of any such action.

"Bankruptcy Laws" has the meaning specified in Section 11.09.

"Board Resolution" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Sponsor to have been duly adopted by the Sponsor's Board of Directors or a duly authorized committee thereof and to be in full force and effect on the date of such certification, and delivered to the Trustees.

"Book-Entry Preferred Securities Certificates" means certificates representing Preferred Securities issued in global, fully registered form to the Clearing Agency as described in Section 5.11.

"Business Day" means a day other than (i) a Saturday or a Sunday; (ii) a day on which banks in New York, New York are authorized or obligated by law or executive order to remain closed; or (iii) a day on which the Indenture Trustee's corporate trust office is closed for business.

"Calculation Agent" means Union Bank of California, N.A., acting as calculation agent, or its successor appointed by the Company and the Trust.

"Calculation Agent Agreement" means the agreement among the Company, the Trust and Union Bank of California, N.A., as calculation agent, dated as of _____, 2004.

"Certificate Depository Agreement" means the agreement among the Trust, the Institutional Trustee and The Depository Trust Company, as the initial Clearing Agency, dated _____, 2004, relating to the Preferred Securities Certificates.

"Clearing Agency" means an organization registered as a "clearing agency" pursuant to Section 17A of the Exchange Act. The Depository Trust Company will be the initial Clearing Agency.

"Clearing Agency Participant" means a broker, dealer, bank, other financial institution or other Person for whom from time to time a Clearing Agency effects book-entry transfers and pledges of securities deposited with the Clearing Agency.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commission" means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this 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 at such time.

"Common Security" means an undivided beneficial interest in the assets of the Trust having a Liquidation Amount of \$1,000 and having the rights provided therefor in this Declaration, including the right to receive Distributions and a Liquidation Distribution as provided herein.

"Common Securities Certificate" means a certificate evidencing ownership of a Common Security or Securities, substantially in the form attached as Exhibit C.

"Company" means Avista Corporation.

"Declaration" means this Amended and Restated Declaration of Trust, as the same may be modified, amended or supplemented in accordance with the applicable provisions hereof, including all exhibits hereto, including, for all purposes of this Amended and Restated Declaration of Trust and any modification, amendment or supplement, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this Amended and Restated Declaration of Trust and any such modification, amendment or supplement, respectively.

"Definitive Preferred Securities Certificates" means either or both (as the context requires) of (i) Preferred Securities Certificates issued in certificated, fully registered form as provided in Section 5.11(a) and (ii) Preferred Securities Certificates issued in certificated, fully registered form as provided in Section 5.13.

"Delaware Bank" has the meaning specified in the preamble to this Declaration.

"Delaware Statutory Trust Act" means Chapter 38 of Title 12 of the Delaware Code, 12 Del. Code Section 3801 et seq., as it may be amended from time to time.

"Delaware Trustee" means the commercial bank or trust company or any other Person identified as the "Delaware Trustee" and has the meaning specified in the preamble to this Declaration solely in its capacity as Delaware Trustee of the Trust and not in its individual capacity, or its successor in interest in such capacity, or any successor Delaware Trustee appointed as herein provided.

"Designated CMT Maturity Index" means the original period to maturity of the U.S. Treasury securities (10 years) with respect to which the 10-year Treasury CMT will be calculated.

"Distribution Payment Date" means each day on which Distributions are payable determined based on the prevailing Distribution Rate.

"Distribution Period" means each semiannual period in a Fixed Rate Period and each quarterly period in a Floating Rate Period for which Distributions are payable.

"Distribution Rate" means the rate at which Distributions will accrue in respect of any Distribution Period, as determined pursuant to the terms of this Declaration, whether by Remarketing or otherwise.

"Distributions" means amounts payable in respect of the Trust Securities as provided in Section 4.01.

"Election Date" means a date that is no later than the fifth Business Day prior to the proposed Remarketing Date.

"Event of Default" means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) the occurrence of an Indenture Event of Default;

(b) default by the Trust in the payment of any Distribution when it becomes due and payable, and continuation of such default for a period of 60 days;

(c) default by the Trust in the payment of any Redemption Price of any Trust Security when it becomes due and payable;

(d) default in the performance, or breach, in any material respect, of any covenant or warranty of the Institutional Trustee and the Delaware Trustee in this Declaration (other than a covenant or warranty a default in the performance of which or the breach of which is dealt with in clause (b) or (c) above) and continuation of such default or breach for a period of 60 days after there has been given, by registered or certified mail, to the appropriate trustees and the Sponsor by the Holders of at least 33% in aggregate Liquidation Amount of the Outstanding Preferred Securities, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder;

(e) the occurrence of any Bankruptcy Event with respect to the Institutional Trustee or all or substantially all of its property if a successor Institutional Trustee has not been appointed within a period of 90 days thereof; or

(f) the occurrence of any Bankruptcy Event with respect to the Trust.

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

"Expense Agreement" means the Agreement as to Expenses and Liabilities between the Company and the Trust, substantially in the form attached as Exhibit B, as amended from time to time.

"Extension Period" has the meaning specified in Section 4.01(d).

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System.

"Fixed Rate" means the Distribution Rate during a Fixed Rate Period as determined by a Remarketing.

"Fixed Rate Period" means the Initial Fixed Rate Period and each period set by the Company and the Regular Trustees during a Remarketing for which the Fixed Rate determined in such Remarketing will apply; provided, however, that a Fixed Rate Period must be for a duration of at least six months, may not extend beyond the stated maturity of the Subordinated Debt Securities and may not end on a day other than a day immediately preceding a Distribution Payment Date.

"Floating Rate" means the Distribution Rate during a Floating Rate Period calculated pursuant to Section 4.02(e).

"Floating Rate Determination Date" means the second London Business Day immediately preceding the first day of the relevant Distribution Period in the Floating Rate Period.

"Floating Rate Period" means any period during which a Floating Rate is in effect.

"Guarantee" means the Guarantee Agreement executed and delivered by the Company and Union Bank of California, N.A., as Guarantee Trustee, contemporaneously with the execution and delivery of this Declaration, for the benefit of the Holders of the Trust Securities, as amended from time to time.

"Indenture Event of Default" means an "Event of Default" as defined in the Subordinated Indenture.

"Indenture Redemption Date" means "Redemption Date," as defined in the Subordinated Indenture.

"Indenture Trustee" means the trustee under the Subordinated Indenture.

"Initial Distribution Rate" means ____% per annum.

"Initial Fixed Rate Period" means the Issue Date through ____, 2009.

"Institutional Trustee" means the commercial bank or trust company identified as the "Institutional Trustee" in the preamble to this Declaration solely in its capacity as Institutional Trustee of the Trust and not in its individual capacity, or its successor in interest in such capacity, or any successor "Institutional Trustee" as herein provided.

"Investment Company Act" means the Investment Company Act of 1940, as amended.

"Issue Date" means the date of the delivery of the Trust Securities.

"Lien" means any lien, pledge, charge, encumbrance, mortgage, deed of trust, adverse ownership interest, hypothecation, assignment, security interest or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever.

"Like Amount" means (i) Trust Securities having a Liquidation Amount equal to the principal amount of Subordinated Debt Securities to be contemporaneously redeemed or repaid

in accordance with the Subordinated Indenture and the proceeds of which will be used to pay the Redemption Price of such Trust Securities and (ii) Subordinated Debt Securities having a principal amount equal to the Liquidation Amount of the Trust Securities of the Holder to whom such Subordinated Debt Securities are distributed.

"Liquidation Amount" means the stated amount of \$1,000 per Trust Security.

"Liquidation Date" means the date on which Subordinated Debt Securities are to be distributed to Holders of Trust Securities in connection with a dissolution and liquidation of the Trust pursuant to Section 9.04.

"Liquidation Distribution" has the meaning specified in Section 9.05.

"London Business Day" means a day that is a Business Day and a day on which dealings in deposits in U.S. dollars are transacted, or with respect to any future date are expected to be transacted, in the London interbank market.

"Maturity Date of the Subordinated Debt Securities" means "Stated Maturity" as defined in the Subordinated Indenture.

"Majority in Liquidation Amount of the Preferred Securities" or "Majority in Liquidation Amount of the Common Securities" means, except as provided by the Trust Indenture Act, Preferred Securities or Common Securities, as the case may be, representing more than 50% of the aggregate Liquidation Amount of all then Outstanding Preferred Securities or Common Securities, as the case may be.

"Officers' Certificate" means a certificate signed by the Chairman of the Board, the President or a Vice President, and by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Sponsor, and delivered to the appropriate Trustee. One of the officers signing an Officers' Certificate given pursuant to Section 8.16 shall be the principal executive, financial or accounting officer of the Sponsor. An Officers' Certificate delivered with respect to compliance with a condition or covenant provided for in this Declaration shall include:

(a) a statement that each officer signing the Officers' Certificate has read the covenant or condition and the definitions relating thereto;

(b) a brief statement of the nature and scope of the examination or investigation undertaken by each officer in rendering the Officers' Certificate;

(c) a statement that each such officer has made such examination or investigation as is necessary, in such officer's opinion, to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such officer, such condition or covenant has been complied with.

"Opinion of Counsel" means a written opinion of counsel, who may be counsel for the Trust, the Trustees or the Sponsor, but not an employee of the Trust or the Trustees, and who

shall be reasonably acceptable to the Institutional Trustee. Any Opinion of Counsel pertaining to federal income tax matters may rely on published rulings of the Internal Revenue Service.

"Original Declaration of Trust" has the meaning specified in the recitals to this Declaration.

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

(i) Preferred Securities theretofore canceled by the Regular Trustees or delivered to the Regular Trustees for cancellation;

(ii) Preferred Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Institutional Trustee or any Paying Agent for the Holders of such Preferred Securities; provided that if such Preferred Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Declaration; and

(iii) Preferred Securities in exchange for or in lieu of which other Preferred Securities have been authenticated and delivered pursuant to this Declaration;

provided, however, that in determining whether the Holders of the requisite Liquidation Amount of the Outstanding Preferred Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Preferred Securities owned by the Sponsor, the Holder of the Common Securities, any Trustee or any Affiliate of the Sponsor or any Trustee shall be disregarded and deemed not to be Outstanding, except that (a) in determining whether any Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Preferred Securities which such Trustee knows to be so owned shall be so disregarded and (b) the foregoing shall not apply at any time when all of the outstanding Preferred Securities are owned by the Sponsor, the Holder of the Common Securities, one or more Trustees and/or any such Affiliate. Preferred Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Regular Trustees the pledgee's right to act with respect to such Preferred Securities and that the pledgee is not the Sponsor or any Affiliate of the Sponsor.

"Owner" means each Person who is the beneficial owner of a Book-Entry Preferred Securities Certificate as reflected in the records of the Clearing Agency or, if a Clearing Agency Participant is not the Owner, then as reflected in the records of a Person maintaining an account with such Clearing Agency (directly or indirectly, in accordance with the rules of such Clearing Agency).

"Paying Agent" means any paying agent or co-paying agent appointed pursuant to Section 5.09 and shall initially be the Institutional Trustee.

"Payment Account" means a segregated non-interest-bearing corporate trust account maintained by the Institutional Trustee for the benefit of the Securityholders in which all amounts paid in respect of the Subordinated Debt Securities will be held and from which the Institutional Trustee shall make payments to the Securityholders in accordance with Section 4.01.

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

"Preferred Securities Certificate" means a certificate evidencing ownership of a Preferred Security or Securities, substantially in the form attached as Exhibit A.

"Preferred Security" means an undivided beneficial interest in the assets of the Trust having a Liquidation Amount of \$1,000 and having rights provided therefor in this Declaration, including the right to receive Distributions and a Liquidation Distribution as provided herein.

"Record Date" means the opening of business on the Business Day immediately preceding the relevant Distribution Payment Date.

"Redemption Date" means, with respect to any Trust Security to be redeemed, the date fixed for such redemption by or pursuant to this Declaration; provided that each Indenture Redemption Date and the Maturity Date of the Subordinated Debt Securities shall be a Redemption Date for a Like Amount of Trust Securities.

"Redemption Price" means, with respect to any date fixed for redemption of any Trust Security, the Liquidation Amount of such Trust Security, plus accrued and unpaid Distributions to such date.

"Relevant Trustee" shall have the meaning specified in Section 8.10.

"Remarketing" means the conduct by which a Fixed Rate shall be determined in accordance with the Remarketing Procedures.

"Remarketing Agent" means Lehman Brothers Inc., its successors or assigns, or such other remarketing agent appointed to such capacity by the Company and the Regular Trustees.

"Remarketing Agreement" means the agreement among the Company, the Trust and Lehman Brothers Inc., as remarketing agent, dated as of _____, 2004.

"Remarketing Date" means any Business Day no later than the third Business Day prior to any Remarketing Settlement Date.

"Remarketing Procedures" means those procedures set forth in Article X.

"Remarketing Settlement Date" means, to the extent applicable, (i) the first Business Day of the next Distribution Period following the expiration of the Initial Fixed Rate Period and any subsequent Fixed Rate Period; (ii) any Distribution Payment Date during a Floating Rate Period;

or (iii) any Distribution Payment Date during a time in which Preferred Securities are redeemable in a Fixed Rate Period subsequent to the Initial Fixed Rate Period.

"Regular Trustee" means each of the individuals identified as a "Regular Trustee" in the preamble to this Declaration solely in their capacities as Regular Trustees of the Trust formed and continued hereunder and not in their individual capacities, or such trustee's successor(s) in interest in such capacity, or any successor "Regular Trustee" appointed as herein provided.

"Securities Register" and "Securities Registrar" are described in Section 5.04.

"Securityholder" or "Holder" means a Person in whose name a Trust Security or Securities is registered in the Securities Register; and any such Person who is a beneficial owner within the meaning of the Delaware Statutory Trust Act.

"Sponsor" means Avista Corporation, in its capacity as "Sponsor" under this Declaration.

"Subordinated Debt Securities" means the \$_____ aggregate principal amount of the Sponsor's Subordinated Debt Securities due _____, issued pursuant to the Subordinated Indenture.

"Subordinated Indenture" means the Indenture, dated as of _____, 2004, between the Sponsor and the Indenture Trustee, as the same may be modified, amended or supplemented in accordance with the applicable provisions thereof.

"Telerate Page 3750" means the display designated on page 3750 on MoneyLine Telerate (or such other page as may replace the 3750 page on the service or such other service as may be nominated by the British Bankers' Association for the purpose of displaying London interbank offered rates for U.S. dollar deposits).

"Telerate Page 7051" means the display on MoneyLine Telerate (or any successor service), on such page (or any other page as may replace such page on that service), for the purpose of displaying Treasury Constant Maturities as reported in H.15(519).

"10-year Treasury CMT" has the meaning set forth in Section 4.02(e).

"30-year Treasury CMT" has the meaning set forth in Section 4.02(e).

"3-month LIBOR Rate" has the meaning set forth in Section 4.02(e).

"Trust" means the Delaware statutory trust continued hereby and identified on the cover page to this Declaration.

"Trustees" means the Persons identified as "Trustees" in the preamble to this Declaration solely in their capacities as Trustees of the Trust and not in their individual capacities, or their successor in interest in such capacity, or any successor trustee appointed as herein provided.

"Trust Indenture Act" means the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed; provided, however, that in the event the Trust Indenture Act

of 1939 is amended after such date, "Trust Indenture Act" means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

"Trust Property" means (i) the Subordinated Debt Securities; (ii) any cash on deposit in, or owing to, the Payment Account; and (iii) all proceeds and rights in respect of the foregoing and any other property and assets for the time being held or deemed to be held by the Institutional Trustee pursuant to this Declaration.

"Trust Securities Certificate" means any one of the Common Securities Certificates or the Preferred Securities Certificates.

"Trust Security" means any one of the Common Securities or the Preferred Securities.

"Underwriting Agreement" means the Underwriting Agreement, dated _____, 2004, among the Trust, the Sponsor and the underwriters named therein.

ARTICLE II ESTABLISHMENT OF THE TRUST

SECTION 2.01. NAME

The Trust continued hereby shall be known as "AVA Capital Trust III", in which name the Trustees may conduct the business of the Trust, make and execute contracts and other instruments on behalf of the Trust and sue and be sued. The Regular Trustees may change the name of the Trust from time to time following written notice to the Holders.

SECTION 2.02. OFFICES OF THE TRUSTEES; PRINCIPAL PLACE OF BUSINESS

The address of the Institutional Trustee is 475 Sansome Street, 12th Floor, San Francisco, California 94111, or at such other address as the Institutional Trustee may designate by written notice to the Securityholders and the Sponsor. The principal place of business of the Delaware Trustee is c/o _____, _____, or at such other address in Delaware as the Delaware Trustee may designate by notice to the Sponsor. The address of the Regular Trustees is c/o Avista Corporation, 1411 East Mission Avenue, Spokane, Washington 99202, Attention: Treasurer. The principal place of business of the Trust is c/o Avista Corporation, 1411 East Mission Avenue, Spokane, Washington 99202. The Sponsor may change the principal place of business of the Trust at any time by giving notice thereof to the Trustees.

SECTION 2.03. INITIAL CONTRIBUTION OF TRUST PROPERTY; ORGANIZATIONAL EXPENSES

The Trust received from the Sponsor in connection with the Original Declaration of the sum of \$10, which constituted the initial Trust Property. The Sponsor, as obligor of the Subordinated Debt Securities, shall pay all costs and expenses of the Trust as they arise (including, but not limited to, costs and expenses relating to the organization of the Trust, issuance and sale of the Preferred Securities, the fees and expenses (including reasonable counsel fees and expenses) of the Trustees) or shall, upon request of the Trustees, promptly reimburse the

Trustees for any such expenses paid by the Trustees. The Sponsor shall make no claim upon the Trust Property for the payment of such expenses.

SECTION 2.04. ISSUANCE OF THE PREFERRED SECURITIES

The Regular Trustees, on behalf of the Trust, shall execute and deliver to the underwriters named in the Underwriting Agreement Preferred Securities Certificates, registered in the name of the nominee of the initial Clearing Agency, in an aggregate amount of _____ Preferred Securities having an aggregate Liquidation Amount of \$_____, against receipt of the aggregate purchase price of such Preferred Securities of \$_____, which amount the Regular Trustees shall promptly deliver to the Institutional Trustee.

SECTION 2.05. SUBSCRIPTION AND PURCHASE OF SUBORDINATED DEBT SECURITIES; ISSUANCE OF THE COMMON SECURITIES

The Regular Trustees, on behalf of the Trust, shall execute and deliver to the Sponsor Common Securities Certificates, registered in the name of the Sponsor, in an aggregate amount of _____ Common Securities having an aggregate Liquidation Amount of \$_____ against payment by the Sponsor of such amount, which amount shall be promptly delivered to the Institutional Trustee. Contemporaneously therewith, the Regular Trustees, on behalf of the Trust, shall subscribe to and purchase from the Sponsor Subordinated Debt Securities, registered in the name of the Institutional Trustee, on behalf of the Trust and the Holders, and having an aggregate principal amount equal to \$_____, and, in satisfaction of the purchase price for such Subordinated Debt Securities, the Institutional Trustee, on behalf of the Trust, shall deliver to the Sponsor the sum of \$_____.

SECTION 2.06. DECLARATION OF TRUST

The exclusive purposes and functions of the Trust are (i) to issue and sell the Trust Securities and use the proceeds from such sale to acquire the Subordinated Debt Securities, (ii) to maintain its status as a grantor trust for federal income tax purposes; (iii) to make Distributions, and (iv) to engage in those activities necessary, incidental, appropriate or convenient thereto. The Sponsor hereby confirms each of the Bank, the Delaware Bank, Malyn K. Malquist and Diane C. Thoren as trustees of the Trust, to have all the rights, powers and duties to the extent set forth herein. The Institutional Trustee hereby declares that it will hold the Trust Property in trust upon and subject to the conditions set forth herein for the benefit of the Trust and the Securityholders. The Trustees shall have all rights, powers and duties set forth herein and in accordance with applicable law with respect to accomplishing the purposes of the Trust. The Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities, of the Institutional Trustee or the Regular Trustees set forth herein. The Delaware Trustee shall be one of the Trustees for the sole and limited purpose of fulfilling the requirements of the Delaware Statutory Trust Act.

SECTION 2.07. AUTHORIZATION TO ENTER INTO CERTAIN TRANSACTIONS

The Trustees shall conduct the affairs of the Trust in accordance with the terms of this Declaration. Subject to the limitations set forth in paragraph (c) of this Section, and in

accordance with the following paragraphs (a) and (b), the Trustees shall have the authority to enter into all transactions and agreements determined by the Trustees to be appropriate in exercising the authority, express or implied, otherwise granted to the Trustees under this Declaration, and to perform all acts in furtherance thereof, including without limitation, the following:

(a) As among the Trustees, the Regular Trustees, acting singly or jointly, shall have the exclusive power, duty and authority to act on behalf of the Trust with respect to the following matters:

(i) to acquire the Subordinated Debt Securities with the proceeds of the sale of the Trust Securities; provided, however, the Regular Trustees shall cause legal title to all of the Subordinated Debt Securities to be vested in, and the Subordinated Debt Securities to be held of record in the name of, the Institutional Trustee for the benefit of the Trust and Holders of the Trust Securities;

(ii) to give the Sponsor and the Institutional Trustee prompt written notice of the occurrence of any Special Event (as defined in the Subordinated Indenture) and to take any ministerial actions in connection therewith; provided, that the Regular Trustees shall consult with the Sponsor and the Institutional Trustee before taking or refraining to take any ministerial action in relation to a Special Event;

(iii) to establish a record date with respect to all actions to be taken hereunder that require a record date be established, including for the purposes of ss. 316(c) of the Trust Indenture Act and with respect to Distributions, voting rights, redemptions, and exchanges, and to issue relevant notices to Holders of the Trust Securities as to such actions and applicable record dates;

(iv) to bring or defend, pay, collect, compromise, arbitrate, resort to legal action, or otherwise adjust claims or demands of or against the Trust ("Legal Action"), unless pursuant to Section 2.07(b)(v), the Institutional Trustee has the power to bring such Legal Action;

(v) to employ or otherwise engage employees and agents (who may be designated as officers with titles) and managers, contractors, advisors, and consultants and pay reasonable compensation for such services;

(vi) to cause the Trust to comply with the Trust's obligations under the Trust Indenture Act;

(vii) to give the certificate to the Institutional Trustee required by ss. 314(a)(4) of the Trust Indenture Act, which certificate may be executed by any Regular Trustee;

(viii) to take all actions and perform such duties as may be required of the Regular Trustees pursuant to the terms of this Declaration, the Remarketing Agreement and the Calculation Agent Agreement;

(ix) to take all action that may be necessary or appropriate for the preservation and the continuation of the Trust's valid existence, rights, franchises and privileges as a statutory trust under the laws of the State of Delaware and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Holders of the Trust Securities or to enable the Trust to effect the purposes for which the Trust has been created;

(x) to take all action necessary to cause all applicable tax returns and tax information reports that are required to be filed with respect to the Trust to be duly prepared and filed by the Regular Trustees, on behalf of the Trust;

(xi) to execute and deliver the Trust Securities on behalf of the Trust;

(xii) to cause the Trust to enter into, and to execute, deliver and perform on behalf of the Trust, the Remarketing Agreement, the Calculation Agent Agreement, the Expense Agreement and the Certificate Depository Agreement and such other agreements as may be necessary or desirable in connection with the consummation hereof;

(xiii) to assist in the registration of the Preferred Securities under the Securities Act of 1933, as amended, and under state securities or blue sky laws, and the qualification of this Declaration as a trust indenture under the Trust Indenture Act;

(xiv) to assist in the listing of the Preferred Securities upon such securities exchange or exchanges, if necessary and as shall be determined by the Sponsor, and the registration of the Preferred Securities under the Exchange Act, and the preparation and filing of all periodic and other reports and other documents pursuant to the foregoing;

(xv) to send notices (other than notices of default) and other information regarding the Trust Securities and the Subordinated Debt Securities to the Securityholders in accordance with this Declaration, the Remarketing Agreement and the Calculation Agent Agreement;

(xvi) to appoint a Paying Agent (subject to Section 5.09), authenticating agent, Remarketing Agent, Calculation Agent and Securities Registrar in accordance with this Declaration;

(xvii) to elect to remarket the Preferred Securities and determine the length of any Fixed Rate Period in accordance with this Declaration, including redemption dates applicable to any Fixed Rate Period;

(xviii) to register transfers of the Trust Securities in accordance with this Declaration;

(xix) to assist in, to the extent provided in this Declaration, the winding up of the affairs of and termination of the Trust and the preparation, execution and filing of the certificate of cancellation with the Secretary of State of the State of Delaware; and (xx) to take any action incidental to the foregoing as the Regular Trustees may from time to time determine is necessary, appropriate, convenient or advisable to protect and conserve the Trust Property for the benefit of the Securityholders (without consideration of the effect of any such action on any particular Securityholder).

(b) As among the Trustees, the Institutional Trustee shall have the exclusive power, duty and authority to act on behalf of the Trust with respect to the following matters:

(i) engage in such ministerial activities as shall be necessary or appropriate to effect promptly the redemption of the Trust Securities to the extent the Subordinated Debt Securities are redeemed, mature or otherwise repaid;

(ii) upon a distribution of Subordinated Debt Securities in accordance with the terms of this Declaration, engage in such ministerial activities as shall be necessary or appropriate to effect promptly the distribution of Subordinated Debt Securities to Holders of Trust Securities pursuant to the terms of this Declaration;

(iii) subject to the terms hereof, exercise all of the rights, powers and privileges of a holder of the Subordinated Debt Securities under the Subordinated Indenture and, if an Event of Default occurs and is continuing, shall enforce for the benefit of, and subject to the rights of, the Holders of the Trust Securities, its rights as holder of the Subordinated Debt Securities under the Subordinated Indenture;

(iv) take all actions and perform such duties as may be specifically required of the Institutional Trustee pursuant to the terms of this Declaration;

(v) take any Legal Action specifically required of the Institutional Trustee pursuant to the terms of this Declaration which arises out of or in connection with an Event of Default or the Institutional Trustee's duties and obligations under this Declaration, the Delaware Statutory Trust Act or the Trust Indenture Act;

(vi) the establishment and maintenance of the Payment Account;

(vii) the receipt of and holding of legal title to the Subordinated Debt Securities as described herein;

(viii) the collection of interest, principal and any other payments made in respect of the Subordinated Debt Securities in the Payment Account;

(ix) the distribution of amounts owed to the Securityholders in respect of the Trust Securities;

(x) the sending of notices of default and other information regarding the Trust Securities and the Subordinated Debt Securities to the Securityholders in accordance with this Declaration;

(xi) the distribution of the Trust Property in accordance with the terms of this Declaration;

(xii) as provided in this Declaration, the winding up of the affairs of and termination of the Trust; and

(xiii) the taking of any action incidental to the foregoing as the Institutional Trustee may from time to time determine is necessary, appropriate, convenient or advisable to protect and conserve the Trust Property for the benefit of the Securityholders (without consideration of the effect of any such action on any particular Securityholder).

(c) So long as this Declaration remains in effect, the Trust (or the Trustees acting on behalf of the Trust) shall not undertake any business, activities or transaction except as expressly provided herein or contemplated hereby. In particular, the Trustees shall not (i) acquire any investments or engage in any activities not authorized by this Declaration; (ii) sell, assign, transfer, exchange, pledge, set-off or otherwise dispose of any of the Trust Property or interests therein, including to Securityholders, except as expressly provided herein; (iii) take any action that would cause the Trust to fail or cease to qualify as a grantor trust for United States federal income tax purposes; (iv) incur any indebtedness for borrowed money; (v) take or consent to any action that would result in the placement of a Lien on any of the Trust Property; (vi) issue any securities other than the Trust Securities; or (vii) have any power to, or agree to any action by the Sponsor that would, vary the investment (within the meaning of Treasury Regulation Section 301.7701-4(c)) of the Trust or of the Securityholders. The Trustees shall defend all claims and demands of all Persons at any time claiming any Lien on any of the Trust Property adverse to the interest of the Trust or the Securityholders in their capacity as Securityholders.

(d) In connection with the issue and sale of the Preferred Securities, the Sponsor, as obligor of the Subordinated Debt Securities, shall have the right and responsibility to assist the Trust with respect to, or effect on behalf of the Trust, the following (and any actions taken by the Sponsor in furtherance of the following prior to the date of this Declaration are hereby ratified and confirmed in all respects):

(i) to prepare for filing by the Trust with the Commission, and execute on behalf of the Trust, a registration statement on Form S-3 under the Securities

Act of 1933, as amended, in relation to the Preferred Securities, including any amendments thereto;

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

(iii) to prepare for filing by the Trust, and execute on behalf of the Trust, an application to the New York Stock Exchange or any other national stock exchange or the Nasdaq National Market for listing upon notice of issuance of any Preferred Securities, if applicable;

(iv) to prepare for filing by the Trust, and execute on behalf of the Trust, with the Commission a registration statement on Form 8-A relating to the registration of the Preferred Securities under Section 12(b) of the Exchange Act, including any amendments thereto;

(v) to negotiate the terms of, and execute on behalf of the Trust, the Underwriting Agreement providing for the sale of the Preferred Securities and to execute, deliver and perform the Underwriting Agreement on behalf of the Trust;

(vi) to negotiate the terms of, and execute on behalf of the Trust, the Remarketing Agreement providing for the retention of the Remarketing Agent and the establishment of certain procedures relating to Remarketings;

(vii) to negotiate the terms of, and execute on behalf of the Trust, the Calculation Agent Agreement providing for the retention of the Calculation Agent;

(viii) to elect to remarket the Preferred Securities and determine the length of any Fixed Rate Period in accordance with this Declaration, including redemption dates applicable to any Fixed Rate Period; and

(ix) to take any other actions necessary, incidental, appropriate or convenient to carry out any of the foregoing activities.

(e) Notwithstanding anything herein to the contrary, the Regular Trustees are authorized and directed to conduct the affairs of the Trust and to operate the Trust so that the Trust will not be deemed to be an "investment company" required to be registered under the Investment Company Act of 1940, as amended, or taxed as other than a grantor trust for United States federal income tax purposes and so that the Subordinated Debt Securities will be treated as indebtedness of the Sponsor for United States federal income tax purposes. In this connection, the Sponsor and the Regular Trustees are authorized to take any action, not inconsistent with

applicable law, the Certificate of Trust or this Declaration, that each of the Sponsor and the Regular Trustees determines in its discretion to be necessary or desirable for such purposes, as long as such action does not materially and adversely affect the interests of the Holders of the Preferred Securities.

SECTION 2.08. ASSETS OF TRUST

The assets of the Trust shall consist of the Trust Property.

SECTION 2.09. TITLE TO TRUST PROPERTY

Legal title to all Trust Property shall be vested at all times in the Institutional Trustee (in its capacity as such) and shall be held and administered by the Institutional Trustee for the benefit of the Securityholders and the Trust in accordance with this Declaration. The right, title and interest of the Institutional Trustee to the Subordinated Debt Securities shall vest automatically in each Person who may thereafter be appointed as Institutional Trustee in accordance with the terms hereof. Such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered.

SECTION 2.10. MERGERS AND CONSOLIDATIONS OF THE TRUST

The Trust may not merge with or into, consolidate, amalgamate, or be replaced by, or convey, transfer or lease its properties and assets substantially as an entirety to, any entity, except pursuant to this Section 2.10 or Section 9.04. Upon the approval of the Holders of the Common Securities, and without the consent of the Holders of the Preferred Securities or the Trustees, the Trust may merge with or into, consolidate, amalgamate, or be replaced by or convey, transfer or lease its properties and assets substantially as an entirety to a trust organized as such under the laws of any state; provided, however, that (i) such successor entity either (a) expressly assumes all of the obligations of the Trust with respect to the Preferred Securities or (b) substitutes for the Preferred Securities other securities having substantially the same terms as the Preferred Securities (the "Successor Preferred Securities") so long as the Successor Preferred Securities have the same priority as the Preferred Securities with respect to distributions and payments upon liquidation, redemption and otherwise; (ii) a trustee of such successor entity possessing the same powers and duties as the Institutional Trustee is appointed to hold the Subordinated Debt Securities; (iii) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not cause the Preferred Securities (including any Successor Preferred Securities) to be downgraded by any nationally recognized statistical rating organization; (iv) the Preferred Securities or any Successor Preferred Securities are listed or quoted, or any Successor Preferred Securities will be listed or quoted upon notification of issuance, on any national securities exchange or with another organization on which Preferred Securities are then listed or quoted; (v) such merger, consolidation, amalgamation, replacement,

conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the holders of the Preferred Securities (including any Successor Preferred Securities) in any material respect; (vi) such successor entity has a purpose substantially identical to that of the Trust; (vii) prior to such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, the Institutional Trustee has received an Opinion of Counsel from independent counsel experienced in such matters to the effect that (a) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the holders of the Preferred Securities (including any Successor Preferred Securities) in any material respect, and (b) following such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, neither the Trust nor such successor entity will be required to register as an "investment company" under the Investment Company Act; and (viii) the Sponsor or any permitted transferee to whom it has transferred the Common Securities hereunder owns all of the common securities of such successor entity and guarantees the obligations of such successor entity under the Successor Preferred Securities at least to the extent provided by the Guarantee. Notwithstanding the foregoing, the Trust shall not, except with the consent of Holders of 100% in aggregate Liquidation Amount of the Preferred Securities, consolidate, amalgamate, merge with or into, or be replaced by or convey, transfer or lease its properties and assets substantially as an entirety to, any other entity or permit any other entity to consolidate, amalgamate, merge with or into, or replace it if such consolidation, amalgamation, merger, replacement, conveyance, transfer or lease would cause the Trust or the successor entity to be taxable other than as a grantor trust for United States federal income tax purposes. Any merger or similar agreement shall be executed by the Regular Trustees on behalf of the Trust.

ARTICLE III
PAYMENT ACCOUNT

SECTION 3.01. PAYMENT ACCOUNT

(a) On or prior to the Issue Date, the Institutional Trustee shall establish the Payment Account. The Institutional Trustee and an agent of the Institutional Trustee shall have exclusive control and sole right of withdrawal with respect to the Payment Account for the purpose of making deposits in and withdrawals from the Payment Account in accordance with this Declaration. All monies and other property deposited or held from time to time in the Payment Account shall be held by the Institutional Trustee in the Payment Account for the exclusive benefit of the Securityholders and for distribution as herein provided, including (and subject to) any priority of payments provided for herein.

(b) The Institutional Trustee shall deposit in the Payment Account, promptly upon receipt, all payments of principal or interest on, and any other payments or proceeds with respect to, the Subordinated Debt Securities and any amounts paid to the Institutional Trustee pursuant to the Guarantee. Amounts held in the Payment Account shall not be invested by the Institutional Trustee pending distribution thereof.

ARTICLE IV
DISTRIBUTIONS; REDEMPTION

SECTION 4.01. DISTRIBUTIONS

(a) Distributions shall accrue from the Issue Date until the Redemption Date. During the Initial Fixed Rate Period, Distributions will be payable semiannually in arrears on ____ and ____ of each year, commencing on ____, 2004. During any Fixed Rate Period,

other than the Initial Fixed Rate Period, Distributions will be payable semiannually in arrears on the first day of the first month that begins at least six months after the first day of the Fixed Rate Period and on the first day of each six month period thereafter during such Fixed Rate Period. Any Fixed Rate Period may not end on a day other than a day immediately preceding a Distribution Payment Date. During any Floating Rate Period, Distributions will be payable quarterly in arrears on _____, _____, _____ and _____ of each year.

(b) If any Distribution Payment Date with respect to a Fixed Rate Period is not a Business Day, Distributions will be payable, without interest, on the immediately succeeding Business Day, with the same force and effect as if payment was made on the date such payment was originally payable (and without the accrual of any additional amount of Distributions). If any Distribution Payment Date with respect to a Floating Rate Period is not a Business Day, then Distributions will be payable on the immediately succeeding Business Day and Distributions shall accrue to the actual payment date (except for a Distribution Payment Date that coincides with the Redemption Date).

(c) The amount of Distributions payable on each Distribution Payment Date relating to a Fixed Rate Period will be computed on the basis of a 360-day year of twelve 30-day months. The amount of Distributions payable on each Distribution Payment Date relating to a Floating Rate Period will be computed by multiplying the per annum Distribution Rate in effect for such Distribution Period by a fraction, the numerator of which will be the actual number of days in such Distribution Period (or portion thereof) (determined by including the first day thereof and excluding the last thereof) and the denominator of which will be 360, and multiplying the rate so obtained by \$1,000.

(d) The Company has the right under the Subordinated Indenture to defer payments of interest on the Subordinated Debt Securities by extending the interest period from time to time on the Subordinated Debt Securities (an "Extension Period") which, if exercised, would defer Distributions on the Preferred Securities during any Extension Period. The payment of such Distributions, together with any interest thereon, will be distributed to the Holders of Trust Securities as received at the end of any Extension Period.

(e) Distributions on the Trust Securities shall be made and shall be deemed payable on each Distribution Payment Date only to the extent that the Trust has available funds on hand in the Payment Account for the payment of such Distributions.

(f) Distributions on the Trust Securities on each Distribution Date shall be payable to the Holders thereof as they appear on the Securities Register for the Trust Securities on the relevant Record Date.

Each Trust Security upon registration of transfer of or in exchange for or in lieu of any other Trust Security shall carry the rights of Distributions accrued and unpaid, and to accrue, which were carried by such other Trust Security.

(a) During the Initial Fixed Rate Period, the Distribution Rate shall be the Initial Distribution Rate.

(b) Prior to the expiration of the Initial Fixed Rate Period and any subsequent Fixed Rate Period, prior to any Distribution Payment Date with respect to a Floating Rate Period or prior to any Distribution Payment Date in a Fixed Rate Period during a time in which the Preferred Securities are redeemable in such Fixed Rate Period, the Company and the Regular Trustees will have the option to remarket the Preferred Securities to establish a new Fixed Rate for a new Fixed Rate Period (to be in effect after the expiration of the then current Distribution Period). If the Company and the Regular Trustees elect to conduct a Remarketing of the Preferred Securities for the purpose of establishing a new Fixed Rate for a new Fixed Rate Period, the Trust shall, not less than 20 nor more than 35 Business Days prior to the related Election Date, notify in writing the Clearing Agency, the Institutional Trustee, the Indenture Trustee, the Calculation Agent and the Remarketing Agent. If the Preferred Securities are not issued in global, fully registered form to the Clearing Agency or its nominee, such notice shall be delivered to the Owners instead of the Clearing Agency. Such notice shall describe the Remarketing and shall indicate the length of the proposed new Fixed Rate Period, the proposed Remarketing Date and any redemption provisions that will apply during such new Fixed Rate Period. The Company and the Regular Trustees shall have the right to terminate a Remarketing at any time prior to the Election Date by written notice of such termination to the Clearing Agency (or the Owners, as applicable), the Remarketing Agent, the Institutional Trustee, the Indenture Trustee and the Calculation Agent.

(c) If the Remarketing Agent has determined that it will be able to remarket all Preferred Securities tendered or deemed tendered for purchase in the Remarketing at a Fixed Rate and at a price of \$1,000 per Preferred Security, on any Remarketing Date, the Distribution Rate for the new Fixed Rate Period will be the Fixed Rate determined by the Remarketing Agent, which will be the rate per annum (rounded to the nearest one-thousandth (0.001) of one percent per annum) which the Remarketing Agent determines, in its sole judgment, to be the lowest Fixed Rate per annum that will enable it to remarket all Preferred Securities tendered or deemed tendered for Remarketing at a price of \$1,000 per Preferred Security.

(d) If the Company and the Regular Trustees do not elect to remarket the Preferred Securities pursuant to Section 4.02(b) or have terminated a Remarketing or if the Remarketing Agent is unable to remarket all of the Preferred Securities tendered or deemed tendered for a purchase price of \$1,000 per Preferred Security pursuant to the Remarketing Procedures, the Distribution Rate for the next Distribution Period shall be the Floating Rate and the new Distribution Period shall be a Floating Rate Period.

(e) The Calculation Agent shall calculate the Floating Rate on the Floating Rate Determination Date as follows:

Except as provided below, the Floating Rate for any Floating Rate Period for the Preferred Securities will be equal to the Adjustable Rate (as defined below) plus ____%. The "Adjustable Rate" for any Distribution Period will be equal to the highest of the 3-month LIBOR

Rate, the 10-year Treasury CMT and the 30-year Treasury CMT (each as defined below and collectively referred to as the "Benchmark Rates") for such Distribution Period during the Floating Rate Period. In the event that the Calculation Agent determines in good faith that for any reason:

- (1) any one of the Benchmark Rates cannot be determined for any Distribution Period, the Adjustable Rate for such Distribution Period will be equal to the higher of whichever two of such rates can be so determined;
- (2) only one of the Benchmark Rates can be determined for any Distribution Period, the Adjustable Rate for such Distribution Period will be equal to whichever such rate can be so determined; or
- (3) none of the Benchmark Rates can be determined for any Distribution Period, the Adjustable Rate for the preceding Distribution Period will be continued for such Distribution Period.

The "3-month LIBOR Rate" means, for each Distribution Period, the arithmetic average of the two most recent weekly quotes for deposits for U.S. Dollars having a term of three months, as published on the first Business Day of each week immediately preceding the Distribution Period for which the Floating Rate is being determined. Such quotes will be taken from Telerate Page 3750 at approximately 11:00 a.m. London time on the relevant date. If such rate does not appear on Telerate Page 3750 on the Floating Rate Determination Date, the 3-month LIBOR Rate will be the arithmetic mean of the rates quoted by three major banks in New York City selected by the Calculation Agent, at approximately 11:00 a.m., New York City time, on the Floating Rate Determination Date for loans in U.S. Dollars to leading European banks for a period of three months.

"The 10-year Treasury CMT" means the rate determined in accordance with the following provisions:

- (1) With respect to any Floating Rate Determination Date and the Distribution Period that begins immediately thereafter, the 10-year Treasury CMT means the rate displayed on Telerate Page 7051 under the caption "...Treasury Constant Maturities... Federal Reserve Board Release H.15 ...Mondays Approximately 3:45 P.M.", under the column for the Designated CMT Maturity Index (as defined below).
- (2) If such rate is no longer displayed on the relevant page, or is not so displayed by 3:00 P.M., New York City time, on the applicable Floating Rate Determination Date, then the 10-year Treasury CMT for such Floating Rate Determination Date will be such treasury constant maturity rate for the Designated CMT Maturity Index as is published in H.15(519).

- (3) If such rate is no longer displayed on the relevant page, or if not published by 3:00 P.M., New York City time, on the applicable Floating Rate Determination Date, then the 10-year Treasury CMT for such Floating Rate Determination Date will be such constant maturity treasury rate for the Designated CMT Maturity Index (or other United States Treasury rate for the Designated CMT Maturity Index) for the applicable Floating Rate Determination Date with respect to such Distribution reset date as may then be published by either the Board of Governors of the Federal Reserve System or the United States Department of the Treasury that the Calculation Agent determines to be comparable to the rate formerly displayed on the Telerate Page 7051 and published in H.15(519).
- (4) If such information is not provided by 3:00 P.M., New York City time, on the applicable Floating Rate Determination Date, then the 10-year Treasury CMT for such Floating Rate Determination Date will be calculated by the Calculation Agent and will be a yield to maturity, based on the arithmetic mean of the secondary market offered rates as of approximately 3:30 P.M., New York City time, on such Floating Rate Determination Date reported, according to their written records, by three leading primary United States government securities dealers in The City of New York (each, a "Reference Dealer") selected by the Calculation Agent (from five such Reference Dealers selected by the Calculation Agent and eliminating the highest quotation (or, in the event of equality, one of the highest) and the lowest quotation (or, in the event of equality, one of the lowest)), for the most recently issued direct noncallable fixed rate obligations of the United States ("Treasury Debentures") with an original maturity of approximately the Designated CMT Maturity Index and a remaining term to maturity of not less than such Designated CMT Maturity Index minus one year.
- (5) If the Calculation Agent is unable to obtain three such Treasury Debentures quotations, the 10-year Treasury CMT for the applicable Floating Rate Determination Date will be calculated by the Calculation Agent and will be a yield to maturity based on the arithmetic mean of the secondary market offered rates as of approximately 3:30 P.M., New York City time, on the applicable Floating Rate Determination Date of three Reference Dealers in The City of New York (from five such Reference Dealers selected

by the Calculation Agent and eliminating the highest quotation (or, in the event of equality, one of the highest) and the lowest quotation (or, in the event of equality, one of the lowest)), for Treasury Debentures with an original maturity of the number of years that is the next highest to the Designated CMT Maturity Index and a remaining term to maturity closest to the Designated CMT Maturity Index and in an amount of at least \$100 million.

- (6) If three or four (and not five) of such Reference Dealers are quoting as set forth above, then the 10-year Treasury CMT will be based on the arithmetic mean of the offered rates obtained and neither the highest nor lowest of such quotes will be eliminated; provided, however, that if fewer than three Reference Dealers selected by the Calculation Agent are quoting as set forth above, the 10-year Treasury CMT with respect to the applicable Floating Rate Determination Date will remain the 10-year Treasury CMT for the immediately preceding interest period. If two Treasury Debentures with an original maturity as described in the second preceding sentence have remaining terms to maturity equally close to the Designated CMT Maturity Index, then the quotes for the Treasury Debentures with the shorter remaining term to maturity will be used.

The "30-year Treasury CMT" has the meaning specified under the definition of 10-year Treasury CMT, except that the Designated CMT Maturity Index for the 30-year Treasury CMT shall be 30 years.

The 3-month LIBOR Rate, the 10-year Treasury CMT and the 30-year Treasury CMT shall each be rounded to the nearest hundredth of a percent.

The Floating Rate with respect to each Floating Rate Period will be calculated as promptly as practicable by the Calculation Agent according to the appropriate method described above.

(f) If the Company elects to defer interest during a Fixed Rate Period, Distributions will continue to accrue and be compounded semiannually at the Fixed Rate until the expiration of the Fixed Rate Period. Prior to the expiration of such Fixed Rate Period and any subsequent Fixed Rate Period during the Extension Period, the Company and the Regular Trustees will have the option to remarket the Preferred Securities for a new Fixed Rate Period (to take effect upon expiration of such Fixed Rate Period). If the Company and the Trust do not remarket the Preferred Securities, the Floating Rate during the Extension Period shall be determined as provided herein, but shall not be less than the Fixed Rate for the Fixed Rate Period just ended. If the Company elects to defer interest during a Floating Rate Period, Distributions will continue to accrue and be compounded quarterly at the applicable Floating Rate, reset quarterly, subject to the right of the Company and the Regular Trustees to remarket the Preferred

Securities prior to any Distribution Payment Date in order to establish a new Fixed Rate for a new Fixed Rate Period in accordance with this Section 4.02 and the Remarketing Procedures.

SECTION 4.03. DISTRIBUTION PERIODS

In accordance with Section 4.02 and the Remarketing Procedures, the Company and the Regular Trustees, on behalf of the Trust may, prior to the expiration of the Initial Fixed Rate Period and any subsequent Fixed Rate Period, prior to any Distribution Payment Date in a Fixed Rate Period during a time in which the Preferred Securities are redeemable in such Fixed Rate Period or prior to any Distribution Payment Date with respect to a Floating Rate Period, elect to remarket the Preferred Securities to establish a new Fixed Rate for a new Fixed Rate Period (to be in effect after the then current Distribution Period). A Fixed Rate Period must be for a duration of at least six months, may not extend beyond the stated maturity of the Subordinated Debt Securities and may not end on a day other than a day immediately preceding a Distribution Payment Date. If a new Fixed Rate for a new Fixed Rate Period is set in a Remarketing, a new Fixed Rate Period shall commence following the expiration of the then current Distribution Period. If a new Fixed Rate for a new Fixed Rate Period is not set, for any reason, including after the expiration of the Initial Fixed Rate Period, in accordance with the terms of this Declaration, a Floating Rate Period and the Floating Rate reset quarterly shall be in effect if and until the Company and the Regular Trustees remarket the Preferred Securities and set a new Fixed Rate for a new Fixed Rate Period in accordance with Section 4.02 and the Remarketing Procedures.

SECTION 4.04. REDEMPTION

(a) On each Indenture Redemption Date and the Maturity Date of the Subordinated Debt Securities, the Trust will be required to redeem a Like Amount of Trust Securities at the Redemption Price.

(b) Notice of redemption shall be given by the Institutional Trustee by first class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date to each Holder of Trust Securities to be redeemed, at such Holder's address appearing in the Securities Register. All notices of redemption shall state:

- (i) the Redemption Date;
- (ii) the Redemption Price;
- (iii) the CUSIP number or CUSIP numbers of the Preferred Securities affected;
- (iv) that on the Redemption Date the Redemption Price will become due and payable upon each such Trust Security to be redeemed and that Distributions thereon will cease to accumulate on and after said date, except as provided in Section 4.04(e) below; and

(v) the place or places where Trust Securities are to be surrendered for the payment of the Redemption Price.

(c) The Trust in issuing the Trust Securities may use "CUSIP" or "private placement" numbers (if then generally in use), and, if so, the Institutional Trustee shall indicate the "CUSIP" or "private placement" numbers of the Trust Securities in notices of redemption and related materials as a convenience to Holders; provided, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Trust Securities or as contained in any notice of redemption and related material.

(d) The Trust Securities redeemed on each Redemption Date shall be redeemed at the Redemption Price with the applicable proceeds from the contemporaneous redemption or repayment of Subordinated Debt Securities. Redemptions of the Trust Securities shall be made and the Redemption Price shall be payable on each Redemption Date only to the extent that the Trust has funds then on hand and available in the Payment Account for the payment of such Redemption Price.

(e) If the Trust gives a notice of redemption in respect of any Preferred Securities, then by 12:00 noon, New York City time, on the Redemption Date, subject to this Section 4.04(e), the Institutional Trustee will, with respect to Preferred Securities held in global form, irrevocably deposit with the Clearing Agency for such Preferred Securities, to the extent available therefor, funds sufficient to pay the applicable Redemption Price and will give such Clearing Agency irrevocable instructions and authority to pay the Redemption Price to the Holders of the Preferred Securities. With respect to Preferred Securities that are not held in global form, the Institutional Trustee, subject to Section this 4.04(e), will irrevocably deposit with the Paying Agent, to the extent available therefor, funds sufficient to pay the applicable Redemption Price and will give the Paying Agent irrevocable instructions and authority to pay the Redemption Price to the Holders of the Preferred Securities upon surrender of their Preferred Securities Certificates. Notwithstanding the foregoing, Distributions payable on or prior to the Redemption Date for any Trust Securities called for redemption shall be payable to the Holders of such Trust Securities as they appear on the Securities Register for the Trust Securities on the relevant Record Dates for the related Distribution Dates. If notice of redemption shall have been given (or if the Sponsor has given irrevocable instructions to the Institutional Trustee to give notice of redemption) and funds deposited as required, then, upon the date of such deposit, all rights of Holders holding Trust Securities so called for redemption will cease, except the right of such Holders to receive the Redemption Price and any Distribution payable in respect of the Trust Securities on or prior to the Redemption Date, but without interest, and such Trust Securities will cease to be Outstanding. In the event that any date on which any applicable Redemption Price is payable is not a Business Day, then payment of the applicable Redemption Price payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay), except that, if such Business Day falls in the next calendar year, such payment will be made on the immediately preceding Business Day, in each case, with the same force and effect as if made on such date. In the event that payment of the Redemption Price in respect of any Trust Securities called for redemption is improperly withheld or refused and not paid either by the Trust or by the Sponsor pursuant to the Guarantee, Distributions on such Trust Securities will continue to accumulate, as set forth in

Section 4.01 and in accordance with the continued accrual of interest on the Subordinated Debt Securities, from the Redemption Date originally established by the Trust for such Trust Securities to the date such applicable Redemption Price is actually paid, in which case the actual payment date will be the date fixed for redemption for purposes of calculating the applicable Redemption Price.

SECTION 4.05. SUBORDINATION OF COMMON SECURITIES AND DISTRIBUTIONS

(a) Payment of Distributions on, and the Redemption Price of, the Trust Securities, as applicable, shall be made pro rata based on the Liquidation Amount of the Trust Securities; provided, however, that if on any Distribution Payment Date or Redemption Date an Indenture Event of Default shall have occurred and be continuing, no payment of any Distribution on, or Redemption Price of, any Common Security, and no other payment on account of the redemption, liquidation or other acquisition of Common Securities, shall be made unless payment in full in cash of all accumulated and unpaid Distributions on all Outstanding Preferred Securities for all Distribution Periods terminating on or prior thereto, or in the case of payment of the Redemption Price the full amount of such Redemption Price on all Outstanding Preferred Securities, shall have been made or provided for, and all funds immediately available to the Institutional Trustee shall first be applied to the payment in full in cash of all Distributions on, or Redemption Price of, Preferred Securities then due and payable.

(b) In the case of the occurrence of any Indenture Event of Default, the Holder of Common Securities will be deemed to have waived any right to act with respect to such Event of Default under this Declaration until the effect of all such Events of Default with respect to the Preferred Securities have been cured, waived or otherwise eliminated. Until any such Events of Default under this Declaration with respect to the Preferred Securities have been so cured, waived or otherwise eliminated, the Institutional Trustee shall act solely on behalf of the Holders of the Preferred Securities and not the Holder of the Common Securities, and only the Holders of the Preferred Securities will have the right to direct the Institutional Trustee to act on their behalf.

(c) Distributions on the Common Securities shall be payable at the same Distribution Rates, on the same Distribution Payment Dates and for the same Distribution Periods and to holders as of the same Record Date as for the Preferred Securities.

SECTION 4.06. PAYMENT PROCEDURES

Payments of Distributions in respect of the Preferred Securities shall be made by check mailed to the address of the Person entitled thereto as such address shall appear on the Securities Register or, if the Preferred Securities are held by a Clearing Agency, such Distributions shall be made to the Clearing Agency, which shall credit the relevant Persons' accounts at such Clearing Agency on the applicable Distribution Payment Dates. Payment of the Redemption Price of or Liquidation Distribution on the Preferred Securities shall be made in immediately available funds upon surrender of the Preferred Securities Certificates representing such Preferred Securities at the corporate trust office of the Institutional Trustee or, if the Preferred Securities are held by the Clearing Agency or its nominee, such Redemption Price or Liquidation Distribution shall be made to the Clearing Agency by wire transfer in immediately available funds. Payments in

respect of the Common Securities shall be made in such manner as shall be mutually agreed between the Institutional Trustee and the Holder of the Common Securities.

SECTION 4.07. TAX RETURNS AND REPORTS

The Regular Trustee(s) shall prepare (or cause to be prepared), at the Sponsor's expense, and file all United States federal, state and local tax and information returns and reports required to be filed by or in respect of the Trust. The Regular Trustee(s) shall provide or cause to be provided on a timely basis to each Holder any Internal Revenue Service form required to be so provided in respect of the Trust Securities.

SECTION 4.08. EXCHANGE

(a) If at any time the Sponsor or any of its Affiliates (in either case, a "Sponsor Affiliated Owner/Holder") is the Owner or Holder of any Preferred Securities, such Sponsor Affiliated Owner/Holder shall have the right to deliver to the Institutional Trustee all or such portion of its Preferred Securities as it elects and receive, in exchange therefore, a like amount of Subordinated Debt Securities. Such election (i) shall be exercisable effective on any Distribution Payment Date by such Sponsor Affiliated Owner/Holder delivering to the Institutional Trustee a written notice of such election specifying the liquidation amount of Preferred Securities with respect to which such election is being made and the Distribution Payment Date on which such exchange shall occur, which Distribution Payment Date shall be not less than ten Business Days after the date of receipt by the Institutional Trustee or its designee the Preferred Securities which are the subject of such election by 10:00 A.M. New York time, on the Distribution Payment Date on which such exchange is to occur. After the exchange, such Preferred Securities will be canceled and will no longer be deemed to be outstanding and all rights of the Sponsor or its Affiliate(s) with respect to such Preferred Securities will cease.

(b) In the case of an exchange described in Section 4.08(a), the Trust will, on the date of such exchange, exchange Subordinated Debt Securities having a principal amount equal to the aggregate liquidation amount of the outstanding Common Securities, multiplied by the ratio of the aggregate liquidation amount of the Preferred Securities exchanged pursuant to Section 4.08(a) divided by the aggregate liquidation amount of the Preferred Securities outstanding immediately prior to such exchange, for such proportional amount of Common Securities held by the Sponsor (which contemporaneously shall be canceled and no longer be deemed to be outstanding); provided, that the Sponsor delivers or caused to be delivered to the Institutional Trustee or its designee the required amount of Common Securities to be exchanged by 10:00 A.M. New York time, on the Distribution Payment Date on which such exchange is to occur.

ARTICLE V
TRUST SECURITIES CERTIFICATES

SECTION 5.01. INITIAL OWNERSHIP

Upon the creation of the Trust by the contribution by the Sponsor pursuant to Section 2.03 and until the issuance of the Trust Securities, and at any time during which no Trust Securities are outstanding, the Sponsor shall be the sole beneficial owner of the Trust.

SECTION 5.02. THE TRUST SECURITIES CERTIFICATES

Each of the Preferred and Common Securities Certificates shall be issued in minimum denominations of \$1,000 and integral multiples in excess thereof. The Trust Securities Certificates shall be executed on behalf of the Trust by manual or facsimile signature of at least one Regular Trustee. Trust Securities Certificates bearing the manual or facsimile signatures of individuals who were, at the time when such signatures shall have been affixed, authorized to sign on behalf of the Trust, shall be validly issued and entitled to the benefits of this Declaration, notwithstanding that such individuals or any of them shall have ceased to be so authorized prior to the authentication and delivery of such Trust Securities Certificates or did not hold such offices at the date of authentication and delivery of such Trust Securities Certificates. A transferee of a Trust Securities Certificate shall become a Securityholder, and shall be entitled to the rights and subject to the obligations of a Securityholder hereunder, upon due registration of such Trust Securities Certificate in such transferee's name pursuant to Section 5.04.

SECTION 5.03. AUTHENTICATION OF TRUST SECURITIES CERTIFICATES

On the Issue Date, the Regular Trustees shall cause Trust Securities Certificates, in an aggregate Liquidation Amount as provided in Sections 2.04 and 2.05, to be executed on behalf of the Trust, authenticated and delivered to or upon the written order of the Sponsor signed by its Chairman of the Board, its President or any Vice President, without further corporate action by the Sponsor, in authorized denominations. No Trust Securities Certificate shall entitle its holder to any benefit under this Declaration, or shall be valid for any purpose, unless there shall appear on such Trust Securities Certificate a certificate of authentication substantially in the form set forth in Exhibit A or Exhibit C, as applicable, executed by the Institutional Trustee by manual signature; such authentication shall constitute conclusive evidence that such Trust Securities Certificate shall have been duly authenticated and delivered hereunder. All Trust Securities Certificates shall be dated the date of their authentication.

SECTION 5.04. REGISTRATION OF TRANSFER AND EXCHANGE OF PREFERRED SECURITIES CERTIFICATES

The Securities Registrar shall keep or cause to be kept, at the office or agency maintained pursuant to Section 5.08, a Securities Register in which, subject to such reasonable regulations as it may prescribe, the Securities Registrar shall provide for the registration of Preferred Securities Certificates and the Common Securities Certificates (subject to Section 5.10 in the case of the Common Securities Certificates) and registration of transfers and exchanges of Preferred

Securities Certificates as herein provided. The Institutional Trustee shall be the initial Securities Registrar.

Upon surrender for registration of transfer of any Preferred Securities Certificate at the office or agency maintained pursuant to Section 5.08, one or more of the Regular Trustees shall execute, and the Institutional Trustee shall authenticate and deliver in the name of the designated transferee or transferees one or more new Preferred Securities Certificates in authorized denominations of a like aggregate Liquidation Amount dated the date of authentication by the Institutional Trustee. The Securities Registrar shall not be required to register the transfer of any Preferred Securities that have been called for redemption. At the option of a Holder, Preferred Securities Certificates may be exchanged for other Preferred Securities Certificates in authorized denominations of the same class and of a like aggregate Liquidation Amount upon surrender of the Preferred Securities Certificates to be exchanged at the office or agency maintained pursuant to Section 5.08.

Every Preferred Securities Certificate presented or surrendered for registration of transfer or exchange shall be accompanied by a written instrument of transfer in form satisfactory to the Trustees and the Securities Registrar duly executed by the Holder or his attorney duly authorized in writing. Each Preferred Securities Certificate surrendered for registration of transfer or exchange shall be canceled and subsequently disposed of by the Securities Registrar in accordance with its customary practice.

No service charge shall be made for any registration of transfer or exchange of Preferred Securities Certificates, but the Securities Registrar or the Regular Trustees may require payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer or exchange of Preferred Securities Certificates.

SECTION 5.05. MUTILATED, DESTROYED, LOST OR STOLEN TRUST
SECURITIES CERTIFICATES

If (a) any mutilated Trust Securities Certificate shall be surrendered to the Securities Registrar, or if the Securities Registrar shall receive evidence to its satisfaction of the destruction, loss or theft of any Trust Securities Certificate and (b) there shall be delivered to the Securities Registrar and the Regular Trustees such security or indemnity as may be required by them to save each of them harmless, then in the absence of notice that such Trust Securities Certificate shall have been acquired by a bona fide purchaser, the Regular Trustees or any one of them on behalf of the Trust shall execute, and the Institutional Trustee shall authenticate and make available for delivery, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Trust Securities Certificate, a new Trust Securities Certificate of like class, tenor and denomination. In connection with the issuance of any new Trust Securities Certificate under this Section, the Regular Trustees or the Securities Registrar may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith. Any duplicate Trust Securities Certificate issued pursuant to this Section shall constitute conclusive evidence of an ownership interest in the Trust, as if originally issued, whether or not the lost, stolen or destroyed Trust Securities Certificate shall be found at any time.

SECTION 5.06. PERSONS DEEMED SECURITYHOLDERS

Prior to due presentation of a Trust Securities Certificate for registration of transfer, the Trustees or the Securities Registrar shall treat the Person in whose name any Trust Securities Certificate shall be registered in the Securities Register as the owner of such Trust Securities Certificate for the purpose of receiving Distributions (subject to Section 4.01(d)) and for all other purposes whatsoever, and neither the Trustees nor the Securities Registrar shall be bound by any notice to the contrary.

SECTION 5.07. ACCESS TO LIST OF SECURITYHOLDERS' NAMES AND ADDRESSES

In the event that the Institutional Trustee is no longer the Securities Registrar, the Regular Trustees shall furnish or cause to be furnished to (i) the Sponsor and the Institutional Trustee semi-annually, not later than _____ and _____ in each year, and (ii) the Sponsor or the Institutional Trustee, as the case may be, within 15 days after receipt by any Regular Trustee of a request therefor from the Sponsor or the Institutional Trustee, as the case may be, in writing, a list, in such form as the Sponsor or the Institutional Trustee, as the case may be, may reasonably require, of the names and addresses of the Securityholders as of a date not more than 15 days prior to the time such list is furnished. If three or more Securityholders or one or more Holders of Trust Securities Certificates evidencing not less than 25% of the outstanding Liquidation Amount apply in writing to the Regular Trustees, and such application states that the applicants desire to communicate with other Securityholders with respect to their rights under this Declaration or under the Trust Securities Certificates and such application is accompanied by a copy of the communication that such applicants propose to transmit, then the Regular Trustees shall, within five Business Days after the receipt of such application, afford such applicants access during normal business hours to the current list of Securityholders. Each Holder, by receiving and holding a Trust Securities Certificate, shall be deemed to have agreed not to hold the Sponsor, the Institutional Trustee or the Regular Trustees accountable by reason of the disclosure of its name and address, regardless of the source from which such information was derived.

SECTION 5.08. MAINTENANCE OF OFFICE OR AGENCY

The Regular Trustees shall maintain in the Borough of Manhattan, New York, an office or offices or agency or agencies where Preferred Securities Certificates may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Trustees in respect of the Trust Securities Certificates may be served. The Regular Trustees initially designate Union Bank of California, N.A., 475 Sansome Street, 12th Floor, San Francisco, California 94111, as its principal agency for such purposes. The Regular Trustees shall give prompt written notice to the Sponsor and to the Securityholders of any change in the location of the Securities Register or any such office or agency.

SECTION 5.09. APPOINTMENT OF PAYING AGENT

The Paying Agent shall make Distributions and other payments provided hereby to Securityholders from the Payment Account and shall report the amounts of such Distributions and payments to the Institutional Trustee and the Regular Trustees. Any Paying Agent shall

have the revocable power to withdraw funds from the Payment Account for the purpose of making the Distributions and payments provided hereby. The Regular Trustees may revoke such power and remove the Paying Agent if such Trustees determine in their sole discretion that the Paying Agent shall have failed to perform its obligations under this Agreement in any material respect, provided that such revocation and removal shall not become effective until the appointment of a successor. The Paying Agent shall initially be the Institutional Trustee, and it may choose any co-paying agent that is acceptable to the Regular Trustees and the Sponsor. Any Person acting as Paying Agent shall be permitted to resign as Paying Agent upon 30 days' written notice to the Regular Trustees and the Institutional Trustee, provided that such resignation shall not become effective until the appointment of a successor. In the event that a Paying Agent shall resign or be removed, the Institutional Trustee shall appoint a successor that is acceptable to the Regular Trustees to act as Paying Agent (which shall be a bank or trust company). The Institutional Trustee shall cause such successor Paying Agent or any additional Paying Agent appointed by the Institutional Trustee to execute and deliver to the Trustees an instrument in which such successor Paying Agent or additional Paying Agent shall agree with the Trustees that as Paying Agent, such successor Paying Agent or additional Paying Agent will hold all sums, if any, held by it for payment to the Securityholders in trust for the benefit of the Securityholders entitled thereto until such sums shall be paid to such Securityholders. The Paying Agent shall return all unclaimed funds to the Institutional Trustee and upon removal of a Paying Agent such Paying Agent shall also return all funds in its possession to the Institutional Trustee. The provisions of Sections 8.01, 8.03 and 8.06 shall apply to the Institutional Trustee also in its role as Paying Agent, for so long as the Institutional Trustee shall act as Paying Agent and, to the extent applicable, to any other paying agent appointed hereunder. Any reference in this Agreement to the Paying Agent shall include any co-paying agent unless the context requires otherwise.

SECTION 5.10. OWNERSHIP OF COMMON SECURITIES BY SPONSOR

On the Issue Date, the Sponsor shall acquire, and thereafter retain, beneficial and record ownership of the Common Securities. To the fullest extent permitted by law, any attempted transfer of the Common Securities, except for transfers by operation of law or to an Affiliate of the Sponsor or a permitted successor under Article Ten of the Subordinated Indenture, shall be void. The Regular Trustees shall cause each Common Securities Certificate issued to the Sponsor to contain a legend stating "THIS CERTIFICATE IS NOT TRANSFERABLE EXCEPT AS PROVIDED IN THE DECLARATION OF TRUST REFERRED TO HEREIN".

SECTION 5.11. BOOK-ENTRY PREFERRED SECURITIES CERTIFICATES; COMMON SECURITIES CERTIFICATE

(a) The Preferred Securities Certificates, upon original issuance, will be issued in the form of a typewritten global Preferred Securities Certificate or Certificates representing Book-Entry Preferred Securities Certificates, to be delivered to The Depository Trust Company, the initial Clearing Agency, or its custodian, by or on behalf of, the Trust. Such Preferred Securities Certificate or Certificates shall initially be registered on the Securities Register in the name of Cede & Co., the nominee of the initial Clearing Agency, and no Owner will receive a definitive Preferred Securities Certificate representing such beneficial owner's

interest in such Preferred Securities, except as provided in Section 5.13. Unless and until Definitive Preferred Securities Certificates have been issued to Owners pursuant to Section 5.13:

(i) the provisions of this Section 5.11(a) shall be in full force and effect;

(ii) the Securities Registrar and the Trustees shall be entitled to deal with the Clearing Agency for all purposes of this Declaration relating to the Book-Entry Preferred Securities Certificates (including the payment of principal of and Distributions on the Book-Entry Preferred Securities and the giving of instructions or directions to Owners of Book-Entry Preferred Securities) as the sole Holder of Book-Entry Preferred Securities and shall have no obligations to the Owners thereof;

(iii) to the extent that the provisions of this Section conflict with any other provisions of this Declaration, the provisions of this Section shall control; and

(iv) the rights of the Owners of the Book-Entry Preferred Securities Certificates shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreements between such Owners and the Clearing Agency and/or the Clearing Agency Participants. Pursuant to the Certificate Depository Agreement, unless and until Definitive Preferred Securities Certificates are issued pursuant to Section 5.13, the Clearing Agency will make book-entry transfers among the Clearing Agency Participants and receive and transmit payments on the Preferred Securities to such Clearing Agency Participants.

(v) The Clearing Agency will make book-entry transfers among the Clearing Agency Participants; provided, that solely for the purposes of determining whether the Holders of the requisite amount of Preferred Securities have voted on any matter provided for in this Declaration, so long as Definitive Preferred Securities Certificates have not been issued, the Trustees may conclusively rely on, and shall be fully protected in relying on, any written instrument (including a proxy) delivered to the Trustees by the Clearing Agency setting forth the Owners' votes or assigning the right to vote on any matter to any other Person either in whole or in part.

(b) A single Common Securities Certificate representing the Common Securities shall be issued to the Sponsor in the form of a definitive Common Securities Certificate.

SECTION 5.12. NOTICES TO CLEARING AGENCY

To the extent a notice or other communication to the Owners is required under this Declaration, unless and until Definitive Preferred Securities Certificates shall have been issued to Owners pursuant to Section 5.13, the Trustees shall give all such notices and communications

specified herein to be given to Owners to the Clearing Agency, and shall have no obligations to the Owners.

SECTION 5.13. DEFINITIVE PREFERRED SECURITIES CERTIFICATES

If (i) the Sponsor advises the Trustees in writing that the Clearing Agency is no longer willing or able to properly discharge its responsibilities with respect to the Preferred Securities Certificates, and the Sponsor is unable to locate a qualified successor within 90 days, or (ii) the Sponsor at its option advises the Trustees in writing that it elects to terminate the book-entry system through the Clearing Agency, then the Regular Trustees shall notify the Clearing Agency and Holders of the Preferred Securities. Upon surrender to the Regular Trustees of the typewritten Preferred Securities Certificate or Certificates representing the Book-Entry Preferred Securities Certificates by the Clearing Agency, accompanied by registration instructions, the Regular Trustees or any one of them shall execute, and the Institutional Trustee shall authenticate, the Definitive Preferred Securities Certificates in accordance with the instructions of the Clearing Agency. Neither the Securities Registrar nor the Trustees shall be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be protected in relying on, such instructions. Upon the issuance of Definitive Preferred Securities Certificates, the Trustees shall recognize the Holders of the Definitive Preferred Securities Certificates as Securityholders. The Definitive Preferred Securities Certificates shall be printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Regular Trustees, as evidenced by the execution thereof by the Regular Trustees or any one of them.

SECTION 5.14. RIGHTS OF SECURITYHOLDERS

The legal title to the Trust Property is vested exclusively in the Institutional Trustee (in its capacity as such) in accordance with Section 2.09, and the Securityholders shall not have any right or title therein other than an undivided beneficial interest in the assets of the Trust conferred by their Trust Securities, and they shall have no right to call for any partition or division of property, profits or rights of the Trust except as described below. The Trust Securities shall be personal property giving only the rights specifically set forth therein and in this Declaration. The Trust Securities shall have no preemptive or other similar rights and when issued and delivered to Securityholders against payment of the purchase price therefor, except as otherwise provided in the Expense Agreement and Section 11.01 hereof, will be fully paid and nonassessable by the Trust. Except as otherwise provided in the Expense Agreement and Section 11.01 hereof, the Holders of the Trust Securities shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

ARTICLE VI
ACTS OF SECURITYHOLDERS; MEETINGS; VOTING

SECTION 6.01. LIMITATIONS ON VOTING RIGHTS

(a) Except as provided in this Section, in Section 2.10, in Section 8.10 or in Section 11.03 of this Declaration, in the Subordinated Indenture, and as otherwise required by

law, no Holder of Preferred Securities shall have any right to vote or in any manner otherwise control the administration, operation and management of the Trust or the obligations of the parties hereto, nor shall anything herein set forth, or contained in the terms of the Trust Securities Certificates, be construed so as to constitute the Securityholders from time to time as partners or members of an association.

(b) So long as any Subordinated Debt Securities are held by the Institutional Trustee on behalf of the Trust, the Institutional Trustee shall not (i) direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or execute any trust or power conferred on the Institutional Trustee with respect to such Subordinated Debt Securities; (ii) waive any past default that may be waived under Section 713 of the Subordinated Indenture; (iii) exercise any right to rescind or annul a declaration that the principal of all the Subordinated Debt Securities shall be due and payable; or (iv) consent to any amendment, modification or termination of the Subordinated Indenture or the Subordinated Debt Securities, where such consent shall be required, without, in each case, obtaining the prior approval of the Holders of at least a Majority in Liquidation Amount of the Preferred Securities; provided, however, that where a consent under the Subordinated Indenture would require the consent of each holder of Subordinated Debt Securities affected thereby, no such consent shall be given by the Institutional Trustee without the prior written consent of each Holder of Preferred Securities. The Institutional Trustee shall not revoke any action previously authorized or approved by a vote of the Holders of Preferred Securities, except by a subsequent vote of the Holders of Preferred Securities. Subject to Section 8.02, the Institutional Trustee shall notify all Holders of the Preferred Securities of any notice of default received with respect to the Subordinated Debt Securities. In addition to obtaining the foregoing approvals of the Holders of the Preferred Securities, prior to taking any of the foregoing actions, the Institutional Trustee shall, at the expense of the Sponsor, obtain an Opinion of Counsel experienced in such matters to the effect that such action will not cause the Trust to be taxable other than as a grantor trust for United States federal income tax purposes.

(c) If any proposed amendment to the Declaration provides for, or the Trust otherwise proposes to effect, (i) any action that would adversely affect in any material respect the interests, powers, preferences or special rights of the Preferred Securities, whether by way of amendment to the Declaration or otherwise, or (ii) the dissolution, winding-up or termination of the Trust, other than pursuant to the terms of this Declaration, then the Holders of Outstanding Trust Securities as a class will be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of the Holders of at least a Majority in Liquidation Amount of the Preferred Securities; except as otherwise provided in Section 11.03(c). Notwithstanding any other provision of this Declaration, no amendment to this Declaration may be made if, as a result of such amendment, it would cause the Trust to be taxable other than as a grantor trust for United States federal income tax purposes.

(d) Holders of a Majority in Liquidation Amount of the Preferred Securities may, on behalf of the Holders of all the Preferred Securities, waive any past Event of Default and its consequences, except a default described in clause (b) or (c) of the definition of "Event of Default" contained in Section 1.01, a default in respect of a covenant or provision which under this Declaration cannot be modified or amended without the consent of the Holder of each

Outstanding Preferred Security or an Indenture Event of Default that the Holders of a Majority in Liquidation Amount of the Preferred Securities would not be entitled to waive pursuant to Section 6.01(e).

Upon any such waiver, any such Event of Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Declaration; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon. Any waiver by the Holders of the Preferred Securities of an Event of Default with respect to Preferred Securities shall also be deemed to constitute a waiver by the Holders of Common Securities for all purposes of the Declaration without any further act, vote or consent of the Holders of Common Securities.

(e) For so long as any Preferred Securities remain Outstanding, if, upon an Indenture Event of Default, the Indenture Trustee and the holders of the outstanding Subordinated Debt Securities have failed to declare the principal of all of the Subordinated Debt Securities to be immediately due and payable, the Holders of at least 33% in aggregate Liquidation Amount of the Preferred Securities then Outstanding shall have such right to make such declaration by a notice in writing to the Institutional Trustee, the Sponsor and the Indenture Trustee.

At any time after such a declaration of acceleration with respect to the Subordinated Debt Securities has been made and before a judgment or decree for payment of the money due has been obtained by the Indenture Trustee as provided in the Subordinated Indenture, the Holders of a Majority in Liquidation Amount of the Preferred Securities, by written notice to the Institutional Trustee, the Sponsor and the Indenture Trustee, may rescind and annul such declaration and its consequences if:

(i) the Sponsor has paid or deposited with the Indenture Trustee a sum sufficient to pay

(1) all overdue installments of interest on all of the Subordinated Debt Securities,

(2) the principal of any Subordinated Debt Securities which have become due otherwise than by such declaration of acceleration and interest thereon at the rate borne by the Subordinated Debt Securities, and

(3) all sums paid or advanced by the Indenture Trustee under the Subordinated Indenture and the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee and the Institutional Trustee, their agents and counsel; and

(ii) all Indenture Events of Default, other than the non-payment of the principal of the Subordinated Debt Securities which has become due solely by such acceleration, have been cured or waived as provided in Section 713 of the Subordinated Indenture.

The Holders of at least a Majority in Liquidation Amount of the Preferred Securities may, on behalf of the Holders of all the Preferred Securities, waive any past default under the Subordinated Indenture, except a default in the payment of principal or interest (unless such default has been cured and a sum sufficient to pay all matured installments of interest and principal due otherwise than by acceleration has been deposited with the Indenture Trustee) or a default in respect of a covenant or provision which under the Subordinated Indenture cannot be modified or amended without the consent of the holder of each outstanding Subordinated Debt Securities. No such rescission shall affect any subsequent default or impair any right consequent thereon.

Upon receipt by the Institutional Trustee of written notice declaring such an acceleration, or rescission and annulment thereof, by Holders of the Preferred Securities all or part of which is represented by Book-Entry Preferred Securities Certificates, a record date shall be established for determining Holders of Outstanding Preferred Securities entitled to join in such notice, which record date shall be at the close of business on the day the Institutional Trustee receives such notice. The Holders on such record date, or their duly designated proxies, and only such Persons, shall be entitled to join in such notice, whether or not such Holders remain Holders after such record date; provided, that, unless such declaration of acceleration, or rescission and annulment, as the case may be, shall have become effective by virtue of the requisite percentage having joined in such notice prior to the day which is 90 days after such record date, such notice of declaration of acceleration, or rescission and annulment, as the case may be, shall automatically and without further action by any Holder be canceled and of no further effect. Nothing in this paragraph shall prevent a Holder, or a proxy of a Holder, from giving, after expiration of such 90-day period, a new written notice of declaration of acceleration, or rescission and annulment thereof, as the case may be, that is identical to a written notice which has been canceled pursuant to the proviso to the preceding sentence, in which event a new record date shall be established pursuant to the provisions of this Section 6.01(e).

(f) Except as set forth in Section 6.01(e) and Section 8.19, the Holders of Preferred Securities shall have no right to exercise directly any right or remedy available to the holders of, or in respect of, the Subordinated Debt Securities.

The Holders of a Majority in Liquidation Amount of the Preferred Securities at the time Outstanding shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Institutional Trustee, or exercising any trust or power conferred on the Institutional Trustee with respect to the Preferred Securities; provided, however, that, the Institutional Trustee shall have the right to decline to follow any such direction if the Institutional Trustee being advised by counsel determines that the action so directed may not lawfully be taken, or if the Institutional Trustee in good faith shall determine that the proceedings so directed would be illegal or involve it in personal liability or be unduly prejudicial to the rights of Holders of Preferred Securities not parties to such direction, and provided further that nothing in this Declaration shall impair the right of the Institutional Trustee to take any action deemed proper by the Institutional Trustee and which is not inconsistent with such direction by such Holders.

SECTION 6.02. NOTICE OF MEETINGS

Notice of all meetings of the Holders of Preferred Securities, stating the time, place and purpose of the meeting, shall be given by the Regular Trustees pursuant to Section 11.08 to each Holder of Preferred Securities of record, at his registered address, at least 15 days and not more than 90 days before the meeting. At any such meeting, any business properly before the meeting may be so considered whether or not stated in the notice of the meeting. Any adjourned meeting may be held as adjourned without further notice.

SECTION 6.03. MEETINGS OF HOLDERS OF PREFERRED SECURITIES

No annual meeting of Securityholders is required to be held. The Regular Trustees, however, shall call a meeting of Securityholders to vote on any matter upon the written request of the Holders of Preferred Securities of record of at least 33% of the Preferred Securities (based upon their Liquidation Amount) and the Regular Trustees or the Institutional Trustee may, at any time in their discretion, call a meeting of Holders of Preferred Securities to vote on any matters as to which Holders of Preferred Securities are entitled to vote.

Holders of Preferred Securities of record of at least 50% of the Preferred Securities (based upon their Liquidation Amount), present in person or by proxy, shall constitute a quorum at any meeting of Holders of Preferred Securities.

If a quorum is present at a meeting, an affirmative vote by the Holders of Preferred Securities of record present, in person or by proxy, holding more than 66-2/3% of the Preferred Securities (based upon their Liquidation Amount) held by the Holders of Preferred Securities of record present, either in person or by proxy, at such meeting shall constitute the action of the Securityholders, unless this Declaration requires a greater number of affirmative votes.

SECTION 6.04. VOTING RIGHTS

Securityholders shall be entitled to one vote for each \$1,000 of Liquidation Amount represented by their Trust Securities in respect of any matter as to which such Securityholders are entitled to vote; provided, however, any Preferred Securities that are owned by the Company, the Institutional Trustee or the Delaware Trustee will, for purposes of any vote or consent, be treated as if they were not outstanding.

SECTION 6.05. PROXIES, ETC.

At any meeting of Securityholders, any Securityholder entitled to vote may vote by proxy, provided that no proxy shall be voted at any meeting unless it shall have been placed on file with the Regular Trustees, or with such other officer or agent of the Trust as the Regular Trustees may direct, for verification prior to the time at which such vote shall be taken. Pursuant to a resolution of the Institutional Trustee, proxies may be solicited in the name of the Institutional Trustee or one or more officers of the Institutional Trustee. Only Securityholders of record shall be entitled to vote. When Trust Securities are held jointly by several Persons, any one of them may vote at any meeting in person or by proxy in respect of such Trust Securities, but if more than one of them shall be present at such meeting in person or by proxy, and such

joint owners or their proxies so present disagree as to any vote to be cast, such vote shall not be received in respect of such Trust Securities. A proxy purporting to be executed by or on behalf of a Securityholder shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger. No proxy shall be valid more than three years after its date of execution.

SECTION 6.06. SECURITYHOLDER ACTION BY WRITTEN CONSENT

Any action which may be taken by Securityholders at a meeting may be taken without a meeting and without prior notice if Securityholders holding at least 66-2/3% of all outstanding Trust Securities entitled to vote in respect of such action (or such other proportion thereof as shall be required by any express provision of this Declaration) shall consent to the action in writing (based upon their Liquidation Amount).

SECTION 6.07. RECORD DATE FOR VOTING AND OTHER PURPOSES

For the purposes of determining the Securityholders who are entitled to notice of and to vote at any meeting or by written consent, or to participate in any Distribution on the Trust Securities in respect of which a record date is not otherwise provided for in this Declaration, or for the purpose of any other action, the Regular Trustees may from time to time fix a date, not more than 90 days prior to the date of any meeting of Securityholders or the payment of Distribution or other action, as the case may be, as a record date for the determination of the identity of the Securityholders of record for such purposes.

SECTION 6.08. ACTS OF SECURITYHOLDERS

Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Declaration to be given, made or taken by Securityholders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Securityholders in person or by an agent appointed in writing; and, except as otherwise expressly provided herein, such action shall become effective when such instrument or instruments are delivered to the Regular Trustees. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Securityholders 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 Declaration and (subject to Section 8.01) conclusive in favor of the Trustees, if made in the manner provided in this Section.

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

The ownership of Preferred Securities shall be proved by the Securities Register. Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Securityholder of any Trust Security shall bind every future Securityholder of the same Trust Security and the Securityholder of every Trust Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustees or the Trust in reliance thereon, whether or not notation of such action is made upon such Trust Security.

Without limiting the foregoing, a Securityholder entitled hereunder to take any action hereunder with regard to any particular Trust Security may do so with regard to all or any part of the Liquidation Amount of such Trust Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such Liquidation Amount.

If any dispute shall arise between the Securityholders and the Trustees with respect to the authenticity, validity or binding nature of any request, demand, authorization, direction, consent, waiver or other Act of such Securityholder or Trustee under this Article VI, then the determination of such matter by the Institutional Trustee shall be conclusive with respect to such matter.

SECTION 6.09. INSPECTION OF RECORDS

Upon reasonable notice to the Trustees, the records of the Trust shall be open to inspection by Securityholders during normal business hours for any purpose reasonably related to such Securityholder's interest as a Securityholder.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES OF THE TRUSTEES

SECTION 7.01. REPRESENTATIONS AND WARRANTIES OF THE TRUSTEES

The Bank, the Delaware Bank, the Institutional Trustee and the Delaware Trustee, each on behalf of and as to itself, hereby represents and warrants for the benefit of the Sponsor and the Securityholders that:

(a) the Bank is a banking corporation or trust company duly organized, validly existing and in good standing under the laws of the United States of America, and the Delaware Bank is a banking corporation or trust company, duly organized, validly existing and in good standing under the laws of the State of Delaware;

(b) each of the Bank and the Delaware Bank has full corporate power, authority and legal right to execute, deliver and perform their obligations under this Declaration and has taken all necessary action to authorize the execution, delivery and performance by it of this Declaration;

(c) this Declaration has been duly authorized, executed and delivered by each of the Bank and the Delaware Bank and constitutes the valid and legally binding agreement of each of the Bank and the Delaware Bank, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles;

(d) the execution, delivery and performance by each of the Bank and the Delaware Bank of this Declaration have been duly authorized by all necessary corporate action on the part of the Bank, the Institutional Trustee, the Delaware Bank and the Delaware Trustee and do not require any approval of stockholders of the Bank or the Delaware Bank and such execution, delivery and performance will not (i) violate the Bank's or the Delaware Bank's Charter or By-laws, or (ii) violate any law, governmental rule or regulation of the United States or the State of New York or Delaware, as the case may be, governing the banking or trust powers of the Bank and the Institutional Trustee or the Delaware Bank and the Delaware Trustee, or any order, judgment or decree applicable to the Bank, the Institutional Trustee, the Delaware Bank or the Delaware Trustee; and

(e) neither the authorization, execution or delivery by the Bank or the Delaware Bank of this Declaration, nor the consummation of any of the transactions by the Bank, the Institutional Trustee, the Delaware Bank or the Delaware Trustee (as appropriate in context) contemplated herein or therein, require the consent or approval of, the giving of notice to, the registration with or the taking of any other action with respect to any governmental authority or agency under any existing federal, New York or Delaware law governing the banking or trust powers of the Bank or the Delaware Bank.

ARTICLE VIII
THE TRUSTEES

SECTION 8.01. CERTAIN DUTIES AND RESPONSIBILITIES

(a) The rights, duties and responsibilities of the Trustees shall be as provided by this Declaration and, in the case of the Institutional Trustee, the Trust Indenture Act. The Institutional Trustee, other than during the occurrence and continuation of an Event of Default, undertakes to perform only such duties as are specifically set forth in this Declaration and, upon an Event of Default, must exercise the same degree of care and skill as a prudent person would exercise or use in the conduct of his/her own affairs. The Trustees shall have all the privileges, rights and immunities provided by the Delaware Statutory Trust Act. Notwithstanding the foregoing, no provision of this Declaration shall require the Trustees to expend or risk their own funds or otherwise incur any financial liability in the performance of any of their duties hereunder, or in the exercise of any of their rights or powers, if they shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to them. Whether or not therein expressly so provided, every provision of this Declaration relating to the conduct or affecting the liability of or affording protection to the Trustees shall be subject to the provisions of this Section. To the extent that, at law or in equity, each Trustee has duties (including fiduciary duties) and liabilities relating

thereto to the Trust or to the Securityholders, each Trustee shall not be liable to the Trust or to any Securityholder for such Trustee's good faith reliance on the provisions of this Declaration. The provisions of this Declaration, to the extent that they restrict the duties and liabilities of each Trustee otherwise existing at law or in equity, are agreed by the Sponsor and the Securityholders to replace such other duties and liabilities of such Trustee.

(b) All payments made by the Institutional Trustee in respect of the Trust Securities shall be made only from the income and proceeds from the Trust Property and only to the extent that there shall be sufficient income or proceeds from the Trust Property to enable the Institutional Trustee to make payments in accordance with the terms hereof. Each Securityholder, by its acceptance of a Trust Security, agrees that it will look solely to the income and proceeds from the Trust Property to the extent available for distribution to it as herein provided and that the Trustees are not personally liable to it for any amount distributable in respect of any Trust Security or for any other liability in respect of any Trust Security. This Section 8.01(b) does not limit the liability of the Trustees expressly set forth elsewhere in this Declaration or, in the case of the Institutional Trustee, in the Trust Indenture Act.

SECTION 8.02. NOTICE OF DEFAULTS

Within 90 days after the occurrence of any default, the Institutional Trustee shall transmit, in the manner and to the extent provided in Section 11.08, notice of any default actually known to the Institutional Trustee to the Securityholders, the Regular Trustees and the Sponsor, unless such default shall have been cured or waived before the giving of such notice, provided that the Institutional 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 Institutional Trustee in good faith determines that the withholding of such notice is in the interests of the Securityholders. 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 8.03. CERTAIN RIGHTS OF INSTITUTIONAL TRUSTEE

Subject to the provisions of Section 8.01 and except as provided by law:

(a) the Institutional Trustee may rely and shall be protected in acting or refraining from acting in good faith upon any resolution, Opinion of Counsel, certificate, written representation of a Holder or transferee, certificate of auditors or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, appraisal, bond 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) if (i) in performing its duties under this Declaration the Institutional Trustee is required to decide between alternative courses of action, or (ii) in construing any of the provisions in this Declaration the Institutional Trustee finds the same ambiguous or inconsistent with any other provisions contained herein, or (iii) the Institutional Trustee is unsure of the application of any provision of this Declaration, then, except as to any matter as to which the Holders of Preferred Securities are entitled to vote under the terms of this Declaration, the

Institutional Trustee shall deliver a notice to the Sponsor requesting written instructions of the Sponsor as to the course of action to be taken. The Institutional Trustee shall take such action, or refrain from taking such action, as the Institutional Trustee shall be instructed in writing to take, or to refrain from taking, by the Sponsor; provided, however, that if the Institutional Trustee does not receive such instructions of the Sponsor within ten Business Days after it has delivered such notice, or such reasonably shorter period of time set forth in such notice (which to the extent practicable shall not be less than two Business Days), it may, but shall be under no duty to, take or refrain from taking such action not inconsistent with this Declaration as it shall deem advisable and in the best interests of the Securityholders, in which event the Institutional Trustee shall have no liability except for its own bad faith, negligence or willful misconduct;

(c) the Institutional Trustee may consult with counsel or other experts of its selection and the written advice of such counsel or other experts 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;

(d) the Institutional Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Declaration at the request or direction of any of the Securityholders pursuant to this Declaration, unless such Securityholders shall have offered to the Institutional Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(e) the Institutional Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond or other document, but the Institutional Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit;

(f) the Institutional Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through its agents or attorneys; provided that the Institutional Trustee shall be responsible for its own negligence or recklessness with respect to selection of any agent or attorney appointed by it hereunder;

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

(h) the Institutional Trustee shall not be deemed to have notice of any default or Event of Default unless an officer of the Institutional Trustee assigned to its Corporate Trust Division has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Institutional Trustee at its corporate trust office, and such notice references the Trust Securities and this Declaration; and

(i) the rights, privileges, protections, immunities and benefits given to the Institutional Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Institutional Trustee in each of its respective capacities hereunder, and to each agent, custodian and other Person employed to act hereunder.

SECTION 8.04. NOT RESPONSIBLE FOR RECITALS OR ISSUANCE OF
SECURITIES

The recitals contained herein and in the Trust Securities Certificates shall be taken as the statements of the Trust, and the Trustees do not assume any responsibility for their correctness. The Trustees shall not be accountable for the use or application by the Trust of the proceeds of the Trust Securities in accordance with Section 2.05.

The Institutional Trustee may conclusively assume that any funds held by it hereunder are legally available unless an officer of the Institutional Trustee assigned to its Institutional Trust Services Department shall have received written notice from the Company, any Holder or any other Trustee that such funds are not legally available.

The Institutional Trustee makes no representations as to the value or condition of the property of the Trust or any part thereof. The Institutional Trustee makes no representations as to the validity or sufficiency of this Declaration or the Trust Securities.

SECTION 8.05. MAY HOLD SECURITIES

Any Trustee or any other agent of the Trustees or the Trust, in its individual or any other capacity, and except as provided in the definition of the term "Outstanding" in Article I, may become the owner or pledgee of Trust Securities and may otherwise deal with the Trust with the same rights it would have if it were not a Trustee or such other agent.

SECTION 8.06. COMPENSATION; FEES; INDEMNITY

The Sponsor, as obligor of the Subordinated Debt Securities, agrees:

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

(b) except as otherwise expressly provided herein, to reimburse the Trustees upon request for all reasonable expenses, disbursements and advances incurred or made by the Trustees in accordance with any provision of this Declaration (including the reasonable compensation and the expenses and disbursements of their agents and counsel), except any such expense, disbursement or advance as may be attributable to their willful misconduct, negligence or bad faith (or, in the case of the Delaware Trustee, any such expense, disbursement or advance as shall have been caused by his/her own gross negligence); and

(c) to indemnify each of the Trustees for, and to hold each of the Trustees harmless against, any and all loss, damage, claims, liability or expense incurred without willful misconduct, negligence (gross negligence, in the case of the Delaware Trustee) or bad faith on their part, arising out of or in connection with the acceptance or administration of this Declaration, including the costs and expenses of defending themselves against any claim (whether by the Sponsor, any Securityholder or any other person) or liability in connection with the exercise or performance of any of their powers or duties hereunder.

The provisions of this Section 8.06 shall survive the termination of this Declaration.

SECTION 8.07. TRUSTEES REQUIRED; ELIGIBILITY

(a) There shall at all times be an Institutional Trustee hereunder with respect to the Trust Securities. The Institutional Trustee shall be a Person that has a combined capital and surplus of at least \$50,000,000. If any such Person publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Institutional Trustee with respect to the Trust Securities 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.

(b) There shall at all times be one or more Regular Trustees hereunder with respect to the Trust Securities. Each Regular Trustee shall be either a natural person who is at least 21 years of age or a legal entity that shall act through one or more persons authorized to bind such entity.

(c) There shall at all times be a Delaware Trustee with respect to the Trust Securities. The Delaware Trustee shall either be (i) a natural person who is at least 21 years of age and a resident of the State of Delaware or (ii) a legal entity authorized to conduct a trust business and with its principal place of business in the State of Delaware that shall act through one or more persons authorized to bind such entity.

SECTION 8.08. CONFLICTING INTERESTS

If the Institutional Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Institutional Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Declaration. To the extent permitted by the Trust Indenture Act, the Institutional Trustee shall not be deemed to have a conflicting interest by virtue of being trustee under the Guarantee.

SECTION 8.09. CO-TRUSTEES AND SEPARATE TRUSTEE

At any time or times, for the purpose of meeting the legal requirements of the Trust Indenture Act or of any jurisdiction in which any part of the Trust Property may at the time be located, the Holder of the Common Securities and the Institutional Trustee shall have power to appoint, and upon the written request of the Institutional Trustee, the Sponsor shall for such purpose join with the Institutional Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint, one or more Persons approved by the Institutional Trustee either to act as co-trustee, jointly with the Institutional Trustee, of all or any part of such Trust Property, or to act as separate trustee of any such Trust Property, in either case with such powers as may be provided in the instrument of appointment, and to vest in such Person or Persons in the capacity aforesaid, any property, title, right or power deemed necessary or desirable, subject to the other provisions of this Section. If the Sponsor does not join in such appointment within 15 days after the receipt by it of a request so to do, or in case an Indenture Event of Default has occurred and is continuing, the Institutional Trustee alone shall have power

to make such appointment. Any co-trustee or separate trustee appointed pursuant to this Section shall satisfy the requirements of Section 8.07.

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

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

(i) The Trust Securities shall be executed, authenticated and delivered and all rights, powers, duties, and obligations hereunder in respect of the custody of securities, cash and other personal property held by, or required to be deposited or pledged with, the Trustees hereunder, shall be exercised, solely by the Trustees.

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

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

(iv) No co-trustee or separate trustee hereunder shall be personally liable by reason of any act or omission of the Institutional Trustee, or any other such trustee hereunder.

(v) The Trustees shall not be liable by reason of any act of a co-trustee or separate trustee.

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

SECTION 8.10. RESIGNATION AND REMOVAL; APPOINTMENT OF SUCCESSOR

No resignation or removal of any Trustee (the "Relevant Trustee") and no appointment of a successor Relevant Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Relevant Trustee in accordance with the applicable requirements of Section 8.11.

The Relevant Trustee may resign at any time by giving written notice thereof to the Securityholders, the Sponsor and the other Trustees, except that notice is only required to be delivered to the Securityholders in the event that the Institutional Trustee or the Delaware Trustee is the resigning Relevant Trustee. If the instrument of acceptance by a successor Relevant Trustee required by Section 8.11 shall not have been delivered to the resigning Relevant Trustee within 30 days after the giving of such notice of resignation, the resigning Relevant Trustee may petition any court of competent jurisdiction for the appointment of a successor Relevant Trustee.

Unless an Indenture Event of Default shall have occurred and be continuing, the Relevant Trustee may be removed at any time by Act of the Holder of the Common Securities. If an Indenture Event of Default shall have occurred and be continuing, the Relevant Trustee may be removed at such time by Act of the Securityholders of a Majority in Liquidation Amount of the Preferred Securities, delivered to the Relevant Trustee (in its individual capacity and on behalf of the Trust).

If the Relevant Trustee shall resign, be removed or become incapable of continuing to act as Trustee at a time when no Indenture Event of Default shall have occurred and be continuing, the Holder of the Common Securities, by Act of the Holder of the Common Securities delivered to the retiring and successor Relevant Trustees, shall promptly appoint a successor Relevant Trustee or Trustees, and the retiring Relevant Trustee shall comply with the applicable requirements of Section 8.11. If the Relevant Trustee shall resign, be removed or become incapable of continuing to act as the Relevant Trustee at a time when an Indenture Event of Default shall have occurred and be continuing, the Holders of Preferred Securities, by Act of the Securityholders of a Majority in Liquidation Amount of the Preferred Securities then outstanding delivered to the retiring and successor Relevant Trustee, shall promptly appoint a successor Relevant Trustee or Trustees, and the Relevant Trustee shall comply with the applicable requirements of Section 8.11. If no successor Relevant Trustee shall have been so appointed in accordance with this Section 8.10 and accepted appointment in the manner required by Section 8.11, any Securityholder who has been a Securityholder of Trust Securities for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Relevant Trustee.

The retiring Relevant Trustee shall give notice of each resignation and each removal of the Relevant Trustee, and each appointment of a successor Trustee to all Securityholders in the manner provided in Section 11.08 and shall give notice to the Sponsor, except that notice is only required to be delivered to the Securityholders in the event that the Institutional Trustee or the

Delaware Trustee is the resigning or removed Relevant Trustee. Each notice shall include the name of the successor Relevant Trustee and the address of its corporate trust office if it is the Institutional Trustee.

Notwithstanding the foregoing or any other provision of this Declaration, in the event any Regular Trustee or a Delaware Trustee who is a natural person dies or becomes incompetent or incapacitated, the vacancy created by such death, incompetence or incapacity may be filled by (i) the act of the remaining Regular Trustee or (ii) otherwise by the Sponsor (with the successor in each case being an individual who satisfies the eligibility requirement for Regular Trustees set forth in Section 8.07). Additionally, notwithstanding the foregoing or any other provision of this Declaration, in the event the Sponsor believes that any Regular Trustee has become incompetent or incapacitated, the Sponsor, by notice to the remaining Trustees, may terminate the status of such Person as a Regular Trustee (in which case the vacancy so created will be filled in accordance with the preceding sentence).

SECTION 8.11. ACCEPTANCE OF APPOINTMENT BY SUCCESSOR

In case of the appointment hereunder of a successor Relevant Trustee, every such successor Relevant Trustee so appointed shall execute, acknowledge and deliver to the Trust and to the retiring Relevant Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Relevant Trustee shall become effective and such successor Relevant Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Relevant Trustee; but, on the request of the Sponsor or the successor Relevant Trustee, such retiring Relevant Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Relevant Trustee all the rights, powers and trusts of the retiring Relevant Trustee and shall duly assign, transfer and deliver to such successor Relevant Trustee all property and money held by such retiring Relevant Trustee hereunder.

Upon request of any such successor Relevant Trustee, the retiring Relevant Trustee shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Relevant Trustee all such rights, powers and trusts referred to in the preceding paragraph.

No successor Relevant Trustee shall accept its appointment unless at the time of such acceptance such successor Relevant Trustee shall be qualified and eligible under this Article.

SECTION 8.12. MERGER, CONVERSION, CONSOLIDATION OR SUCCESSION TO BUSINESS

Any Person into which the Institutional Trustee, Delaware Trustee or any Regular Trustee which is not a natural person may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which such Relevant Trustee shall be a party, or any Person succeeding to all or substantially all the corporate trust business of such Relevant Trustee, shall be the successor of such Relevant Trustee hereunder; provided such Person shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

SECTION 8.13. PREFERENTIAL COLLECTION OF CLAIMS AGAINST SPONSOR OR TRUST

If and when the Institutional Trustee shall be or become a creditor of the Sponsor or the Trust (or any other obligor upon the Subordinated Debt Securities or the Trust Securities), the Institutional Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Sponsor or Trust (or any such other obligor). For purposes of Section 311(b)(4) and (6) of the Trust Indenture Act:

(a) "cash transaction" means any transaction in which full payment for goods or securities sold is made within seven 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; and

(b) "self-liquidating paper" means any draft, bill of exchange, acceptance or obligation which is made, drawn, negotiated or incurred by the Sponsor or the Trust (or any such obligor) 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 Institutional Trustee simultaneously with the creation of the creditor relationship with the Sponsor or the Trust (or any such obligor) arising from the making, drawing, negotiating or incurring of the draft, bill of exchange, acceptance or obligation.

SECTION 8.14. REPORTS BY INSTITUTIONAL TRUSTEE

(a) Within 60 days after ____ of each year commencing with ____, 2004, if required by Section 313(a) of the Trust Indenture Act, the Institutional Trustee shall transmit a brief report dated as of such ____ with respect to any of the events specified in such Section 313(a) that may have occurred since the later of the date of this Declaration or the preceding ____.

(b) The Institutional Trustee shall transmit to Securityholders the reports required by Section 313(b) of the Trust Indenture Act at the times specified therein.

(c) Reports pursuant to this Section shall be transmitted in the manner and to the Persons required by Sections 313(c) and (d) of the Trust Indenture Act.

SECTION 8.15. REPORTS TO THE INSTITUTIONAL TRUSTEE

The Sponsor and the Regular Trustees on behalf of the Trust shall provide to the Institutional Trustee such documents, reports and information as required by Section 314 of the Trust Indenture Act (if any) and, within 120 days after the end of each fiscal year of the Sponsor, the compliance certificate required by Section 314(a)(4) of the Trust Indenture Act in the form and in the manner required by Section 314 of the Trust Indenture Act.

Delivery of such reports, information and documents to the Institutional Trustee is for informational purposes only and the Institutional Trustee's receipt of such shall not constitute

constructive notice of any information contained therein or determinable from information contained therein.

SECTION 8.16. EVIDENCE OF COMPLIANCE WITH CONDITIONS PRECEDENT

Each of the Sponsor and the Regular Trustees on behalf of the Trust shall provide to the Institutional Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Declaration, including an Officers' Certificate and an Opinion of Counsel that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given pursuant to Section 314(c) of the Trust Indenture Act shall comply with Section 314(e) of the Trust Indenture Act.

SECTION 8.17. NUMBER OF TRUSTEES

(a) The number of Trustees shall initially be four; provided that the Sponsor by written instrument may increase or decrease the number of Regular Trustees.

(b) If a Trustee ceases to hold office for any reason and the number of Regular Trustees is not reduced pursuant to Section 8.17(a), or if the number of Trustees is increased pursuant to Section 8.17(a), a vacancy shall occur. The vacancy shall be filled with a Trustee appointed in accordance with Section 8.10.

(c) Except as provided in Section 9.02, the death, resignation, retirement, removal, bankruptcy, incompetence or incapacity to perform the duties of a Trustee shall not operate to annul, dissolve or terminate the Trust. Whenever a vacancy in the number of Regular Trustees shall occur, until such vacancy is filled by the appointment of an Regular Trustee in accordance with Section 8.10, the Regular Trustees in office, regardless of their number (and notwithstanding any other provision of this Declaration), shall have all powers granted to the Regular Trustees and shall discharge the duties imposed upon the Regular Trustees by this Declaration.

SECTION 8.18. DELEGATION OF POWER

(a) Any Regular Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purpose of executing any documents contemplated in Section 2.07(a), including any registration statement or amendment thereto filed with the Commission, or making any other governmental filing; and

(b) The Regular Trustees shall have power to delegate from time to time to such of their number the doing of such things and the execution of such instruments either in the name of the Trust or the names of the Regular Trustees or otherwise as the Regular Trustees may deem expedient, to the extent such delegation is not prohibited by applicable law or contrary to the provisions of the Trust, as set forth herein.

SECTION 8.19. ENFORCEMENT OF RIGHTS OF INSTITUTIONAL TRUSTEE BY SECURITYHOLDERS

If (i) the Trust fails to pay Distributions in full on the Preferred Securities for more than five consecutive years at any one time, or (ii) an Event of Default occurs and is continuing, then

the Holders of Preferred Securities will rely on the enforcement by the Institutional Trustee of its rights against the Company as the holder of the Subordinated Debt Securities. In addition, the Holders of a majority in aggregate Liquidation Amount of the Preferred Securities will have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Institutional Trustee or to direct the exercise of any trust or power conferred upon the Institutional Trustee under this Declaration, including the right to direct the Institutional Trustee to exercise the remedies available to it as a holder of the Subordinated Debt Securities; provided that such direction shall not be in conflict with any rule of law or with this Declaration, and could not involve the Institutional Trustee in personal liability in circumstances where reasonable indemnity would not be adequate. If the Institutional Trustee fails to enforce its rights under the Subordinated Debt Securities, a Holder of Preferred Securities may, to the fullest extent permitted by applicable law, institute a legal proceeding against the Company to enforce its rights under this Declaration without first instituting any legal proceeding against the Institutional Trustee or any other Person, including the Trust; it being understood and intended that no one or more of such Holders shall have any right in any manner whatsoever by virtue of, or by availing of, any provision of this Declaration to affect, disturb or prejudice the rights of any other of such Holders or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Declaration, except in the manner herein provided and for the equal and ratable benefit of all such Holders. Notwithstanding the foregoing, a Holder of Preferred Securities may institute a legal proceeding directly against the Company, without first instituting a legal proceeding against or requesting or directing that action be taken by the Institutional Trustee or any other Person, for enforcement of payment to such Holder of principal of or interest on the Subordinated Debt Securities having a principal amount equal to the aggregate stated liquidation amount of the Preferred Securities of such Holder on or after the due dates therefor specified or provided for in the Subordinated Debt Securities. The Company shall be subrogated to all rights of the Holders of Preferred Securities in respect of any amounts paid to such Holders by the Company pursuant to this Section.

SECTION 8.20. DELAWARE TRUSTEE

(a) Notwithstanding any other provision of this Declaration, the Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities of the Regular Trustees or the Institutional Trustee described in this Declaration. The Delaware Trustee shall be a trustee for the sole and limited purpose of fulfilling the requirements of ss.3807 of the Delaware Statutory Trust Act.

(b) It is expressly understood and agreed by the parties hereto that in fulfilling its obligations as Delaware Trustee hereunder on behalf of the Trust (i) each of the representations, undertakings and agreements herein made on the part of the Trust is made and intended not as representations, warranties, covenants, undertakings and agreements by SunTrust Delaware Trust Company in its individual capacity but is made and intended for the purpose of binding only the Trust, and (ii) under no circumstances shall SunTrust Delaware Trust Company in its individual capacity be personally liable for the payment of any indebtedness or expenses of the Trust or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Trust under this Declaration, except if such breach or failure is due to any gross negligence or willful misconduct of the Delaware Trustee.

ARTICLE IX
DISSOLUTION AND LIQUIDATION

SECTION 9.01. DISSOLUTION UPON EXPIRATION DATE

The Trust shall automatically dissolve on December 1, 2044 (the "Expiration Date") or earlier pursuant to Section 9.02.

SECTION 9.02. EARLY TERMINATION

Upon the first to occur of any of the following events (such first occurrence, an "Early Termination Event"), the Trust shall be dissolved in accordance with the terms hereof:

(i) the occurrence of a Bankruptcy Event in respect of the Sponsor, dissolution or liquidation of the Sponsor, or the dissolution of the Trust pursuant to judicial decree;

(ii) the delivery of written direction to the Institutional Trustee by the Sponsor at any time (which direction is optional and wholly within the discretion of the Sponsor) to dissolve the Trust and distribute the Subordinated Debt Securities to Securityholders as provided in Section 9.04; and

(iii) the payment at maturity or redemption of all of the Junior Subordinated Debt Securities, and the consequent redemption of all of the Preferred Securities.

SECTION 9.03. TERMINATION

The respective obligations and responsibilities of the Trust and the Trustees created hereby shall terminate upon the latest to occur of the following: (a) the distribution by the Institutional Trustee to Securityholders upon the liquidation of the Trust pursuant to Section 9.04 or 9.05, or upon the redemption of all of the Trust Securities pursuant to Section 4.04, of all amounts or instruments required to be distributed hereunder upon the final payment of the Trust Securities; (b) the payment of any expenses owed by the Trust; and (c) the discharge of all administrative duties of the Regular Trustees, including the performance of any tax reporting obligations with respect to the Trust or the Securityholders.

SECTION 9.04. LIQUIDATION

(a) If any Early Termination Event specified in clause (ii) of Section 9.02 occurs, the Trust shall be liquidated and the Institutional Trustee shall distribute the Subordinated Debt Securities to the Securityholders as provided in this Section 9.04.

(b) In connection with a distribution of the Subordinated Debt Securities, each Holder of Trust Securities shall be entitled to receive, after the satisfaction of liabilities to creditors of the Trust (as evidenced by a certificate of the Regular Trustees), a Like Amount of Subordinated Debt Securities. Notice of liquidation shall be given by the Institutional Trustee by

first-class mail, postage prepaid, mailed not later than 30 nor more than 60 days prior to the Liquidation Date to each Holder of Trust Securities at such Holder's address appearing in the Securities Register. All notices of liquidation shall:

(i) state the Liquidation Date;

(ii) state that from and after the Liquidation Date, the Trust Securities will no longer be deemed to be Outstanding and any Trust Securities Certificates not surrendered for exchange will be deemed to represent a Like Amount of Subordinated Debt Securities; and

(iii) provide such information with respect to the mechanics by which Holders may exchange Trust Securities Certificates for Subordinated Debt Securities as the Regular Trustees or the Institutional Trustee shall deem appropriate.

(c) In order to effect the liquidation of the Trust and distribution of the Subordinated Debt Securities to Securityholders, the Institutional Trustee shall establish a record date for such distribution (which shall be not more than 45 days prior to the Liquidation Date) and, either itself acting as exchange agent or through the appointment of a separate exchange agent, shall establish such procedures as it shall deem appropriate to effect the distribution of Subordinated Debt Securities in exchange for the Outstanding Trust Securities Certificates.

(d) After the Liquidation Date, (i) the Trust Securities will no longer be deemed to be Outstanding, (ii) certificates representing a Like Amount of Subordinated Debt Securities will be issued to Holders of Trust Securities Certificates, upon surrender of such certificates to the Regular Trustees or their agent for exchange, (iii) any Trust Securities Certificates not so surrendered for exchange will be deemed to represent a Like Amount of Subordinated Debt Securities, accruing interest at the rate provided for in the Subordinated Debt Securities from the last Distribution Payment Date on which a Distribution was made on such Trust Certificates until such certificates are so surrendered (and until such certificates are so surrendered, no payments of interest or principal will be made to Holders of Trust Securities Certificates with respect to such Subordinated Debt Securities) and (iv) all rights of Securityholders holding Trust Securities will cease, except the right of such Securityholders to receive Subordinated Debt Securities upon surrender of Trust Securities Certificates.

(e) The Sponsor will use its best efforts to have the Subordinated Debt Securities that are distributed in exchange for the Preferred Securities to be listed on such securities exchange as the Preferred Securities are then listed. The Sponsor may elect to have the Subordinated Debt Securities issued in book-entry form to the Clearing Agency or its nominee pursuant to a Certificate Depository Agreement.

SECTION 9.05. BANKRUPTCY

If an Early Termination Event specified in clause (i) of Section 9.02 has occurred, the Trust shall be liquidated. The Institutional Trustee shall distribute the Subordinated Debt Securities to the Securityholders as provided in Section 9.04, unless such distribution is

determined by the Regular Trustees not to be practical, in which event the Holders will be entitled to receive out of the assets of the Trust available for distribution to Securityholders, after satisfaction of liabilities to creditors, an amount equal to the Liquidation Amount per Trust Security plus accrued and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"). If such Liquidation Distribution can be paid only in part because the Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then, subject to the next succeeding sentence, the amounts payable by the Trust on the Trust Securities shall be paid on a pro rata basis (based upon Liquidation Amounts). The Holder of the Common Securities will be entitled to receive Liquidation Distributions upon any such dissolution, winding-up or termination pro rata (determined as aforesaid) with Holders of Preferred Securities, except that, if an Indenture Event of Default has occurred and is continuing, the Preferred Securities shall have a priority over the Common Securities.

SECTION 9.06. CERTIFICATE OF CANCELLATION

A Certificate of Cancellation ("Certificate") to terminate the Trust (as permitted hereby) may be signed by any Regular Trustee, individually, in such capacity so long as such Certificate fully complies with all legal requirements.

ARTICLE X
REMARKETING PROCEDURES

SECTION 10.01. ELECTION TO REMARKET

If the Company, and the Regular Trustees acting at the direction of the Company, elect to conduct a Remarketing, the Trust, not less than 20 nor more than 35 Business Days prior to the related Election Date, is required pursuant to Section 4.02(b) to give the written notice of proposed Remarketing of the Preferred Securities to the Clearing Agency, the Institutional Trustee, the Indenture Trustee, the Remarketing Agent and the Calculation Agent. If the Preferred Securities are not issued in global, fully registered form to the Clearing Agency, such notice shall be delivered to the Holders instead of the Clearing Agency. As required by Section 4.02(b), such notice will describe the Remarketing and will indicate the length of the proposed new Fixed Rate Period, the proposed Remarketing Date and any redemption provisions that will apply during such new Fixed Rate Period. At any time prior to the Election Date, the Company and the Regular Trustees may elect to terminate a Remarketing by giving the Clearing Agency (or the Holders, as applicable), the Remarketing Agent, the Institutional Trustee, the Indenture Trustee and the Calculation Agent written notice of such termination.

SECTION 10.02. NOTICE OF ELECTION

(a) Not later than 4:00 P.M., New York City time, on an Election Date, each Holder of Preferred Securities may give, through the facilities of the Clearing Agency in the case of Book-Entry Preferred Securities Certificates, a written notice to the Institutional Trustee of its election ("Notice of Election") (i) to retain and not to have all or any portion of the Preferred Securities owned by it remarketed in the Remarketing or (ii) to tender all or any portion of such Preferred Securities for purchase in the Remarketing (such portion, in either case, is to be in the

Liquidation Amount of \$1,000 or any integral multiple thereof). Any Notice of Election given to the Institutional Trustee will be irrevocable and may not be conditioned upon the level at which the Fixed Rate is established in the Remarketing. Promptly after 4:30 P.M., New York City time, on such Election Date, the Institutional Trustee, based on the Notices of Election received by it through the Clearing Agency (or from the Holders, if Definitive Preferred Securities Certificates have been issued) prior to such time, will notify the Regular Trustees, the Company and the Remarketing Agent of the number of Preferred Securities to be retained by holders of Preferred Securities and the number of Preferred Securities tendered for purchase in the Remarketing.

(b) If any Holder of Preferred Securities gives a Notice of Election to tender Preferred Securities as described in 10.02(a), the Preferred Securities so subject to such Notice of Election will be deemed tendered for purchase in the Remarketing, notwithstanding any failure by such Holder to deliver or properly deliver such Preferred Securities to the Remarketing Agent for purchase. If any Holder of Preferred Securities fails timely to deliver a Notice of Election, as described above, such Preferred Securities will be deemed tendered for purchase in such Remarketing, notwithstanding such failure or the failure by such Holder to deliver or properly deliver such Preferred Securities to the Remarketing Agent for purchase.

(c) The right of each Holder of Preferred Securities to have Preferred Securities tendered for purchase in the Remarketing shall be limited to the extent that (i) the Remarketing Agent conducts a Remarketing pursuant to the terms of the Remarketing Agreement, (ii) Preferred Securities tendered have not been called for redemption, (iii) the Remarketing Agent is able to find a purchaser or purchasers for tendered Preferred Securities at a Fixed Rate and (iv) such purchaser or purchasers deliver the purchase price therefor to the Remarketing Agent.

(d) Any Holder of Preferred Securities that desires to continue to retain a number of Preferred Securities, but only if the Fixed Rate is not less than a specified rate per annum, shall submit a Notice of Election to tender such Preferred Securities pursuant to this Section 10.02 and separately notify the Remarketing Agent of its interest at the telephone number set forth in the notice of Remarketing delivered pursuant to Section 10.01. If such Holder so notifies the Remarketing Agent, the Remarketing Agent will give priority to such Holder's purchase of such number of Preferred Securities in the Remarketing providing that the Fixed Rate is not less than such specified rate.

SECTION 10.03. DETERMINATION OF DISTRIBUTION RATE

(a) If Holders submit Notices of Election to retain all of the Preferred Securities then outstanding, the Fixed Rate will be the rate determined by the Remarketing Agent, in its sole discretion, as the rate that would have been established had a Remarketing been held on the related Remarketing Date.

(b) On any Remarketing Date on which the Remarketing is to be conducted, the Remarketing Agent will use commercially reasonable efforts to remarket, at a price equal to 100% of the Liquidation Amount thereof, Preferred Securities tendered or deemed tendered for purchase. Except as provided in Section 10.03(a), if, as a result of such efforts, on any

Remarketing Date, the Remarketing Agent has determined that it will be able to remarket all Preferred Securities tendered or deemed tendered for purchase in the Remarketing at a Fixed Rate and at a price of \$1,000 per Preferred Security, prior to 4:00 P.M., New York City time, on such Remarketing Date, the Remarketing Agent will determine the Fixed Rate, which will be the rate per annum (rounded to the nearest one-thousandth (0.001) of one percent per annum) which the Remarketing Agent determines, in its sole judgment, to be the lowest Fixed Rate per annum that will enable it to remarket all Preferred Securities tendered or deemed tendered for Remarketing at a price of \$1,000 per Preferred Security.

(c) If the Remarketing Agent is unable to remarket by 4:00 P.M., New York City time on the third Business Day prior to the Remarketing Settlement Date, all Preferred Securities tendered or deemed tendered for a purchase at a price of \$1,000 per Preferred Security, the Distribution Rate for the next Distribution Period shall be the Floating Rate and the new Distribution Period shall be a Floating Rate Period. In such case, no Preferred Securities will be sold in the Remarketing and each Holder will continue to hold its Preferred Securities at such Floating Rate during such Floating Rate Period.

(d) All Preferred Securities tendered or deemed tendered in the Remarketing will be automatically delivered to the account of the Remarketing Agent through the facilities of the Clearing Agency against payment of the purchase price therefor on the Remarketing Settlement Date. The Remarketing Agent will make payment to the Clearing Agency Participant of each tendering holder of Preferred Securities in the Remarketing through the facilities of the Clearing Agency by the close of business on the Remarketing Settlement Date.

In accordance with the Clearing Agency's normal procedures, on the Remarketing Settlement Date, the transaction described above with respect to each Preferred Security tendered for purchase and sold in the Remarketing will be executed through the Clearing Agency Participants, will be debited and credited and such Preferred Securities delivered by book entry as necessary to effect purchases and sales of such Preferred Securities. The Clearing Agency is expected to make payment in accordance with its normal procedures.

This Section 10.03(d) shall not apply if Definitive Preferred Securities Certificates have been issued.

(e) If any Holder selling Preferred Securities in the Remarketing fails to deliver such Preferred Securities, the Clearing Agency Participant of such selling Holder and of any other person that was to have purchased Preferred Securities in the Remarketing may deliver to any such other person a number of Preferred Securities that is less than the number of Preferred Securities that otherwise was to be purchased by such person. In such event, the number of Preferred Securities to be so delivered will be determined by such Clearing Agency Participant and delivery of such lesser number of Preferred Securities will constitute good delivery. This paragraph shall not apply if Definitive Preferred Securities Certificates have been issued.

(f) The Remarketing Agent is not obligated to purchase any Preferred Securities that would otherwise remain unsold in a Remarketing. Neither the Trust, any Trustee,

the Company nor the Remarketing Agent shall be obligated in any case to provide funds to make payment upon tender of Preferred Securities for Remarketing.

ARTICLE XI
MISCELLANEOUS PROVISIONS

SECTION 11.01. GUARANTEE BY THE SPONSOR

Subject to the terms and conditions hereof, the Sponsor, as obligor of the Subordinated Debt Securities, irrevocably and unconditionally guarantees to each Person to whom the Trust is now or hereafter becomes indebted or liable (the "Beneficiaries") the full payment, when and as due, of any and all Obligations (as hereinafter defined) to such Beneficiaries. As used herein, "Obligations" means any indebtedness, expenses or liabilities of the Trust, other than obligations of the Trust to pay to Holders of any Preferred Securities, Common Securities or other similar interests in the Trust the amounts due such Holders pursuant to the terms of the Preferred Securities, Common Securities or such other similar interests, as the case may be. This guarantee is intended to be for the benefit of, and to be enforceable by, all such Beneficiaries, whether or not such Beneficiaries have received notice hereof.

SECTION 11.02. LIMITATION OF RIGHTS OF SECURITYHOLDERS

The death or incapacity of any Person having an interest, beneficial or otherwise, in a Trust Security shall not operate to terminate this Declaration, nor entitle the legal representatives or heirs of such Person or any Securityholder for such Person, to claim an accounting, take any action or bring any proceeding in and for a partition or winding up of the arrangements contemplated hereby, nor otherwise affect the rights, obligations and liabilities of the parties hereto or any of them.

SECTION 11.03. AMENDMENT

(a) This Declaration may be amended from time to time by the Institutional Trustee and the Holders of a Majority in Liquidation Amount of the Common Securities, without the consent of any Holder of the Preferred Securities (i) to cure any ambiguity, correct or supplement any provision herein that may be defective or inconsistent with any other provision herein, or to make other changes to the provisions with respect to matters or questions arising under this Declaration; provided, however, that such amendment shall not adversely affect in any material respect the interests of any Holder of Trust Securities; (ii) to facilitate the tendering, remarketing and settlement of the Preferred Securities, as herein contemplated; (iii) to modify, eliminate or add to any provisions of this Declaration to such extent as shall be necessary to ensure that the Trust will not be taxable other than as a grantor trust for United States federal income tax purposes at any time that any Trust Securities are Outstanding or to ensure that the Trust will not be required to register as an investment company under the Investment Company Act; or (iv) in accordance with the requirements of Section 8.11. Without limiting the generality of the foregoing, if the Trust Indenture Act as in effect at the date of the execution and delivery of this Declaration or at any time thereafter shall be amended and (x) if any such amendment shall require one or more changes to any provisions hereof or the inclusion herein of any

additional provisions, or shall by operation of law be deemed to effect such changes or incorporate such provisions by reference or otherwise, this Declaration shall be deemed to have been amended so as to conform to such amendment to the Trust Indenture Act, and the Company and the Trustees may, without the consent of any Holders, amend this Declaration to evidence such amendment hereof; or (y) if any such amendment shall permit one or more changes to, or the elimination of, any provisions hereof which, at the date of the execution and delivery hereof or at any time thereafter, are required by the Trust Indenture Act to be contained herein or are contained herein to reflect any provisions of the Trust Indenture Act as in effect at such date, this Declaration shall be deemed to have been amended to effect such changes or elimination, and the Company and the Trustees may, without the consent of any Holders, amend this Declaration to evidence such amendment.

(b) Except as provided in Section 11.03(c) hereof, any provision of this Declaration may be amended by the Institutional Trustee and the Holders of a Majority in Liquidation Amount of the Common Securities with (i) the consent of Holders of at least a Majority in Liquidation Amount of the Preferred Securities, and (ii) receipt by the Trustees of an Opinion of Counsel to the effect that such amendment or the exercise of any power granted to the Trustees in accordance with such amendment will not affect the Trust's being taxable as a grantor trust for United States federal income tax purposes or the Trust's exemption from status of an "investment company" under the Investment Company Act.

(c) In addition to and notwithstanding any other provision in this Declaration, without the consent of each affected Securityholder, this Declaration may not be amended to (i) change the amount or timing of any Distribution on the Trust Securities or otherwise adversely affect the amount of any Distribution required to be made in respect of the Trust Securities as of a specified date; (ii) restrict the right of a Securityholder to institute suit for the enforcement of any such payment on or after such date; or (iii) change the consent required pursuant to this Section 11.03.

(d) Notwithstanding any other provisions of this Declaration, the Trustees shall not enter into or consent to any amendment to this Declaration which would cause the Trust to fail or cease to qualify for the exemption from status of an "investment company" under the Investment Company Act of 1940, as amended, afforded by Rule 3a-5 thereunder.

(e) Without the consent of the Sponsor, the Calculation Agent or the Remarketing Agent, this Declaration may not be amended in a manner which imposes any additional obligation on the Sponsor, the Calculation Agent or the Remarketing Agent, as the case may be. Notwithstanding any other provisions of this Declaration, the consent of the Delaware Trustee shall be required to amend any provision of, or add any provision to, this Declaration which affects the Delaware Trustee's rights, duties, immunities, liabilities or otherwise. In executing any amendment permitted by this Declaration, the Trustees shall be entitled to receive, and (subject to Section 8.01) shall be fully protected in relying upon an Officer's Certificate and an Opinion of Counsel stating that the execution of such amendment is authorized or permitted by this Declaration. Any Trustee may, but shall not be obligated to, enter into any such amendment which affects such Trustee's own rights, duties, immunities or liabilities under this Declaration or otherwise.

(f) In the event that any amendment to this Declaration is made, the Regular Trustees shall promptly provide to the Sponsor a copy of such amendment.

SECTION 11.04. SEPARABILITY

In case any provision in this Declaration or in the Trust Securities Certificates 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 11.05. GOVERNING LAW

THIS DECLARATION AND THE RIGHTS AND OBLIGATIONS OF EACH OF THE SECURITYHOLDERS, THE TRUST AND THE TRUSTEES WITH RESPECT TO THIS DECLARATION AND THE TRUST SECURITIES SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF DELAWARE.

SECTION 11.06. SUCCESSORS

This Declaration shall be binding upon and shall inure to the benefit of any successor to both the Trust and the Trustees, including any successor by operation of law.

SECTION 11.07. HEADINGS

The Article and Section headings are for convenience only and shall not affect the construction of this Declaration.

SECTION 11.08. NOTICE AND DEMAND

Any notice, demand or other communication which by any provision of this Declaration is required or permitted to be given or served to or upon any Securityholder or the Sponsor may be given or served in writing by deposit thereof, first-class postage prepaid, in the United States mail, hand delivery or facsimile transmission, in each case, addressed, (i) in the case of a Holders of Preferred Securities, to such Holders of Preferred Securities as such Securityholder's name and address appear on the Securities Register and, (ii) in the case of the Holders of Common Securities or the Sponsor, to Avista Corporation, 1411 East Mission Avenue, Spokane, Washington 99202, Attention: Treasurer, Facsimile No. (509) 495-4361, or to such other address as the Holders of Common Securities or the Sponsor may give notice of to the Institutional Trustee and the Delaware Trustee. Such notice, demand or other communication to or upon a Securityholder shall be deemed to have been sufficiently given or made, for all purposes, upon hand delivery, mailing or transmission.

Any notice, demand or other communication which by any provision of this Declaration is required or permitted to be given or served to or upon the Trust or the Trustees shall be given in writing addressed as follows: (i) with respect to the Institutional Trustee and the Delaware Trustee, Union Bank of California, N.A., 475 Sansome Street, 12th Floor, San Francisco, California 94111, Attention: Corporate Trust Services, Facsimile No. (415) 296-6754; SunTrust Delaware Trust Company, _____, Attention: Corporate Trust Services, Facsimile No. (____) ____-

____, as the case may be, or to such other address as the Institutional Trustee or the Delaware Trustee may give notice of to the Sponsor; and (ii) with respect to the Regular Trustees, to them at the address above for notices to the Sponsor, marked Attention: Regular Trustees of AVA Capital Trust III, c/o Treasurer. Such notice, demand or other communication to or upon the Trust or the Trustees shall be deemed to have been sufficiently given or made only upon actual receipt of the writing by the applicable Trustee.

Any notice, demand or other communication which by any provision of this Declaration is required or permitted to be served upon the Calculation Agent or the Remarketing Agreement shall be given in accordance with the Calculation Agent Agreement or the Remarketing Agreement, respectively.

SECTION 11.09. AGREEMENT NOT TO PETITION

Each of the Trustees and the Sponsor agrees for the benefit of the Securityholders that, until at least one year and one day after the Trust has been terminated in accordance with Article IX, it shall not file, or join in the filing of, a petition against the Trust under any bankruptcy, reorganization, arrangement, insolvency, liquidation or other similar law (including, without limitation, the United States Bankruptcy Code) (collectively, "Bankruptcy Laws") or otherwise join in the commencement of any proceeding against the Trust under any Bankruptcy Law. In the event the Sponsor takes action in violation of this Section 11.09, the Institutional Trustee agrees, for the benefit of Securityholders, that it shall file an answer with the bankruptcy court or otherwise properly contest the filing of such petition by the Sponsor against the Trust or the commencement of such action and raise the defense that the Sponsor has agreed in writing not to take such action and should be stopped and precluded therefrom and such other defenses, if any, as counsel for the Trustees or the Trust may assert. The provisions of this Section 11.09 shall survive the termination of this Declaration.

SECTION 11.10. CONFLICT WITH TRUST INDENTURE ACT

(a) This Declaration is subject to the provisions of the Trust Indenture Act that are required to be part of this Declaration and shall, to the extent applicable, be governed by such provisions.

(b) The Institutional Trustee shall be the only Trustee which is a Trustee for the purposes of the Trust Indenture Act.

(c) If any provision hereof limits, qualifies or conflicts with another provision hereof which is required to be included in this Declaration by any of the provisions of the Trust Indenture Act, such required provision shall control.

(d) The application of the Trust Indenture Act to this Declaration shall not affect the nature of the Trust Securities as equity securities representing undivided beneficial interests in the assets of the Trust.

THE RECEIPT AND ACCEPTANCE OF A TRUST SECURITY OR ANY INTEREST THEREIN BY OR ON BEHALF OF A SECURITYHOLDER OR ANY BENEFICIAL

OWNER, WITHOUT ANY SIGNATURE OR FURTHER MANIFESTATION OF ASSENT, SHALL CONSTITUTE THE UNCONDITIONAL ACCEPTANCE BY THE SECURITYHOLDER AND ALL OTHERS HAVING A BENEFICIAL INTEREST IN SUCH TRUST SECURITY OF ALL THE TERMS AND PROVISIONS OF THIS DECLARATION AND AGREEMENT TO THE SUBORDINATION PROVISIONS AND OTHER TERMS OF THE GUARANTEE AND THE SUBORDINATED INDENTURE AND THE AGREEMENT OF THE TRUST, SUCH SECURITYHOLDER AND SUCH OTHERS THAT THOSE TERMS AND PROVISIONS SHALL BE BINDING, OPERATIVE AND EFFECTIVE AS BETWEEN THE TRUST AND SUCH SECURITYHOLDER AND SUCH OTHERS.

IN WITNESS WHEREOF, the parties hereto have executed this Declaration or have caused this Declaration to be executed on their behalf, all as of the day and year first above written.

AVISTA CORPORATION,
as Sponsor

By: _____
Name:
Title:

UNION BANK OF CALIFORNIA, N.A.,
as Institutional Trustee

By: _____
Name:
Title:

SUNTRUST DELAWARE TRUST COMPANY,
as Delaware Trustee

By: _____
Name:
Title:

Malyn K. Malquist
as Regular Trustee

Diane C. Thoren
as Regular Trustee

EXHIBIT A

This Security is a Global Certificate within the meaning of the Declaration hereinafter referred to and is registered in the name of the Depository Trust Company ("DTC") or a nominee of DTC. This Security is exchangeable for Securities registered in the name of a person other than DTC or its nominee only in the limited circumstances described in the Declaration and no transfer of this Security (other than a transfer of this Security as a whole by DTC to a nominee of DTC or by a nominee of DTC to another nominee of DTC) may be registered except in limited circumstances.

Unless this certificate is presented by an authorized representative of DTC, to AVA Capital Trust III or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), any transfer, pledge or other use hereof for value or otherwise by or to any person is wrongful inasmuch as the registered owner thereof, Cede & Co., has an interest herein.*

Certificate Number _____ Number of Preferred Securities _____

P-_____ CUSIP NO. _____

Certificate Evidencing Preferred Securities
of
AVA Capital Trust III

Flexible Trust Preferred Securities
(Five Year Initial Fixed Rate Period)
(Liquidation Amount \$1,000 per Preferred Security)

AVA Capital Trust III, a statutory trust created under the laws of the State of Delaware (the "Trust"), hereby certifies that Cede & Co.* (the "Holder") is the registered owner of _____ (_____) preferred securities of the Trust representing undivided beneficial interests in the assets of the Trust and designated the AVA Capital Trust III Flexible Trust Preferred Securities (Five Year Initial Fixed Rate Period) (Liquidation Amount \$1,000 per Preferred Security) (the "Preferred Securities"). The Preferred Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer as provided in Section 5.04 of the Declaration (as defined below). The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred Securities are set forth in, and this certificate and the Preferred Securities represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Amended and Restated Declaration of Trust of the Trust, dated as of _____, 2004, as the same may be amended from time to time (the "Declaration"), including the designation of the terms of Preferred Securities as set forth therein. The holder of this certificate

is entitled to the benefits of a guarantee by Avista Corporation, a Washington corporation (the "Company"), pursuant to a Guarantee Agreement between the Company and Union Bank of California, N.A., as guarantee trustee, dated as of _____, 2004, as the same may be amended from time to time (the "Guarantee"), to the extent provided therein. The Trust will furnish a copy of the Declaration and the Guarantee to the holder of this certificate without charge upon written request to the Trust at its principal place of business or registered office.

Upon receipt of this certificate, the holder of this certificate is bound by the Declaration and is entitled to the benefits thereunder.

*Insert in Book-Entry Preferred Securities Certificates only

IN WITNESS WHEREOF, the Trust has executed this certificate this ____ day of _____, 2004.

AVA CAPITAL TRUST III

By: _____
As Regular Trustee

CERTIFICATE OF AUTHENTICATION

This is one of the Preferred Securities referred to in the within-mentioned Declaration.

as Institutional Trustee

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Preferred Security to:

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)
and irrevocably appoints

agent to transfer this Preferred Securities Certificate on the books of the Trust. The agent may substitute another to act for him or her.

Date: -----

Signature: -----

(Sign exactly as your name appears on the other side of this Preferred Securities Certificate)

EXHIBIT B

AGREEMENT AS TO EXPENSES AND LIABILITIES

THIS AGREEMENT AS TO EXPENSES AND LIABILITIES (this "Agreement") is made as of _____, 2004, between Avista Corporation, a Washington corporation (the "Company"), and AVA Capital Trust III, a Delaware statutory trust (the "Trust").

WHEREAS, the Trust intends to issue its Common Securities (the "Common Securities and its AVA Capital Trust III Flexible Trust Preferred Securities (the "Preferred Securities"), with such powers, preferences and special rights and restrictions as are set forth in the Amended and Restated Declaration of Trust of the Trust dated as of _____, 2004 as the same may be amended from time to time (the "Declaration"), and with the proceeds thereof to purchase from the Company its Subordinated Debt Securities, Series ____ (the "Subordinated Debt Securities"); and

NOW, THEREFORE, in consideration of the purchase by each holder of the Preferred Securities, which purchase the Company hereby agrees shall benefit the Company and which purchase the Company acknowledges will be made in reliance upon the execution and delivery of this Agreement, the Company and the Trust hereby agree as follows:

ARTICLE I

Section 1.01. AGREEMENT OF THE COMPANY. Subject to the terms and conditions hereof, the Company hereby irrevocably and unconditionally agrees with the Trust, and with each person or entity to whom the Trust is now or hereafter becomes indebted or liable (the "Beneficiaries"), that the Company shall make full payment, when and as due, of any and all Expenses (as hereinafter defined) to such Beneficiaries and shall reimburse the Trust for any Expenses paid by it. As used herein, "Expenses" means any expenses, indebtedness or liabilities of the Trust, including, without limitation, any and all taxes, duties, assessments or other governmental charges of whatever nature (other than United States federal withholding taxes) imposed by the United States or any other taxing authority; it being understood (a) that "Expenses" shall not be deemed to include amounts to be distributed to the holders of the Common Securities and the Preferred Securities pursuant to the terms thereof and (b) that the intention of this covenant is that the net amounts received and retained by the Trust after paying all Expenses will be equal to the amounts the Trust would have received and retained had no such Expenses been incurred by or imposed on the Trust. This Agreement is intended to be for the benefit of, and to be enforceable by, the Trust and by all such Beneficiaries, whether or not such Beneficiaries have received notice hereof.

Section 1.02. TERM OF AGREEMENT. This Agreement shall terminate and be of no further force and effect upon the date on which there are no Beneficiaries remaining; provided, however, that this Agreement shall continue to be effective or shall be reinstated, as the case may be, if at any time any holder of Preferred Securities or any Beneficiary must restore payment of any sums paid

under the Preferred Securities, any Expense, under the Guarantee Agreement dated the date hereof by the Company and Union Bank of California, N.A., as guarantee trustee, or under this Agreement for any reason whatsoever. This Agreement is continuing, irrevocable, unconditional and absolute.

Section 1.03. WAIVER OF NOTICE. The Company hereby waives notice of acceptance of this Agreement and of any payment of Expenses to which it applies or may apply, and the Company hereby waives presentment, demand for payment, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

Section 1.04. NO IMPAIRMENT. The obligations, covenants, agreements and duties of the Company under this Agreement shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

(a) the extension of time for the payment by the Trust of all or any portion of the Expenses or for the performance of any other obligation under, arising out of, or in connection with, the Expenses;

(b) any failure, omission, delay or lack of diligence on the part of the Beneficiaries to enforce, assert or exercise any right, privilege, power or remedy conferred on the Beneficiaries with respect to the Expenses or any action on the part of the Trust granting indulgence or extension of any kind; or

(c) the voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Trust or any of the assets of the Trust.

There shall be no obligation of the Beneficiaries to give notice to, or obtain the consent of, the Company with respect to the happening of any of the foregoing.

Section 1.05. ENFORCEMENT. A Beneficiary may enforce this Agreement directly against the Company and the Company waives any right or remedy to require that any action be brought against the Trust or any other person or entity before proceeding against the Company.

ARTICLE II

Section 2.01. BINDING EFFECT. All guarantees and agreements contained in this Agreement shall bind the successors, assigns, receivers, trustees and representatives of the Company and shall inure to the benefit of the Beneficiaries.

Section 2.02. AMENDMENT. So long as there remains any Beneficiary or any Preferred Securities of any series are outstanding, this Agreement shall not be modified or amended in any manner adverse to such Beneficiary or to the holders of the Preferred Securities.

Section 2.03. NOTICES. Any notice, request or other communication required or permitted to be given hereunder shall be given in writing by delivering the same against receipt therefor by

facsimile transmission (confirmed by mail), telex or by registered or certified mail, addressed as follows (and if so given, shall be deemed given when mailed or upon receipt of an answer-back, if sent by telex), to-wit:

AVA Capital Trust III
c/o Union Bank of California, N.A.
475 Sansome Street, 12th Floor
San Francisco, California 94111
Facsimile No.: (415) 296-6757
Attention: Corporate Trust Services

Avista Corporation
1411 East Mission Avenue
Spokane, Washington 99202
Facsimile No.: [(509) 482-4879]
Attention: [Treasurer]

Section 2.04. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

THIS AGREEMENT is executed as of the date and year first above written.

AVISTA CORPORATION

By: -----
Name:
Title:

AVA CAPITAL TRUST III

By: -----
as Regular Trustee

EXHIBIT C

THIS CERTIFICATE IS NOT TRANSFERABLE EXCEPT AS PROVIDED IN THE
DECLARATION OF TRUST REFERRED TO HEREIN

Certificate Number C-1

Number of Common Securities

Certificate Evidencing Common Securities
of
AVA Capital Trust III

Common Securities
(Liquidation Amount \$1,000 per Common Security)

AVA Capital Trust III, a statutory trust created under the laws of the State of Delaware (the "Trust"), hereby certifies that Avista Corporation (the "Holder") is the registered owner of _____ (_____) common securities of the Trust representing undivided beneficial interests in the assets of the Trust and designated the AVA Capital Trust III Common Securities (Liquidation Amount \$1,000 per Common Security) (the "Common Securities"). In accordance with Section 5.10 of the Declaration (as defined below), the Common Securities are not transferable, except as permitted by the Declaration referred to herein, and, to the fullest extent permitted by law, any attempted transfer hereof shall be void. The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Common Securities are set forth in, and this certificate and the Common Securities represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Amended and Restated Declaration of Trust of the Trust dated as of _____, 2004, as the same may be amended from time to time (the "Declaration"), including the designation of the terms of the Common Securities as set forth therein. The holder of this certificate is entitled to the benefits of a guarantee by Avista Corporation, a Delaware corporation (the "Company"), pursuant to a Guarantee Agreement between the Company and Union Bank of California, N.A., as guarantee trustee, dated as of _____, 2004, as the same may be amended from time to time (the "Guarantee"), to the extent provided therein. The Trust will furnish a copy of the Declaration and the Guarantee to the Holder without charge upon written request to the Trust at its principal place of business or registered office.

Upon receipt of this certificate, the Holder is bound by the Declaration and is entitled to the benefits thereunder.

IN WITNESS WHEREOF, the Trust has executed this certificate this ____ day
of _____, 2004.

AVA Capital Trust III

By: _____,
as Regular Trustee

CERTIFICATE OF AUTHENTICATION

This is one of the Common Securities referred to in the within-mentioned
Declaration.

_____,
as Institutional Trustee

AVISTA CORPORATION

TO

UNION BANK OF CALIFORNIA, N.A.,

Trustee

INDENTURE

DATED AS OF ____ 1, 2004

AVISTA CORPORATION

RECONCILIATION AND TIE BETWEEN TRUST INDENTURE ACT OF 1939 AND
INDENTURE, DATED AS OF _____ 1, 2004

TRUST INDENTURE ACT SECTION	INDENTURE SECTION(S)
ss. 310(a)(1)	809
(a)(2)	809
(a)(3)	Not Applicable
(a)(4)	Not Applicable
(b)	808, 810
ss. 311(a)	813
(b)	813
(c)	813
ss. 312(a)	901
(b)	901
(c)	901
ss. 313(a)	902
(b)	902
(c)	902
(d)	902
ss. 314(a)	902, 507
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(c)(1)	102
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(c)(3)	Not Applicable
(d)	Not Applicable
(e)	102
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(b)	802
(c)	801
(d)	801
(e)	714
ss. 316(a)	712, 713
(a)(1)(A)	702, 712
(a)(1)(B)	713
(a)(2)	Not Applicable
(b)	708
ss. 317(a)(1)	703
(a)(2)	705
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INDENTURE, dated as of ____ 1, 2004 between AVISTA CORPORATION, a corporation duly organized and existing under the laws of the State of Washington (hereinafter sometimes called the "Company"), and UNION BANK OF CALIFORNIA, N.A., a corporation duly organized and existing under the laws of California, as trustee (hereinafter sometimes called the "Trustee").

RECITALS OF THE COMPANY

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

NOW, THEREFORE, THIS INDENTURE WITNESSETH that in consideration of the premises and of the purchase of the Securities by the Holders thereof, it is hereby covenanted and agreed, for the equal and ratable benefit of all Holders of the Securities or of series thereof (except as otherwise contemplated herein), as follows:

ARTICLE ONE

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 101. GENERAL DEFINITIONS.

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

(a) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;

(b) all terms used herein without definition which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;

(c) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles in the United States, and, except as otherwise herein expressly provided, the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted in the United States at the date of such computation or, at the election of the Company, at the date of the execution and delivery of this Indenture;

(d) any reference to an "Article" or a "Section" refers to an Article or a Section, as the case may be, of this Indenture; and

(e) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

"ACT", when used with respect to any Holder of a Security, has the meaning specified in Section 104.

"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 generally the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "CONTROLLING" and "CONTROLLED" have meanings correlative to the foregoing.

"AUTHENTICATING AGENT" means any Person (other than the Company or any Affiliate thereof) authorized by the Trustee to act on behalf of the Trustee to authenticate the Securities of one or more series.

"AUTHORIZED OFFICER" means the Chairman of the Board, the President, any Vice President, the Treasurer, any Assistant Treasurer or the Corporate Secretary or any other duly authorized officer, agent or attorney-in-fact of the Company named in an Officer's Certificate of the Company signed by any of the aforesaid corporate officers.

"BOARD OF DIRECTORS" means either the board of directors of the Company or any committee thereof duly authorized to act in respect of matters relating to this Indenture.

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

"BUSINESS DAY", when used with respect to a Place of Payment or any other particular location specified in the Securities or this Indenture, means any day, other than a Saturday or Sunday, which is not a day on which banking institutions or trust companies in such Place of Payment or other location are generally authorized or required by law, regulation or executive order to remain closed, except as may be otherwise specified as contemplated by Section 301.

"COMMISSION" means the Securities and Exchange Commission, as from time to time constituted, created under the Securities Exchange Act of 1934, as amended, or, if at any time after the date of the execution and delivery of this Indenture such Commission is not existing and

performing the duties now assigned to it under the Trust Indenture Act, then the body, if any, performing such duties at such time.

"COMMON SECURITIES" means any common trust interests issued by a Trust or similar securities issued by permitted successors to such Trust in accordance with the Declaration pertaining to such Trust.

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

"COMPANY ORDER" or "COMPANY REQUEST" means, respectively, a written order or request, as the case may be, signed in the name of the Company by an Authorized Officer and delivered to the Trustee.

"CORPORATE TRUST OFFICE" means the office of the Trustee at which at any particular time its corporate trust business shall be principally administered, which office at the date of the execution and delivery of this Indenture is located at _____.

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

"DECLARATION", with respect to a Trust, means the Declaration of Trust establishing such Trust, as the same shall be amended and restated from time to time.

"DISCOUNT SECURITY" means any Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 702. "INTEREST" with respect to a Discount Security means interest, if any, borne by such Security at a Stated Interest Rate.

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

"ELIGIBLE OBLIGATIONS" means:

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

(b) with respect to Securities denominated in a currency other than Dollars or in a composite currency, such other obligations or instruments as shall be specified with respect to such Securities as contemplated by Section 301.

"EVENT OF DEFAULT" has the meaning specified in Section 701.

"FAIR VALUE" has the meaning specified in Section 1005.

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

"GOVERNMENT OBLIGATIONS" means:

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

(b) certificates, depositary receipts or other instruments which evidence a direct ownership interest in obligations described in clause (a) above or in any specific interest or principal payments due in respect thereof; provided, however, that the custodian of such obligations or specific interest or principal payments shall be a bank or trust company (which may include the Trustee or any Paying Agent) subject to Federal or State supervision or examination with a combined capital and surplus of at least Fifty Million Dollars (\$50,000,000); and provided, further, that except as may be otherwise required by law, such custodian shall be obligated to pay to the holders of such certificates, depositary receipts or other instruments the full amount received by such custodian in respect of such obligations or specific payments and shall not be permitted to make any deduction therefrom.

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

"INDENTURE" means this instrument as originally executed and delivered and as it may from time to time be amended and/or supplemented by one or more indentures or other instruments supplemental thereto or hereto entered into pursuant to the applicable provisions hereof and shall include the terms of particular series of Securities established as contemplated by Section 301.

"INDEPENDENT EXPERT'S CERTIFICATE" has the meaning specified in Section 1005.

"INSTITUTIONAL TRUSTEE", with respect to a Trust, has the meaning set forth in the Declaration establishing such Trust.

"INTEREST PAYMENT DATE", when used with respect to any Security, means the Stated Maturity of an installment of interest on such Security.

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

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

"NOTICE OF DEFAULT" has the meaning specified in Section 701.

"OFFICER'S CERTIFICATE" means a certificate signed by an Authorized Officer of the Company and delivered to the Trustee.

"OPINION OF COUNSEL" means a written opinion of counsel, who may be counsel for the Company or other counsel acceptable to the Trustee and who may be an employee or Affiliate of the Company.

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

(a) Securities theretofore canceled or delivered to the Trustee for cancellation;

(b) Securities deemed to have been paid for all purposes of this Indenture in accordance with Section 601 (whether or not the Company's indebtedness in respect thereof shall be satisfied and discharged for any other purpose); and

(c) Securities which have been paid pursuant to Section 306 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it and the Company that such Securities are held by a bona fide purchaser or purchasers in whose hands such Securities are valid obligations of the Company;

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

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

disregarded; provided, however, that Securities so owned which have been pledged in good faith may be regarded as Outstanding if it is established to the reasonable satisfaction of the Trustee that the pledgee, and not the Company, any such other obligor or Affiliate of either thereof, has the right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor; and

(y) the principal amount of a Discount Security that shall be deemed to be Outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration of the Maturity thereof pursuant to Section 702; and

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

"PAYING AGENT" means any Person, including the Company, authorized by the Company to pay the principal of and premium, if any, or interest, if any, on any Securities on behalf of the Company.

"PERIODIC OFFERING" means an offering of Securities of a series from time to time any or all of the specific terms of which Securities, including without limitation the rate or rates of interest, if any, thereon, the Stated Maturity or Maturities thereof and the redemption provisions, if any, with respect thereto, are to be determined by the Company or its agents from time to time subsequent to the initial request for the authentication and delivery of such Securities by the Trustee, all as contemplated in Section 301 and clause (b) of Section 303.

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

"PLACE OF PAYMENT", when used with respect to the Securities of any series, or any Tranche thereof, means the place or places, specified as contemplated by Section 301, at which, subject to Section 502, principal of and premium, if any, and interest, if any, on the Securities of such series or Tranche are payable.

"PREDECESSOR SECURITY" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 306 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed (to the extent lawful) to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

"PREFERRED SECURITIES" means any preferred trust interests issued by a Trust or similar securities issued by permitted successors to such Trust in accordance with the Declaration pertaining to such Trust.

"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 at which it is to be redeemed pursuant to this Indenture.

"REGULAR RECORD DATE" for the interest payable on any Interest Payment Date on the Securities of any series means the date specified for that purpose as contemplated by Section 301.

"REQUIRED CURRENCY" has the meaning specified in Section 311.

"RESPONSIBLE OFFICER", when used with respect to the Trustee, means any officer of the Trustee assigned by the Trustee to administer its corporate trust matters.

"SECURITIES" means any bonds, notes and other evidences of indebtedness authenticated and delivered under this Indenture.

"SECURITY REGISTER" and "SECURITY REGISTRAR" have the respective meanings specified in Section 305.

"SENIOR INDEBTEDNESS" means, with respect to any Person (a) indebtedness (including premium, if any, and interest, if any, thereon) of such Person for money borrowed or for the deferred purchase price of property or services in transactions not in the ordinary course of business; (b) all other indebtedness (including premium, if any, and interest, if any, thereon) evidenced by bonds, debentures, notes or other similar instruments (other than Securities) issued by such Person; (c) all obligations of such Person under lease agreements designating such Person as lessee, irrespective of the treatment of any such lease agreement for accounting, tax or other purposes; (d) all obligations of such Person for reimbursement (including premium, if any, and interest, if any thereon) in respect of any letter of credit, banker's acceptance, security purchase facility or similar credit transaction; (e) all obligations of the character referred to in clauses (a) through (d) above of other Persons for the payment of which such Person is responsible or liable as obligor, guarantor or otherwise; and (f) all obligations of the character referred to in clauses (a) through (d) above of other Persons secured by any lien on any property or asset of such Person (whether or not such obligation is assumed by such Person); provided, however, that Senior Indebtedness shall not include (x) any such indebtedness that is by its terms subordinated to or pari passu with the Securities; (y) any indebtedness between or among such Person and its Affiliates, including all other debt securities and guarantees in respect of such debt securities, issued to (i) any Trust or (ii) any other trust, or a trustee of such trust, partnership or other entity which is a financing

vehicle of such Person in connection with the issuance by such financing vehicle of preferred securities or (z) indebtedness for goods or materials purchased in the ordinary course of business or for services obtained in the ordinary course of business or indebtedness consisting of trade payables.

"SPECIAL RECORD DATE" for the payment of any Unpaid Interest on the Securities of any series means a date fixed by the Trustee pursuant to Section 307.

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

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

"SUCCESSOR" has the meaning set forth in Section 1001.

"TRANCHE" means a group of Securities which (a) are of the same series and (b) have identical terms except as to principal amount and/or date of issuance.

"TRUST" means AVA Capital Trust III, a statutory trust established under the laws of the State of Delaware, and any other Trust established for the purpose of issuing securities upon the issuance and delivery to it of Securities.

"TRUSTEE" means the Person named as the "Trustee" in the first paragraph of this Indenture until a successor trustee shall have become such with respect to one or more series of Securities pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean or include each Person who is then a Trustee hereunder, and, if at any time there is more than one such Person, acting as trustee hereunder, "Trustee" shall mean each such Person so acting.

"TRUST INDENTURE ACT" means, as of any time, the Trust Indenture Act of 1939, or any successor statute, as in effect at such time.

"TRUST SECURITIES", with respect to a Trust, means the securities issued by such Trust, as established in the Declaration of such Trust.

"TRUST SECURITIES GUARANTEE" means the Guarantee Agreement between the Company, as Trust Securities Guarantor, and a guarantee trustee for the benefit of the holders of Preferred Securities and Common Securities issued by the Trust.

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

"UNPAID INTEREST" has the meaning specified in Section 307.

SECTION 102. COMPLIANCE CERTIFICATES AND OPINIONS.

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

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

(a) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of each such individual, such individual has made such examination or investigation as is necessary to enable such individual to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

SECTION 103. CONTENT AND FORM OF DOCUMENTS DELIVERED TO TRUSTEE.

(a) Any Officer's Certificate may be based (without further examination or investigation), insofar as it relates to or is dependent upon legal matters, upon an opinion of, or representations by, counsel, unless, in any case, such officer has actual knowledge that the certificate or opinion or representations with respect to the matters upon which such Officer's Certificate may be based as aforesaid are erroneous.

Any Opinion of Counsel may be based (without further examination or investigation), insofar as it relates to or is dependent upon factual matters, information with respect to which is in the possession of the Company, upon a certificate of, or representations by, an officer or officers of the Company, unless such counsel has actual knowledge that the certificate or opinion or representations with respect to the matters upon which his opinion may be based as aforesaid are erroneous. In addition, any Opinion of Counsel may be based (without further examination or investigation), insofar as it relates to or is dependent upon matters covered in an Opinion of Counsel rendered by other counsel, upon such other Opinion of Counsel, unless such counsel has actual knowledge that the Opinion of Counsel rendered by such other counsel with respect to the matters upon which his Opinion of Counsel may be based as aforesaid are erroneous. If, in order to render any Opinion of Counsel provided for herein, the signer thereof shall deem it necessary that additional facts or matters be stated in any Officer's Certificate provided for herein, then such certificate may state all such additional facts or matters as the signer of such Opinion of Counsel may request.

(b) 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. Where (i) any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, or (ii) two or more Persons are each required to make, give or execute any such application, request, consent, certificate, statement, opinion or other instrument, any such applications, requests, consents, certificates, statements, opinions or other instruments may, but need not, be consolidated and form one instrument.

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

the valid obligations of the Company entitled to the benefits provided by this Indenture equally and ratably with all other Outstanding Securities, except as aforesaid.

SECTION 104. ACTS OF HOLDERS.

(a) Any request, demand, authorization, direction, notice, consent, election, waiver or other action provided by this Indenture to be made, given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing or, alternatively, may be embodied in and evidenced by the record of Holders voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Holders duly called and held in accordance with the provisions of Article Twelve, or a combination of such instruments and any such record. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments and any such record (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "ACT" of the Holders signing such instrument or instruments and so voting at any such meeting. Proof of execution of any such instrument or of a writing appointing any such agent, or of the holding by any Person of a Security, shall be sufficient for any purpose of this Indenture and (subject to Section 801) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section. The record of any meeting of Holders shall be proved in the manner provided in Section 1206.

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

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

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

(e) Until such time as written instruments shall have been delivered to the Trustee with respect to the requisite percentage of principal amount of Securities for the action contemplated by such instruments, any such instrument executed and delivered by or on behalf of a

Holder may be revoked with respect to any or all of such Securities by written notice by such Holder or any subsequent Holder, proven in the manner in which such instrument was proven.

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

(g) The Company may, at its option, by Company Order, fix in advance a record date for the determination of Holders entitled to give any request, demand, authorization, direction, notice, consent, waiver or other Act solicited by the Company, but the Company shall have no obligation to do so; provided, however, that the Company may not fix a record date for the giving or making of any notice, declaration, request or direction referred to in the next sentence. In addition, the Trustee may, at its option, fix in advance a record date for the determination of Holders of Securities of any series entitled to join in the giving or making of any Notice of Default, any declaration of acceleration referred to in Section 702, any request to institute proceedings referred to in Section 707 or any direction referred to in Section 712, in each case with respect to Securities of such series. If any such record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act, or such notice, declaration, request or direction, may be given before or after such record date, but only the Holders of record at the close of business on the record date shall be deemed to be Holders for the purposes of determining (i) whether Holders of the requisite proportion of the Outstanding Securities have authorized or agreed or consented to such Act (and for that purpose the Outstanding Securities shall be computed as of the record date) and/or (ii) which Holders may revoke any such Act (notwithstanding subsection (e) of this Section); and any such Act, given as aforesaid, shall be effective whether or not the Holders which authorized or agreed or consented to such Act remain Holders after such record date and whether or not the Securities held by such Holders remain Outstanding after such record date.

SECTION 105. NOTICES, ETC. TO TRUSTEE OR COMPANY.

Any request, demand, authorization, direction, notice, consent, election, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with, the Trustee by any Holder or by the Company, or the Company by the Trustee or by any Holder, shall be sufficient for every purpose hereunder (unless otherwise expressly provided herein) if in writing and delivered personally to an officer or other responsible employee of the addressee, or transmitted by facsimile transmission, telex or other direct written electronic means to the telephone number or other electronic communications address set forth for such party below or otherwise as such party shall from time to time designate, or transmitted by registered mail, charges prepaid, to the applicable address set forth for such party below or to such other address as such party may from time to time designate:

If to the Trustee, to:

Union Bank of California, N.A.

Attention: -----
Facsimile: -----

If to the Company, to:

Avista Corporation
1411 East Mission Avenue
Spokane, Washington 99202
Attention: [Treasurer]
Facsimile: [(509) 482-4879]

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

SECTION 106. NOTICE TO HOLDERS OF SECURITIES; WAIVER.

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

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice to Holders by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders.

Any notice required by this Indenture may be waived in writing by the Person entitled to receive such notice, either before or after the event otherwise to be specified therein, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 107. CONFLICT WITH TRUST INDENTURE ACT.

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

SECTION 108. EFFECT OF HEADINGS AND TABLE OF CONTENTS.

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

SECTION 109. SUCCESSORS AND ASSIGNS.

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

SECTION 110. SEPARABILITY CLAUSE.

In case any provision in this Indenture or the Securities shall be held to 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 111. BENEFITS OF INDENTURE.

Nothing in this Indenture or the Securities, express or implied, shall give to any Person, other than the parties hereto, their successors hereunder and the Holders and, to the extent provided in Sections 104(a) and 716, registered holders of Trust Securities (other than Trust Securities initially issued and sold to the Company) and, so long as the notice described in Section 1413 shall not have been given, holders of Senior Indebtedness, any benefit or any legal or equitable right, remedy or claim under this Indenture, provided, however, that so long as any Preferred Securities remain outstanding, the holders of such Preferred Securities, subject to certain limitations set forth in this Indenture, may enforce the Company's obligations hereunder, directly against the Company, as third party beneficiaries of this Indenture without proceeding against the Trust issuing such Preferred Securities.

SECTION 112. GOVERNING LAW.

This Indenture and the Securities shall be governed by and construed in accordance with the law of the State of New York (including without limitation Section 5-1401 of the New York General Obligations Law or any successor to such statute), except to the extent that the Trust Indenture Act shall be applicable.

SECTION 113. LEGAL HOLIDAYS.

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

ARTICLE TWO

SECURITY FORMS

SECTION 201. FORMS GENERALLY.

The definitive Securities of each series shall be in substantially the form or forms established in the Officer's Certificate, the indenture supplemental hereto or the Board Resolution establishing such series, in any case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution thereof. If the form or forms of Securities of any series are established in an Officer's Certificate or a Board Resolution, such Officer's Certificate or Board Resolution shall be delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 303 for the authentication and delivery of such Securities.

[Unless otherwise specified as contemplated by Section 301 or 1101(f), the] Securities of each series shall be issuable in registered form without coupons. The definitive Securities shall be produced in such manner as shall be determined by the officers executing such Securities, as evidenced by their execution thereof.

SECTION 202. FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION.

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

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

as Trustee

By: _____
Authorized Officer

ARTICLE THREE

THE SECURITIES

SECTION 301. AMOUNT UNLIMITED; ISSUABLE IN SERIES.

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

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

(a) the title of the Securities of such series (which shall distinguish the Securities of such series from Securities of all other series);

(b) any limit upon the aggregate principal amount of the Securities of such series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of such series pursuant to Section 304, 305, 306, 406 or 1106 and except for any Securities which, pursuant to Section 303, are deemed never to have been authenticated and delivered hereunder);

(c) the Persons (without specific identification) to whom interest, if any, on Securities of such series, or any Tranche thereof, shall be payable, if other than the Persons in whose names such Securities (or one or more Predecessor Securities) are registered at the close of business on the Regular Record Date for such interest;

(d) the date or dates on which the principal of the Securities of such series, or any Tranche thereof, is payable or any formulary or other method or other means by which such date or dates shall be determined, by reference to an index or

other fact or event ascertainable outside of this Indenture or otherwise (without regard to any provisions for redemption, prepayment, acceleration, purchase or extension)[; and the right, if any, to extend the Maturity of the Securities of such series, or any Tranche thereof, and the duration of any such extension;]

(e) the rate or rates at which the Securities of such series, or any Tranche thereof, shall bear interest, if any (including the rate or rates at which overdue principal shall bear interest, and the right, if any, to extend the interest payment periods and the duration of any such extension; if different from the rate or rates at which such Securities shall bear interest prior to Maturity, and, if applicable, the rate or rates at which overdue premium or interest shall bear interest, if any), or any formulary or other method or other means by which such rate or rates shall be determined by reference to an index or other fact or event ascertainable outside of this Indenture or otherwise; the date or dates from which such interest shall accrue; the Interest Payment Dates on which such interest shall be payable and the Regular Record Date, if any, for the interest payable on such Securities on any Interest Payment Date; the basis of computation of interest, if other than as provided in Section 310; and the right, if any, to extend the interest payment periods and the duration of any such extension;

(f) the place or places at which and/or the methods (if other than as provided elsewhere in this Indenture) by which (i) the principal of and premium, if any, and interest, if any, on Securities of such series, or any Tranche thereof, shall be payable, (ii) registration of transfer of Securities of such series, or any Tranche thereof, may be effected, (iii) exchanges of Securities of such series, or any Tranche thereof, may be effected and (iv) notices and demands to or upon the Company in respect of the Securities of such series, or any Tranche thereof, and this Indenture may be served; the Security Registrar and any Paying Agent or Agents for such series or Tranche; and, if such is the case, that the principal of such Securities shall be payable without the presentment or surrender thereof;

(g) the period or periods within which or the date or dates on which, the price or prices at which and the terms and conditions upon which the Securities of such series, or any Tranche thereof, may be redeemed, in whole or in part, at the option of the Company [and any restrictions on such redemptions];

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

applicable exceptions to the requirements of Section 404 in the case of mandatory redemption or redemption at the option of the Holder;

(i) the denominations in which Securities of such series, or any Tranche thereof, shall be issuable if other than denominations of One Thousand Dollars (\$1,000) and any integral multiple thereof (in the case of Securities issued to a Trust or a trustee of such trust in connection with the issuance of Trust Securities by such Trust, the denomination in which such Securities shall be issuable if other than denominations of Twenty-Five Dollars (\$25) and any integral multiple thereof);

(j) the currency or currencies, including composite currencies, in which payment of the principal of or premium, if any, or interest, if any, on the Securities of such series, or any Tranche thereof, shall be payable (if other than in Dollars) and the formulary or other method or other means by which the equivalent of any such amount in Dollars is to be determined for any purpose, including for the purpose of determining the principal amount of such Securities deemed to be outstanding at any time;

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

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

(m) if the amount payable in respect of the principal of or premium, if any, or interest, if any, on the Securities of such series, or any Tranche thereof, may be determined with reference to an index or other fact or event ascertainable outside of this Indenture, the manner in which such amounts shall be determined (to the extent not established pursuant to clause (e) of this paragraph);

(n) if other than the entire principal amount thereof, the portion of the principal amount of Securities of such series, or any Tranche thereof, which shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 702;

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

(p) the obligations or instruments, if any, which shall be considered to be Eligible Obligations in respect of the Securities of such series, or any Tranche thereof, denominated in a currency other than Dollars or in a composite currency, and any additional or alternative provisions for the reinstatement of the Company's indebtedness in respect of such Securities after the satisfaction and discharge thereof as provided in Section 601;

(q) if the Securities of such series, or any Tranche thereof, are to be issued in global form, (i) any limitations on the rights of the Holder or Holders of such Securities to transfer or exchange the same or to obtain the registration of transfer thereof, (ii) any limitations on the rights of the Holder or Holders thereof to obtain certificates therefor in definitive form in lieu of temporary form and (iii) any and all other matters incidental to such Securities;

(r) if the Securities of such series, or any Tranche thereof, are to be issuable as bearer securities, any and all matters incidental thereto which are not specifically addressed in a supplemental indenture as contemplated by clause (f) of Section 1101;

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

(t) any exceptions to Section 113, or variation in the definition of Business Day, with respect to the Securities of such series, or any Tranche thereof; and

(u) the designation of the Trust to which Securities of such series are to be issued;

(v) any other terms of the Securities of such series, or any Tranche thereof.

With respect to Securities of a series subject to a Periodic Offering, the Officer's Certificate, the indenture supplemental hereto or the Board Resolution which establishes such series, as the case may be, may provide general terms or parameters for Securities of such series and

provide either that the specific terms of Securities of such series, or any Tranche thereof, shall be specified in a Company Order or that such terms shall be determined by the Company or its agents in accordance with procedures specified in a Company Order as contemplated by clause (b) of Section 303.

Unless otherwise specified with respect to a series of Securities as contemplated by Section 301(b), any limit upon the aggregate principal amount of a series of Securities may be increased without the consent of any Holders and additional Securities of such series may be authenticated and delivered up to the limit upon the aggregate principal amount authorized with respect to such series as so increased.

Anything herein to the contrary notwithstanding, the Trustee shall be under no obligation to authenticate and deliver Securities of any series the terms of which, established as contemplated by this Section, would affect the rights, duties, obligations, liabilities or immunities of the Trustee under this Indenture or otherwise.

SECTION 302. DENOMINATIONS.

Unless otherwise provided as contemplated by Section 301 with respect to any series of Securities, or any Tranche thereof, the Securities of each series shall be issuable in denominations of One Thousand Dollars (\$1,000) and any integral multiple thereof (in the case of securities issued to a Trust or a trustee of such trust in connection with the issuance of Trust Securities by such Trust, the Securities of each series shall be issuable in denominations of Twenty-Five Dollars (\$25) and any integral multiple thereof).

SECTION 303. EXECUTION, DATING, AUTHENTICATION.

Unless otherwise specified as contemplated by Section 301 with respect to any series of Securities, or any Tranche thereof, the Securities shall be executed on behalf of the Company by an Authorized Officer, and may have the corporate seal of the Company affixed thereto or reproduced thereon and attested by its Secretary, one of its Assistant Secretaries or any other Authorized Officer. The signature of any or all of these officers on the Securities may be manual or facsimile.

Securities bearing the manual or facsimile signatures of individuals who were at the time of execution Authorized Officers shall bind the Company, notwithstanding that such individuals, or any of them, have ceased to be such Authorized Officers prior to the authentication and delivery of such Securities or were not such Authorized Officers at the date of such Securities.

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

(a) the instrument or instruments establishing the form or forms and terms of the Securities of such series, as provided in Sections 201 and 301;

(b) a Company Order requesting the authentication and delivery of such Securities and, to the extent that the terms of such Securities shall not have been established in an Officer's Certificate, an indenture supplemental hereto or in a Board Resolution, all as contemplated by Sections 201 and 301, either (i) establishing such terms or (ii) in the case of Securities of a series subject to a Periodic Offering, specifying procedures, acceptable to the Trustee, by which such terms are to be established (which procedures may provide, to the extent acceptable to the Trustee, for authentication and delivery pursuant to oral or electronic instructions from the Company or any agent or agents thereof, which oral instructions are to be promptly confirmed electronically or in writing), in either case in accordance with the instrument or instruments delivered pursuant to clause (a) above;

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

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

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

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

(iii) when such Securities shall have been authenticated and delivered by the Trustee and issued and delivered by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, such Securities will constitute valid obligations of the Company, entitled to the benefits provided by this Indenture equally and ratably with all other Securities then Outstanding;

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

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

(y) when such Securities shall have been (1) authenticated and delivered by the Trustee in accordance with this Indenture and the Company Order or Orders or the specified procedures referred to in clause (x) above and (2) issued and delivered by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, such Securities will constitute valid obligations of the Company, entitled to the benefits provided by this Indenture equally and ratably with all other Securities then Outstanding.

With respect to Securities of a series subject to a Periodic Offering, the Trustee may conclusively rely, as to the authorization by the Company of any of such Securities, the forms and terms thereof, the validity thereof and the compliance of the authentication and delivery thereof with the terms and conditions of this Indenture, upon the Opinion or Opinions of Counsel and the certificates and other documents delivered pursuant to this Article at or prior to the time of the first authentication and delivery of Securities of such series until any of such opinions, certificates or other documents have been superseded or revoked or expire by their terms. In connection with the authentication and delivery of Securities of a series subject to a Periodic Offering, the Trustee shall be entitled to assume that the Company's instructions to authenticate and deliver such Securities do not violate any applicable law or any applicable rule, regulation or order of any Governmental Authority having jurisdiction over the Company.

If the form or terms of the Securities of any series have been established by or pursuant to an Officer's Certificate or Board Resolution as permitted by Sections 201 or 301, the Trustee shall not be required to authenticate such Securities if the issuance of such Securities pursuant to this Indenture will adversely affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

Unless otherwise specified as contemplated by Section 301 with respect to any series of Securities, or any Tranche thereof, each Security shall be dated the date of the authentication of such Security.

Unless otherwise specified as contemplated by Section 301 with respect to any series of Securities, or any Tranche thereof, no Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a

certificate of authentication substantially in the form provided for herein executed by the Trustee or an Authenticating Agent by manual signature of an authorized officer thereof, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder and is entitled to the benefits of this Indenture. Notwithstanding the foregoing, if (a) any Security shall have been authenticated and delivered hereunder to the Company, or any Person acting on its behalf, but shall never have been issued and sold by the Company, (b) the Company shall deliver such Security to the Security Registrar for cancellation or shall cancel such Security and deliver evidence of such cancellation to the Trustee, in each case as provided in Section 309, and (c) the Company, at its election, shall deliver to the Trustee a written statement (which need not comply with Section 102 and need not be accompanied by an Officer's Certificate or an Opinion of Counsel) stating that such Security has never been issued and sold by the Company, then, for all purposes of this Indenture, such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits hereof.

SECTION 304. TEMPORARY SECURITIES.

Pending the preparation of definitive Securities of any series, or any Tranche thereof, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed, photocopied or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued, 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; provided, however, that temporary Securities need not recite specific redemption, sinking fund, conversion or exchange provisions.

Except as otherwise specified as contemplated by Section 301 with respect to the Securities of any series, or any Tranche thereof, after the preparation of definitive Securities of such series or Tranche, the temporary Securities of such series or Tranche shall be exchangeable, without charge to the Holder thereof, for definitive Securities of such series or Tranche upon surrender of such temporary Securities at the office or agency of the Company maintained pursuant to Section 502 in a Place of Payment for such Securities. Upon such surrender of temporary Securities, the Company shall, except as aforesaid, execute and the Trustee shall authenticate and deliver in exchange therefor definitive Securities of the same series and Tranche, of authorized denominations and of like tenor and aggregate principal amount.

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

SECTION 305. REGISTRATION, REGISTRATION OF TRANSFER AND EXCHANGE.

The Company shall cause to be kept in one of the offices designated pursuant to Section 502, with respect to the Securities of each series, or any Tranche thereof, a register (the "SECURITY REGISTER") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities of such series or Tranche and the registration of transfer thereof. The Company shall designate one Person to maintain the Security Register for the Securities of each series and such Person is referred to herein, with respect to such series, as the "SECURITY REGISTRAR". Anything herein to the contrary notwithstanding, the Company may designate one or more of its offices or an office of any Affiliate as an office in which a register with respect to the Securities of one or more series, or any Tranche or Tranches thereof, shall be maintained, and the Company may designate itself or any Affiliate as the Security Registrar with respect to one or more of such series. The Security Register shall be open for inspection by the Trustee and the Company at all reasonable times.

Except as otherwise specified as contemplated by Section 301 with respect to the Securities of any series, or any Tranche thereof, upon presentment for registration of transfer of any Security of such series or Tranche at the office or agency of the Company maintained pursuant to Section 502 in a Place of Payment for such series or Tranche, and further upon satisfaction of any conditions prescribed by applicable law, 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 Tranche, of authorized denominations and of like tenor and aggregate principal amount.

Except as otherwise specified as contemplated by Section 301 with respect to the Securities of any series, or any Tranche thereof, any Security of such series or Tranche may be exchanged at the option of the Holder, for one or more new Securities of the same series and Tranche, of authorized denominations and of like tenor and aggregate principal amount, upon presentment of the Securities to be exchanged at any such office or agency. Whenever any Securities are so presented for exchange and upon satisfaction of any conditions prescribed by applicable law, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

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

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

Unless otherwise specified as contemplated by Section 301 with respect to Securities of any series, or any Tranche thereof, no service charge shall be made for any registration of transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 304, 406 or 1106 not involving any transfer.

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

SECTION 306. MUTILATED, DESTROYED, LOST AND STOLEN SECURITIES.

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

If there shall be delivered to the Company and the Trustee (a) evidence to their satisfaction of the ownership of and the destruction, loss or theft of any Security and (b) such security or indemnity as may be reasonably required by them to save each of them and any agent of any of them harmless, then, in the absence of notice to the Company or the Trustee that such Security is held by a Person deemed to be a protected purchaser under applicable law, the Company shall execute and the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of the same series and Tranche, and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

Notwithstanding the foregoing, in case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, but subject to compliance with the conditions set forth in the next preceding paragraph, instead of issuing a new Security, pay such Security.

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

Every new Security of any series 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 other than the Holder of such new Security, and any such new Security shall be entitled to all the benefits of this Indenture equally and ratably with any and all other Securities of such series duly issued hereunder.

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

SECTION 307. PAYMENT OF INTEREST; INTEREST RIGHTS PRESERVED.

Unless otherwise specified as contemplated by Section 301 with respect to the Securities of any series, or any Tranche thereof, interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest.

Any interest on any Security of any series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date, including without limitation interest the payment period for which has been extended as specified with respect to such series as contemplated by Section 301 (herein called "UNPAID INTEREST"), shall forthwith cease to be payable to the Holder on the related Regular Record Date by virtue of having been such Holder, and such Unpaid Interest may be paid by the Company, at its election in each case, as provided in clause (a) or (b) below:

(a) The Company may elect to make payment of any Unpaid Interest to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on a date (herein called a "SPECIAL RECORD DATE") for the payment of such Unpaid Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Unpaid Interest proposed to be paid on each Security of such series and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Unpaid Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Unpaid Interest as in this clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Unpaid Interest which shall be not more than thirty (30) days and not less than ten (10) days prior to the date of the proposed payment and not less than twenty-five (25) days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall, not less than fifteen (15) days prior to such Special Record Date, cause notice of the proposed payment of such Unpaid Interest and the Special Record

Date therefor to be mailed, first-class postage prepaid, to each Holder of Securities of such series at the address of such Holder as it appears in the Security Register. Notice of the proposed payment of such Unpaid Interest and the Special Record Date therefor having been so mailed, such Unpaid Interest shall be paid to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date.

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

Subject to the foregoing provisions of this Section and Section 305, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

SECTION 308. PERSONS DEEMED OWNERS.

Prior to the due presentment of any Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Security is registered as the absolute owner of such Security (subject to Sections 305 and 307) for the purpose of receiving payment of principal of and premium, if any, and interest, if any, on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, nor the Trustee, or any agent of the Company or the Trustee shall be affected by notice to the contrary.

SECTION 309. CANCELLATION BY SECURITY REGISTRAR.

All Securities presented for payment, redemption, registration of transfer or exchange shall, if presented to any Person other than the Security Registrar, be delivered to the Security Registrar and, if not theretofore canceled, shall be promptly canceled by the Security Registrar. The Company may at any time deliver to the Security Registrar for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever or which the Company shall not have issued and sold, and all Securities so delivered shall be promptly canceled by the Security Registrar. Unless by a Company Order the Company shall direct that canceled Securities be returned to it, all canceled Securities held by the Security Registrar shall be disposed of in accordance with the Security Registrar's customary procedures. The Security Registrar shall promptly deliver to the Company and the Trustee evidence of any cancellation by it of a Security, and of any disposition by it of a canceled Security, in accordance with this Section 309 to the Trustee and the Company.

SECTION 310. COMPUTATION OF INTEREST.

Except as otherwise specified as contemplated by Section 301 for Securities of any series, or any Tranche thereof, interest on the Securities of each series shall be computed on the basis of a three hundred sixty (360) day year consisting of twelve (12) thirty (30) day months and, with respect to any period less than a full calendar month, on the basis of the actual number of days elapsed during such period.

SECTION 311. PAYMENT TO BE IN PROPER CURRENCY.

In the case of the Securities of any series, or any Tranche thereof, denominated in any currency other than Dollars or in a composite currency (the "REQUIRED CURRENCY"), except as otherwise specified with respect to such Securities as contemplated by Section 301, the obligation of the Company to make any payment of the principal thereof, or the premium, if any, or interest, if any, thereon, shall not be discharged or satisfied by any tender by the Company, or recovery by the Trustee, in any currency other than the Required Currency, except to the extent that such tender or recovery shall result in the Trustee timely holding the full amount of the Required Currency then due and payable. If any such tender or recovery is in a currency other than the Required Currency, the Trustee may take such actions as it considers appropriate to exchange such currency for the Required Currency. The costs and risks of any such exchange, including without limitation the risks of delay and exchange rate fluctuation, shall be borne by the Company and the Company shall remain fully liable for any shortfall or delinquency in the full amount of Required Currency then due and payable, and in no circumstances shall the Trustee be liable therefor except in the case of its negligence or willful misconduct.

ARTICLE FOUR

REDEMPTION OF SECURITIES

SECTION 401. APPLICABILITY OF ARTICLE.

Securities of any series, or any Tranche thereof, which are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 301 for Securities of such series or Tranche) in accordance with this Article.

SECTION 402. ELECTION TO REDEEM; NOTICE TO TRUSTEE.

The election of the Company to redeem any Securities shall be evidenced by a Board Resolution or an Officer's Certificate. The Company shall, at least forty-five (45) days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee and in the case of Securities of a Series held by a Trust, the Property Trustee under the related Declaration establishing such Trust in writing of such Redemption Date

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

SECTION 403. SELECTION OF SECURITIES TO BE REDEEMED.

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

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

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

SECTION 404. NOTICE OF REDEMPTION.

Notice of redemption shall be given in the manner provided in Section 106 to the Holders of the Securities to be redeemed not less than thirty (30) nor more than sixty (60) days prior to the Redemption Date.

All notices of redemption shall state:

- (a) the Redemption Date,
- (b) the Redemption Price,

(c) if less than all the Securities of any series or Tranche are to be redeemed, the identification of the particular Securities to be redeemed and the portion of the principal amount of any Security to be redeemed in part,

(d) that on the Redemption Date the Redemption Price, together with accrued interest, if any, to the Redemption Date, will become due and payable upon each such Security to be redeemed and, if applicable, that interest thereon will cease to accrue on and after said date,

(e) the place or places where such Securities are to be surrendered for payment of the Redemption Price and accrued interest, if any, unless it shall have been specified as contemplated by Section 301 with respect to such Securities that such surrender shall not be required,

(f) that the redemption is for a sinking or other fund, if such is the case, and

(g) such other matters as the Company shall deem desirable or appropriate.

With respect to any notice of redemption of Securities at the election of the Company, unless, upon the giving of such notice, such Securities shall be deemed to have been paid in accordance with Section 601, such notice may state that such redemption shall be conditional upon the receipt by the Paying Agent or Agents for such Securities, on or prior to the date fixed for such redemption, of money sufficient to pay the principal of and premium, if any, and interest, if any, on such Securities and that if such money shall not have been so received such notice shall be of no force or effect and the Company shall not be required to redeem such Securities. In the event that such notice of redemption contains such a condition and such money is not so received, the redemption shall not be made and within a reasonable time thereafter notice shall be given, in the manner in which the notice of redemption was given, that such money was not so received and such redemption was not required to be made, and the Paying Agent or Agents for the Securities otherwise to have been redeemed shall promptly return to the Holders thereof any of such Securities which had been surrendered for payment upon such redemption.

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

SECTION 405. SECURITIES PAYABLE ON REDEMPTION DATE.

Notice of redemption having been given as aforesaid, and the conditions, if any, set forth in such notice having been satisfied, the Securities or portions thereof so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless, in the case of an unconditional notice of redemption, the Company shall default in the payment of the Redemption Price and accrued interest, if any) such Securities or portions thereof, if interest-bearing, shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with such notice, such Security or portion thereof shall be paid by the Company at the Redemption Price, together with accrued interest, if any, to the Redemption Date; provided, however, that no such surrender shall be a condition to such payment if so specified as contemplated by Section 301 with respect to such Security; and provided, further, that, except as otherwise specified as contemplated by Section 301 with respect to such Security, any installment of interest on any Security the Stated Maturity of which installment is on or prior to the Redemption Date shall be payable to the Holder of such Security, or one or more Predecessor Securities, registered as such at the close of business on the related Regular Record Date according to the terms of such Security and subject to the provisions of Sections 305 and 307.

SECTION 406. SECURITIES REDEEMED IN PART.

Upon the surrender of any Security which is to be redeemed only in part at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company or the Trustee, as the case may be, duly executed by, the Holder thereof or his attorney duly authorized in writing), the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Security, without service charge, a new Security or Securities of the same series and Tranche, of any authorized denomination requested by such Holder and of like tenor and in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

ARTICLE FIVE

COVENANTS

SECTION 501. PAYMENT OF SECURITIES.

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

SECTION 502. MAINTENANCE OF OFFICE OR AGENCY.

The Company shall maintain in each Place of Payment for the Securities of each series, or any Tranche thereof, an office or agency where payment of such Securities shall be made, where the registration of transfer or exchange of such Securities may be effected and where notices and demands to or upon the Company in respect of such Securities and this Indenture may be served. The Company shall give prompt written notice to the Trustee of the location, and any

change in the location, of each such office or agency and prompt notice to the Holders of any such change in the manner specified in Section 106. If at any time the Company shall fail to maintain any such required office or agency in respect of Securities of any series, or any Tranche thereof, or shall fail to furnish the Trustee with the address thereof, payment of such Securities shall be made, registration of transfer or exchange thereof may be effected and notices and demands in respect thereof may be served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent for all such purposes in any such event.

The Company may also from time to time designate one or more other offices or agencies with respect to the Securities of one or more series, or any Tranche thereof, for any or all of the foregoing purposes and may from time to time rescind such designations; provided, however, that, unless otherwise specified as contemplated by Section 301 with respect to the Securities of such series or Tranche, no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency for such purposes in each Place of Payment for such Securities in accordance with the requirements set forth above. The Company shall give prompt written notice to the Trustee, and prompt notice to the Holders in the manner specified in Section 106, of any such designation or rescission and of any change in the location of any such other office or agency.

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

SECTION 503. MONEY FOR SECURITIES PAYMENTS TO BE HELD IN TRUST.

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

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

The Company shall cause each Paying Agent for the Securities of any series, or any Tranche thereof, other than the Company or the Trustee, to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent shall:

(a) hold all sums held by it for the payment of the principal of and premium, if any, or interest, if any, on such Securities in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

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

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

The Company may at any time pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent and, if so stated in a Company Order delivered to the Trustee, in accordance with the provisions of Article Six; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

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

SECTION 504. CORPORATE EXISTENCE.

Subject to the rights of the Company under Article Ten, the Company shall do or cause to be done all things necessary to preserve and keep its corporate existence in full force and effect.

SECTION 505. MAINTENANCE OF PROPERTIES .

The Company shall cause (or, with respect to property owned in common with others, make reasonable efforts to cause) all its properties used or useful in the conduct of its businesses, considered as a whole, to be maintained and kept in good condition, repair and working order and shall cause (or, with respect to property owned in common with others, make reasonable effort to cause) to be made such repairs, renewals, replacement, betterments and improvements thereof, as, in the judgment of the Company, may be necessary in order that the operation of such properties, considered as a whole, may be conducted in accordance with common industry practice; provided, however, that nothing in this section shall prevent the Company from discontinuing, or causing the discontinuance of, the operation and maintenance of any of its properties; and provided, further, that nothing in this Section shall prevent the Company from selling, transferring or otherwise disposing of, or causing the sale, transfer or other disposition of any of its properties.

SECTION 506. WAIVER OF CERTAIN COVENANTS.

The Company may omit in any particular instance to comply with any term, provision or condition set forth in

(a) any covenant or restriction specified with respect to the Securities of any one or more series, or any Tranche or Tranches thereof, as contemplated by Section 301, or by Section 1201(b) if before the time for such compliance the Holders of a majority in aggregate principal amount of the Outstanding Securities of all series and Tranches with respect to which compliance with such covenant or restriction is to be omitted, considered as one class, shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such term, provision or condition; provided, however, that no such waiver shall be effective as to any matters contemplated in clause (a), (b) or (c) in Section 1102 without consent of the Holders specified in such Section; and

(b) Section 504 or Article Ten if before the time for such compliance the Holders of a majority in principal amount of Securities Outstanding under this Indenture shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such term, provision or condition;

but, in either case, no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect; provided, however, so long as a Trust holds Securities of any series,

such Trust may not waive compliance or waive any default in compliance by the Company with any covenant or other term contained in this Indenture or the Securities of such series without the approval of the holders of at least a majority in aggregate liquidation preference of the outstanding Trust Securities issued by such Trust, obtained as provided in the Declaration pertaining to such Trust.

SECTION 507. ANNUAL OFFICER'S CERTIFICATE AS TO COMPLIANCE.

Not later than December 1 in each year, commencing December 1, ____, the Company shall deliver to the Trustee an Officer's Certificate which need not comply with Section 102, executed by the principal executive officer, the principal financial officer or the principal accounting officer of the Company, as to such officer's knowledge of the Company's compliance with all conditions and covenants under this Indenture, such compliance to be determined without regard to any period of grace or requirement of notice under this Indenture.

SECTION 508. RESTRICTION ON PAYMENT OF DIVIDENDS, ETC.

So long as any preferred securities of any series remain outstanding, if, at any time (a) there shall have occurred and be continuing an Event of Default described in clause (a) or (b) of Section 701 with respect to the Securities of any series, (b) the Company shall have elected to extend any interest payment period as specified with respect to the Securities of any series, or any Tranche thereof, as contemplated by Section 301 and any such period, as so extended, shall be continuing, or (c) the Company shall be in default in respect of its payment or other obligations under the Trust Securities Guarantee relating to any Trust Securities (other than Trust Securities initially issued and sold to the Company), then the Company shall not (x) declare or pay any dividend on, make any distribution or liquidation payment with respect to, or redeem, purchase or exchange any of its capital stock, (y) make any payment of principal, premium, if any, or interest, if any, on or repay, repurchase or redeem any debt securities (including other Securities) that rank pari passu with or junior in right of payment to the Securities and (z) make any guarantee payments with respect to any of the foregoing (other than payments under the Trust Securities Guarantee); provided, however, that nothing in this Section shall be deemed to prohibit (i) dividends or distributions payable in shares of the Company's capital stock, or in the form of warrants, options or other rights, where the dividend or distributed stock issuable upon exercise of the warrants, options or other rights are the same stock as that on which the dividend is being paid or is PARI PASSU or junior to the stock, (ii) reclassification of the Company's capital stock or exchange or conversion of shares of one class or series of the Company's capital stock into shares of another class or series of the Company's capital stock, (iii) purchases or other acquisitions of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of the capital stock or the security being converted or exchanged; (iv) redemption, purchases or other acquisitions of the Company's capital stock in connection with the satisfaction by the Company of its obligations under provisions of the Company's Restated Articles of Incorporation, as amended, under any direct purchase, dividend reinvestment, customer purchase or employee benefit plans or under any contract or security requiring the Company to purchase shares of its capital stock; and (v) payments

under any Trust Securities Guarantee executed and delivered by the Company concurrently with the issuance of any Preferred Securities.

SECTION 509. AVA CAPITAL TRUST III.

If Securities of any series are issued and delivered to a Trust (or a trustee thereof) in connection with the issuance by such trust of Trust Securities, so long as such Trust Securities remain outstanding the Company shall (a) maintain 100% direct ownership, by the Company or any Affiliate thereof, of the Trust Securities initially issued and sold to the Company by such Trust, except as otherwise provided in Section 1005, and (b) use all reasonable efforts to cause such Trust (i) to maintain its existence as a business trust, except in connection with a distribution of Securities, with the redemption, purchase or other acquisition and retirement of all Trust Securities of such trust or with certain mergers, consolidations or other business combinations, in each case as permitted by the Declaration establishing such Trust, and (ii) to otherwise continue not to be treated as an association taxable as a corporation for United States federal income tax purposes.

SECTION 510. HOLDERS OF PREFERRED SECURITIES

The Company agrees that, for so long as any Preferred Securities remain outstanding, its obligations under this Indenture will also be for the benefit of the holders from time to time of Preferred Securities, and the Company acknowledges and agrees that such holders will be entitled to enforce this Indenture, as third party beneficiaries, directly against the Company to the same extent as if such holders of Preferred Securities held a principal amount of Securities equal to the stated liquidation preference of the Preferred Securities held by such holders.

ARTICLE SIX

SATISFACTION AND DISCHARGE

SECTION 601. SATISFACTION AND DISCHARGE OF SECURITIES.

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

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

(b) in the case of a deposit made prior to the Maturity of such Securities or portions thereof, Eligible Obligations, which shall not contain provisions permitting the redemption or other prepayment thereof at the option of the issuer thereof, the principal of and the interest on which when due, without any regard to

reinvestment thereof, will provide moneys which, together with the money, if any, deposited with or held by the Trustee or such Paying Agent, shall be sufficient, or

(c) a combination of (a) or (b) which shall be sufficient,

to pay when due the principal of and premium, if any, and interest, if any, due and to become due on such Securities or portions thereof; provided, however, that in the case of the provision for payment or redemption of less than all the Securities of any series or Tranche, such Securities or portions thereof shall have been selected by the Security Registrar as provided herein and, in the case of a redemption, the notice requisite to the validity of such redemption shall have been given or irrevocable authority shall have been given by the Company to the Trustee to give such notice, under arrangements satisfactory to the Trustee; and provided, further, that the Company shall have delivered to the Trustee and such Paying Agent:

(x) if such deposit shall have been made prior to the Maturity of such Securities, a Company Order stating that the money and Eligible Obligations deposited in accordance with this Section shall be held in trust, as provided in Section 603;

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

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

Upon the deposit of money or Eligible Obligations, or both, in accordance with this Section, together with the documents required by clauses (x), (y) and (z) above, the Trustee shall, upon Company Request, acknowledge in writing that such Securities or portions thereof are deemed to have been paid for all purposes of this Indenture and that the entire indebtedness of the Company in respect thereof has been satisfied and discharged as contemplated in this Section. In the event that all of the conditions set forth in the preceding paragraph shall have been satisfied in respect of any Securities or portions thereof except that, for any reason, the Officer's Certificate specified in clause (z) (if otherwise required) shall not have been delivered, such Securities or portions thereof shall nevertheless be deemed to have been paid for all purposes of this Indenture, and the Holders of such Securities or portions thereof shall nevertheless be no longer entitled to the benefits provided

by this Indenture or of any of the covenants of the Company under Article Five (except the covenants contained in Sections 502 and 503) or any other covenants made in respect of such Securities or portions thereof as contemplated by Section 301 or Section 1201(b), but the indebtedness of the Company in respect of such Securities or portions thereof shall not be deemed to have been satisfied and discharged prior to Maturity for any other purpose; and, upon Company Request, the Trustee shall acknowledge in writing that such Securities or portions thereof are deemed to have been paid for all purposes of this Indenture.

If payment at Stated Maturity of less than all of the Securities of any series, or any Tranche thereof, is to be provided for in the manner and with the effect provided in this Section, the Security Registrar shall select such Securities, or portions of principal amount thereof, in the manner specified by Section 403 for selection for redemption of less than all the Securities of a series or Tranche.

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

Notwithstanding that any Securities shall be deemed to have been paid for purposes of this Indenture, as aforesaid, the obligations of the Company and the Trustee in respect of such Securities under Sections 304, 305, 306, 404, 502, 503, 807 and 814 and this Article shall survive.

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

Anything herein to the contrary notwithstanding, (a) if, at any time after a Security would be deemed to have been paid for purposes of this Indenture, and, if such is the case, the Company's indebtedness in respect thereof would be deemed to have been satisfied and discharged, pursuant to this Section (without regard to the provisions of this paragraph), the Trustee or any Paying Agent, as the case may be, (i) shall be required to return the money or Eligible Obligations, or combination thereof, deposited with it as aforesaid to the Company or any representative thereof, under any applicable Federal or State bankruptcy, insolvency or other similar law or (ii) are unable to apply any money held by the Trustee as provided in this Section with respect to such Security by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, such Security shall thereupon be deemed retroactively not to have been paid and any satisfaction and discharge of the Company's indebtedness in respect thereof

shall retroactively be deemed not to have been effected, and such Security shall be deemed to remain Outstanding and (b) any satisfaction and discharge of the Company's indebtedness in respect of any Security shall be subject to the provisions of the last paragraph of Section 503.

SECTION 602. SATISFACTION AND DISCHARGE OF INDENTURE.

This Indenture shall upon Company Request cease to be of further effect (except as hereinafter expressly provided), and the Trustee, at the expense of the Company, shall execute such instruments as the Company shall reasonably request to evidence and acknowledge the satisfaction and discharge of this Indenture, when:

- (a) no Securities remain Outstanding hereunder; and
- (b) the Company has paid or caused to be paid all other sums payable hereunder by the Company;

provided, however, that if, in accordance with the last paragraph of Section 601, any Security, previously deemed to have been paid for purposes of this Indenture, shall be deemed retroactively not to have been so paid, this Indenture shall thereupon be deemed retroactively not to have been satisfied and discharged, as aforesaid, and to remain in full force and effect, and the Company shall execute and deliver such instruments as the Trustee shall reasonably request to evidence and acknowledge the same.

Notwithstanding the satisfaction and discharge of this Indenture as aforesaid, the obligations of the Company and the Trustee under Sections 304, 305, 306, 404, 502, 503, 807 and 814 and this Article shall survive.

Upon satisfaction and discharge of this Indenture as provided in this Section, the Trustee shall turn over to the Company any and all money, securities and other property then held by the Trustee for the benefit of the Holders of the Securities (other than money and Eligible Obligations held by the Trustee pursuant to Section 603) and shall execute and deliver to the Company such instruments as, in the judgment of the Company, shall be necessary, desirable or appropriate to effect or evidence the satisfaction and discharge of this Indenture.

SECTION 603. APPLICATION OF TRUST MONEY.

Neither the Eligible Obligations nor the money deposited pursuant to Section 601, nor the principal or interest payments on any such Eligible Obligations, shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and premium, if any, and interest, if any, on the Securities or portions of principal amount thereof in respect of which such deposit was made, all subject, however, to the provisions of Section 503; provided, however, that any cash received from such principal or interest payments on such Eligible Obligations, if not then needed for such purpose, shall, to the extent practicable and upon Company

Request and delivery to the Trustee of the documents referred to in clause (y) in the first paragraph of Section 601, be invested in Eligible Obligations of the type described in clause (b) in the first paragraph of Section 601 maturing at such times and in such amounts as shall be sufficient, together with any other moneys and the proceeds of any other Eligible Obligations then held by the Trustee, to pay when due the principal of and premium, if any, and interest, if any, due and to become due on such Securities or portions thereof on and prior to the Maturity thereof, and interest earned from such reinvestment shall be paid over to the Company as received, free and clear of any trust, lien or pledge under this Indenture [(except the lien provided by Section 807)]; and provided, further, that any moneys held in accordance with this Section on the Maturity of all such Securities in excess of the amount required to pay the principal of and premium, if any, and interest, if any, then due on such Securities shall be paid over to the Company free and clear of any trust, lien or pledge under this Indenture [(except the lien provided by Section 807)]; and provided, further, that if an Event of Default shall have occurred and be continuing, moneys to be paid over to the Company pursuant to this Section shall be held until such Event of Default shall have been waived or cured.

ARTICLE SEVEN

EVENTS OF DEFAULT; REMEDIES

SECTION 701. EVENTS OF DEFAULT.

"EVENT OF DEFAULT", wherever used herein with respect to the Securities of any series, means any of the following events which shall have occurred and be continuing:

(a) failure to pay interest, if any, on any Security of such series within sixty (60) days after the same becomes due and payable [(whether or not payment is prohibited by the provisions of Article Fourteen)]; provided, however, that no such failure shall constitute an "Event of Default" if the Company shall have made a valid extension of the interest payment period with respect to the Securities of such series if so provided with respect to such series as contemplated by Section 301; or

(b) failure to pay the principal of or premium, if any, on any Security of such series within three (3) Business Days after its Maturity [(whether or not payment is prohibited by the provisions of Article Fourteen)]; provided, however, that no such failure shall constitute an "Event of Default" if the Company shall have made a valid extension of the Maturity of the Securities of such series if so provided with respect to such series as contemplated by Section 301; or

(c) failure to perform or breach of any covenant or warranty of the Company in this Indenture (other than a covenant or warranty a default in the performance of which or breach of which is elsewhere in this Section specifically dealt with or which has expressly been included in this Indenture solely for the benefit of one or more series of Securities

other than such series) for a period of ninety (90) days after there has been given, by registered or certified mail, to the Company by the Trustee, or to the Company and the Trustee by the Holders of at least thirty-three per centum (33%) in principal amount of the Outstanding Securities of such series, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "NOTICE OF DEFAULT" hereunder, unless the Trustee, or the Trustee and the Holders of a principal amount of Securities of such series not less than the principal amount of Securities the Holders of which gave such notice, as the case may be, shall agree in writing to an extension of such period prior to its expiration; provided, however, that the Trustee, or the Trustee and the Holders of such principal amount of Securities of such series, as the case may be, shall be deemed to have agreed to an extension of such period if corrective action is initiated by the Company within such period and is being diligently pursued; or

(d) the entry by a court having jurisdiction in the premises of (i) a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or (ii) a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition by one or more Persons other than the Company seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable Federal or State law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official for the Company or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs, and any such decree or order for relief or any such other decree or order shall have remained unstayed and in effect for a period of ninety (90) consecutive days; or

(e) the commencement by the Company of a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by the Company to the entry of a decree or order for relief in respect of the Company in a 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, or the making by the Company 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 authorization of such action by the Board of Directors of the Company; or

(f) if such Securities shall have been issued and delivered to a Trust (or trustee thereof) in connection with the issuance by such Trust of Trust Securities and so long as such Trust Securities remain outstanding, such Trust shall have voluntarily or involuntarily

dissolved, wound up its business or otherwise terminated its existence except in connection with (i) the distribution of Securities to holders of Trust Securities in liquidation of their interests in such Trust; (ii) the redemption of all or the outstanding Trust Securities of such Trust or (iii) certain mergers, consolidations or other business combinations, each as permitted by the Declaration establishing such Trust, or

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

SECTION 702. ACCELERATION OF MATURITY; RESCISSION AND ANNULMENT.

If an Event of Default shall have occurred and be continuing with respect to Securities of any series at the time Outstanding, then in every such case the Trustee or the Holders of not less than thirty-three per centum (33%) in principal amount of the Outstanding Securities of such series may declare the principal amount (or, if any of the Securities of such series are Discount Securities, such portion of the principal amount of such Securities as may be specified in the terms thereof as contemplated by Section 301) of all of the Outstanding Securities of such series to be due and payable immediately (provided that the payment of principal and interest on such Securities shall remain subordinated to the extent provided in this Indenture), by a notice in writing to the Company (and to the Trustee if given by Holders), and upon receipt by the Company of notice of such declaration such principal amount (or specified amount), together with premium, if any, and accrued interest, if any, thereon, shall become immediately due and payable; provided, however, that if an Event of Default shall have occurred and be continuing with respect to more than one series of Securities, the Trustee or the Holders of not less than thirty-three per centum (33%) in aggregate principal amount of the Outstanding Securities of all such series, considered as one class, may make such declaration of acceleration, and not the Holders of the Securities of any one of such series (provided that the payment of principal and interest on such Securities shall remain subordinated to the extent provided in this Indenture).

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

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

(i) all overdue interest, if any, on all Securities of such series then Outstanding;

(ii) the principal of and premium, if any, on any Securities of such series then Outstanding which have become due otherwise than by such

declaration of acceleration and interest, if any, thereon at the rate or rates prescribed therefor in such Securities;

(iii) interest, if any, upon overdue interest, if any, at the rate or rates prescribed therefor in such Securities, to the extent that payment of such interest is lawful; and

(iv) all amounts due to the Trustee under Section 807; and

(b) all Event or Events of Default with respect to Securities of such series, other than the non-payment of the principal of Securities of such series which shall have become due solely by such declaration of acceleration, shall have been cured or waived as provided in Section 713.

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

SECTION 703. COLLECTION OF INDEBTEDNESS AND SUITS FOR ENFORCEMENT BY TRUSTEE.

If an Event of Default described in clause (a) or (b) of Section 701 shall have occurred and be continuing, the Company shall, upon demand of the Trustee, pay to it, for the benefit of the Holders of the Securities of the series with respect to which such Event of Default shall have occurred, the whole amount then due and payable on such Securities for principal and premium, if any, and interest, if any, and, in addition thereto, such further amount as shall be sufficient to cover any amounts due to the Trustee under Section 807.

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

If an Event of Default with respect to Securities of any series shall have occurred and be continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of the Securities of such series then outstanding by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

SECTION 704. APPLICATION OF MONEY COLLECTED.

Any money collected by the Trustee pursuant to this Article shall be applied in the following order, to the extent permitted by law, at the date or dates fixed by the Trustee and, in case

of the distribution of such money on account of principal or premium, if any, or interest, if any, upon presentation of the Securities in respect of which or for the benefit of which such money shall have been collected and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 807;

SECOND: To the payment of the whole amount then due and unpaid upon the Outstanding Securities for principal and premium, if any, and interest, if any, in respect of which or for the benefit of which such money has been collected; and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon such Securities, then to the payment of such principal and interest, if any, thereon without any preference or priority, ratably according to the aggregate amount so due and unpaid, with any balance then remaining to the payment of premium, if any, and, if so specified as contemplated by Section 301 with respect to the Securities of any series, or any Tranche thereof, interest, if any, on overdue premium, if any, and overdue interest, if any, ratably as aforesaid, all to the extent permitted by applicable law;

THIRD: To the payment of the remainder, if any, to the Company or to whomsoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

SECTION 705. TRUSTEE MAY FILE PROOFS OF CLAIM.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Securities or the property of the Company or of such other obligor or their creditors, the Trustee (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 on the Company for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of principal, premium, if any, and interest, if any, owing and unpaid in respect of the Securities and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for amounts due to the Trustee under Section 807) and of the Holders allowed in such judicial proceeding, and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amounts due it under Section 807.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

SECTION 706. TRUSTEE MAY ENFORCE CLAIMS WITHOUT POSSESSION OF SECURITIES.

All rights of action and claims under this Indenture or on the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders in respect of which such judgment has been recovered.

SECTION 707. LIMITATION ON SUITS.

No Holder shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

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

(b) the Holders of a majority in aggregate principal amount of the Outstanding Securities of all series in respect of which an Event of Default shall have occurred and be continuing, considered as one class, shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

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

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

(e) no direction inconsistent with such written request shall have been given to the Trustee during such sixty (60) day period by the Holders of a majority in aggregate

principal amount of the Outstanding Securities of all series in respect of which an Event of Default shall have occurred and be continuing, considered as one class.

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such Holders or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all of such Holders.

SECTION 708. UNCONDITIONAL RIGHT OF HOLDERS TO RECEIVE PRINCIPAL, PREMIUM AND INTEREST.

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and premium, if any, and (subject to Sections 307) interest, if any, on such Security on the Stated Maturity or Maturities expressed in such Security (or, in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder. In addition, in the case of Securities of a series held by a Trust, a holder of Preferred Securities may directly institute a proceeding against the Company for enforcement of payment to such holder of principal of or interest on the Securities having a principal amount equal to the aggregate liquidation preference amount of the Preferred Securities of such holder on or after the due dates specified or provided for in the Securities.

SECTION 709. RESTORATION OF RIGHTS AND REMEDIES.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and such Holder shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and such Holder shall continue as though no such proceeding had been instituted.

SECTION 710. RIGHTS AND REMEDIES CUMULATIVE.

Except as otherwise provided in the last paragraph of Section 306, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 711. DELAY OR OMISSION NOT WAIVER.

No delay or omission of the Trustee or of any Holder to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

SECTION 712. CONTROL BY HOLDERS OF SECURITIES.

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

(a) such direction shall not be in conflict with any rule of law or with this Indenture, and could not involve the Trustee in personal liability in circumstances where indemnity would not, in the Trustee's sole discretion, be adequate,

(b) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

SECTION 713. WAIVER OF PAST DEFAULTS.

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

(a) in the payment of the principal of or premium, if any, or interest, if any, on any Security of such series then outstanding, or

(b) in respect of a covenant or provision hereof which under Section 1102 cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series affected; provided, however, that so long as a Trust holds the Securities of any series, such trust may not waive any past default without the consent of at least a majority in aggregate liquidation preference of the outstanding Trust Securities issued by such Trust, obtained as provided in the Declaration pertaining to such Trust. Any such waiver by

holders of a majority in aggregate liquidation preference of outstanding Preferred Securities issued by any such Trust shall be deemed to be on behalf of all holders of Preferred Securities issued by any such Trust.

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

SECTION 714. UNDERTAKING FOR COSTS.

The Company and the Trustee agree, and each Holder by its acceptance of a Security shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant all in the manner, to the extent and except as provided in the Trust Indenture Act; but the provisions of this Section shall not apply to any suit instituted by the Company, [to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than ten per centum (10%) in aggregate principal amount of the Outstanding Securities of all series in respect of which such suit may be brought, considered as one class, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or premium, if any, or interest, if any, on any Security on or after the Stated Maturity or Maturities expressed in such Security (or, in the case of redemption, on or after the Redemption Date).]

SECTION 715. WAIVER OF STAY OR EXTENSION LAWS.

To the full extent that it may lawfully so agree, the Company shall not at any time set up, claim or otherwise seek to take the benefit or advantage of any stay or extension law, now or hereafter in effect, in order to prevent or hinder the enforcement of this Indenture; and the Company, for itself and all who may claim under it, so far as it or they now or hereafter may lawfully do so, hereby waives the benefit of all such laws.

SECTION 716. ACTION BY HOLDERS OF CERTAIN TRUST SECURITIES.

If the Securities of any series shall be held by the Institutional Trustee of a Trust and if such Institutional Trustee, as such Holder, shall have failed to exercise any of the rights and remedies available under this Indenture to the Holders of such Securities, the holders of the Trust Securities issued by such Trust (other than Trust Securities initially issued and sold to the Company) shall have and may exercise all such rights and remedies, to the same extent as if such holders of such Trust Securities held a principal amount of Securities of such series equal to the

liquidation preference of such Trust Securities, without first proceeding against such trustee or trust. Notwithstanding the foregoing, in the case of an Event of Default described in clause (a) or (b) of Section 701, each holder of such Trust Securities shall have and may exercise all rights available to the Institutional Trustee under Section 708 as the Holder of the Securities of such series.

If action shall have been taken by both the Holders and the holders of Trust Securities (other than Trust Securities initially issued and sold to the Company) to exercise such rights as contemplated in the preceding paragraph, the action taken by holders of Trust Securities shall control. Any such action taken by registered holders of Trust Securities shall be evidenced to the Trustee in the same manner as an Act of Holders, as provided in Section 104(a). The Trustee shall be entitled to rely on the books and records of the related Trust in determining the identities of the holders of Trust Securities (and, upon the reasonable request of the Trustee, the Company, as the sponsor of such Trust, shall, at its own expense, promptly provide copies of applicable portions of such books and records to the Trustee to the extent reasonably necessary to enable the Trustee to make such determination).

ARTICLE EIGHT

THE TRUSTEE

SECTION 801. CERTAIN DUTIES AND RESPONSIBILITIES.

(a) Except during the continuance of an Event of Default with respect to Securities of any series,

(i) the Trustee undertakes to perform, with respect to Securities of such series, 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

(ii) in the absence of bad faith on its part, the Trustee may, with respect to Securities of such series, 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 with respect to Securities of any series shall have occurred and be continuing, the Trustee shall exercise, with respect to Securities of such series, 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:

(i) this subsection shall not be construed to limit the effect of subsection (a) of this Section;

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

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Securities of any one or more series, as provided herein, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture with respect to the Securities of such series; and

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

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

SECTION 802. NOTICE OF DEFAULTS.

The Trustee shall give notice of any default hereunder with respect to the Securities of any series to the Holders of Securities of such series in the manner and to the extent required to do so by the Trust Indenture Act, unless such default shall have been cured or waived; provided, however, that in the case of any default of the character specified in Section 701(c), no such notice to Holders shall be given until at least seventy-five (75) days after the occurrence thereof; and provided, further, that, subject to the provisions of Section 801, the Trustee shall not be deemed to have knowledge of such default unless either (i) a Responsible Officer of the Trustee shall have actual knowledge of such default or (ii) the Trustee shall have received written notice thereof from the Company or any Holder or, in the case of a default described in Section 701(d), from the holder

of any indebtedness or from the trustee under any mortgage, indenture or other instrument referred to in such Section. For the purpose of this Section, the term "DEFAULT" means any event which is, or after notice or lapse of time, or both, would become, an Event of Default with respect to the Securities of such series.

SECTION 803. CERTAIN RIGHTS OF TRUSTEE.

Subject to the provisions of Section 801 and to the applicable provisions of the Trust Indenture Act:

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

(b) any request, direction or act of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order, or as otherwise expressly provided herein, and any resolution of the Board of Directors of the Company may be sufficiently evidenced by a Board Resolution;

(c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence is specifically prescribed herein) may, in the absence of bad faith on its part, rely upon an Officer's Certificate of the Company;

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

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any Holder pursuant to this Indenture, unless such Holder shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it complying with such request or direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall (subject to applicable legal requirements)

be entitled to examine, during normal business hours, the books, records and premises of the Company, personally or by agent or attorney;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder; and

(h) the Trustee shall not be charged with knowledge of any Event of Default with respect to the Securities of any series for which it is acting as Trustee unless either (i) a Responsible Officer of the Trustee shall have actual knowledge of the Event of Default or (ii) written notice of such Event of Default shall have been given to the Trustee by the Company, any other obligor on such Securities or by any Holder of such Securities.

SECTION 804. NOT RESPONSIBLE FOR RECITALS OR ISSUANCE OF SECURITIES.

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

SECTION 805. MAY HOLD SECURITIES.

Each of the Trustee, any Authenticating Agent, any Paying Agent, any Security Registrar or any other agent of the Company or the Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities and/or Preferred Securities, subject to Sections 808 and 813, may otherwise deal with the Company with the same rights it would have if it were not such Trustee, Authenticating Agent, Paying Agent, Security Registrar or other agent.

SECTION 806. MONEY HELD IN TRUST.

Money held by the Trustee in trust hereunder need not be segregated from other funds, except to the extent required by law. The Trustee shall be under no liability for interest on or investment of any money received by it hereunder except as expressly provided herein or otherwise agreed with, and for the sole benefit of, the Company.

SECTION 807. COMPENSATION AND REIMBURSEMENT.

The Company agrees

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

(b) except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances reasonably incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except to the extent that any such expense, disbursement or advance as may be attributable to its negligence, willful misconduct or bad faith; and

(c) to indemnify the Trustee and hold it harmless from and against any loss, liability or expense reasonably incurred by it arising out of or in connection with the acceptance or administration of the trust or trusts hereunder or the performance of its duties hereunder, including the reasonable costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent that any such loss, liability or expense may be attributable to its negligence, willful misconduct or bad faith.

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 other than property and funds held in trust under Section 603 (except moneys payable to the Company as provided in Section 603). "TRUSTEE" for purposes of this Section shall include any predecessor Trustee; provided, however, that the negligence, willful misconduct or bad faith of any Trustee hereunder shall not affect the rights of any other Trustee hereunder.

SECTION 808. DISQUALIFICATION; CONFLICTING INTERESTS.

If the Trustee shall have or acquire any conflicting interest within the meaning of the Trust Indenture Act, it shall either eliminate such conflicting interest or resign to the extent, in the manner and with the effect, and subject to the conditions, provided in the Trust Indenture Act and this Indenture. For purposes of Section 310(b)(1) of the Trust Indenture Act and to the extent permitted thereby, the Trustee, in its capacity as trustee in respect of the Securities of any series, shall not be deemed to have a conflicting interest arising from its capacity as trustee in respect of (i) the Securities of any other series and (ii) the Declaration and the Trust Securities Guarantee Agreement pertaining to each Trust.

SECTION 809. CORPORATE TRUSTEE REQUIRED; ELIGIBILITY.

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

(a) a corporation organized and doing business under the laws of the United States, any State or Territory thereof or the District of Columbia, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least Fifty Million Dollars (\$50,000,000) and subject to supervision or examination by Federal, State, Territorial or District of Columbia authority, or

(b) if and to the extent permitted by the Commission by rule, regulation or order upon application, a corporation or other Person organized and doing business under the laws of a foreign government, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least Fifty Million Dollars (\$50,000,000) or the Dollar equivalent of the applicable foreign currency and subject to supervision or examination by authority of such foreign government or a political subdivision thereof substantially equivalent to supervision or examination applicable to United States institutional trustees,

and, in either case, qualified and eligible under this Article and the Trust Indenture Act. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of such supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section or the Trust Indenture Act, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

SECTION 810. RESIGNATION AND REMOVAL; APPOINTMENT OF SUCCESSOR.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 811.

(b) The Trustee may resign at any time with respect to the Securities of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 811 shall not have been delivered to the Trustee within thirty (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 with respect to the Securities of such series.

(c) The Trustee may be removed at any time with respect to the Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Trustee and to the Company; provided that so long as any Preferred Securities remain outstanding, the Trust which issued such Preferred Securities shall not execute any Act to remove the Trustee without the consent of the holders of a majority in aggregate liquidation preference of Preferred Securities issued by such Trust outstanding, obtained as provided in the Declaration pertaining to such Trust.

(d) If at any time:

(i) the Trustee shall fail to comply with Section 808 after written request therefor by the Company or by any Holder who has been a bona fide Holder for at least six months, or

(ii) the Trustee shall cease to be eligible under Section 809 or Section 310(a) of the Trust Indenture Act and shall fail to resign after written request therefor by the Company or by any such Holder, 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, (x) the Company may remove the Trustee with respect to all Securities or (y) subject to Section 714, any Holder who has been a bona fide Holder for at least six (6) months may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Securities and the appointment of a successor Trustee or Trustees.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause (other than as contemplated in clause (y) in subsection (d) of this Section), with respect to the Securities of one or more series, the Company shall take prompt steps to appoint a successor Trustee or Trustees with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any particular series) and shall comply with the applicable requirements of Section 811. If, within one (1) year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 811, become the successor Trustee with respect to the Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Securities of any series shall have been so appointed by the Company or the Holders and accepted appointment in the manner required by Section 811, any Holder who has been a bona fide Holder of a Security of such series for at least six (6) months may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(f) So long as no event which is, or after notice or lapse of time, or both, would become, an Event of Default shall have occurred and be continuing, if the Company shall have

delivered to the Trustee or Trustees with respect to the Securities of one or more series (i) an instrument executed by an Authorized Officer of the Company appointing a successor Trustee or Trustees with respect to such series, effective as of a date specified therein, and (ii) an instrument of acceptance of such appointment, effective as of such date, by such successor Trustee or Trustees in accordance with Section 811, the Trustee or Trustees with respect to such series shall be deemed to have resigned as contemplated in subsection (b) of this Section, the successor Trustee or Trustees shall be deemed to have been appointed by the Company pursuant to subsection (e) of this Section and such appointment shall be deemed to have been accepted as contemplated in Section 811, all as of such date, and all other provisions of this Section and Section 811 shall be applicable to such resignation, appointment and acceptance except to the extent inconsistent with this subsection (f).

(g) The Company shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series to all Holders of Securities of such series. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its corporate trust office.

SECTION 811. ACCEPTANCE OF APPOINTMENT BY SUCCESSOR.

(a) In case of the appointment hereunder of a successor Trustee with respect to the Securities of all series, every such successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of all sums owed to it, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

(b) In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Securities of such series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing

herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee, upon payment of all sums owed to it, shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

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

(d) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article.

SECTION 812. MERGER, CONVERSION, CONSOLIDATION OR SUCCESSION TO BUSINESS.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any 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 813. PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY.

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

(a) the term "CASH TRANSACTION" means any transaction in which full payment for goods or securities sold is made within seven 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; and

(b) the term "SELF-LIQUIDATING PAPER" means any draft, bill of exchange, acceptance or obligation which is made, drawn, negotiated or incurred by the Company or such obligor 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 the Company or such obligor arising from the making, drawing, negotiating or incurring of the draft, bill of exchange, acceptance or obligation.

SECTION 814. APPOINTMENT OF AUTHENTICATING AGENT.

The Trustee may appoint an Authenticating Agent or Agents with respect to the Securities of one or more series, or any Tranche thereof, which shall be authorized to act on behalf of the Trustee to authenticate Securities of such series or Tranche issued upon original issuance, exchange, registration of transfer or partial redemption thereof or pursuant to Section 306, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States, any State or Territory thereof or the District of Columbia or the Commonwealth of Puerto Rico, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than Fifty Million Dollars (\$50,000,000) and subject to supervision or examination by Federal or State authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to all or substantially all of the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be otherwise

eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

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

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

The provisions of Sections 308, 804 and 805 shall be applicable to each Authenticating Agent.

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

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

As Trustee

By _____
As Authenticating Agent

By _____
Authorized Officer

If all of the Securities of a series may not be originally issued at one time, and if the Trustee does not have an office capable of authenticating Securities upon original issuance located in a Place of Payment where the Company wishes to have Securities of such series authenticated upon original issuance, the Trustee, if so requested by the Company in writing (which writing need

not comply with Section 102 and need not be accompanied by an Opinion of Counsel), shall appoint, in accordance with this Section and in accordance with such procedures as shall be acceptable to the Trustee, an Authenticating Agent having an office in a Place of Payment designated by the Company with respect to such series of Securities.

ARTICLE NINE

LISTS OF HOLDERS; REPORTS BY TRUSTEE AND COMPANY

SECTION 901. LISTS OF HOLDERS.

Semiannually, not later than _____ and _____ in each year, commencing _____, _____, and within thirty (30) days of such other times as the Trustee may request in writing, the Company shall furnish or cause to be furnished to the Trustee information as to the names and addresses of the Holders, as of a date no more than fifteen (15) days prior to the date such information is so furnished, and the Trustee shall preserve such information and similar information received by it in any other capacity and afford to the Holders access to information so preserved by it, all to such extent, if any, and in such manner as shall be required by the Trust Indenture Act; provided, however, that no such list need be furnished so long as the Trustee shall be the Security Registrar.

SECTION 902. REPORTS BY TRUSTEE AND COMPANY.

Not later than _____ in each year, commencing _____, _____, the Trustee shall transmit to the Holders, the Commission and each securities exchange upon which any Securities are listed, a report, dated as of the next preceding _____, with respect to any events and other matters described in Section 313(a) of the Trust Indenture Act, in such manner and to the extent required by the Trust Indenture Act. The Trustee shall transmit to the Holders, the Commission and each securities exchange upon which any Securities are listed, and the Company shall file with the Trustee (within thirty (30) days after filing with the Commission in the case of reports which pursuant to the Trust Indenture Act must be filed with the Commission and furnished to the Trustee) and transmit to the Holders, such other information, reports and other documents, if any, at such times and in such manner, as shall be required by the Trust Indenture Act. The Company shall notify the Trustee of the listing of any Securities on any securities exchange.

ARTICLE TEN

CONSOLIDATION, MERGER, CONVEYANCE
OR OTHER TRANSFER

SECTION 1001. COMPANY MAY CONSOLIDATE, ETC., ONLY ON CERTAIN TERMS.

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

(a) the Person formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or other transfer, or which leases (for a term extending beyond the last Stated Maturity of the Securities then Outstanding), all of the properties of the Company, as or substantially as an entirety, shall be a Person organized and existing under the laws of the United States, any State or Territory thereof or the District of Columbia or under the laws of Canada or any Province thereof (such Person being hereinafter sometimes called the "SUCCESSOR") and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, the due and punctual payment of the principal of and premium, if any, and interest, if any, on all the Securities then Outstanding and the performance and observance of every other covenant and condition of this Indenture to be performed or observed by the Company; and

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

Anything in this Indenture to the contrary notwithstanding, the conveyance or other transfer by the Company of all of its facilities(a) for the generation of electric energy, (b) for the transmission of electric energy or (c) for the distribution of electric energy and/or natural gas, in each case considered alone, or all of its facilities described in clauses (a) and (b), considered together, or all of its facilities described in clauses (b) and (c), considered together, shall in no event be deemed to constitute a conveyance or other transfer of all the properties of the Company, as or substantially as an entirety, unless, immediately following such conveyance or other transfer, the Company shall own no properties in the other such categories of property not so conveyed or otherwise transferred. The character of particular facilities shall be determined by reference to the Uniform System of Accounts prescribed for public utilities and licensees subject to the Federal Power Act, as amended, to the extent applicable.

SECTION 1002. SUCCESSOR SUBSTITUTED.

Upon any consolidation or merger or any conveyance or other transfer of all the properties of the Company, as or substantially as an entirety, in accordance with Section 1001, the Successor shall succeed to, and be substituted for, and may exercise every power and right of, the Company under this Indenture with the same effect as if such Successor had been named as the "Company" herein. Without limiting the generality of the foregoing, the Successor may execute and deliver to the Trustee, and thereupon the Trustee shall, subject to the provisions of Article Three, authenticate and deliver, Securities. All Securities so executed by the Successor, and authenticated and delivered by the Trustee, shall in all respects be entitled to the benefits provided by this Indenture equally and ratably with all Securities executed, authenticated and delivered prior to the time such consolidation, merger, conveyance or other transfer became effective.

SECTION 1003. RELEASE OF COMPANY UPON CONVEYANCE OR OTHER TRANSFER.

In the case of a conveyance or other transfer to any Person or Persons as contemplated in Section 1001, upon the satisfaction of all the conditions specified in Section 1001 the Company (such term being used in this Section without giving effect to such transaction) shall be released and discharged from all obligations and covenants under this Indenture and on and under all Securities then Outstanding (unless the Company shall have delivered to the Trustee an instrument in which it shall waive such release and discharge) and the Trustee shall acknowledge in writing that the Company has been so released and discharged.

SECTION 1004. MERGER INTO COMPANY.

Nothing in this Indenture shall be deemed to prevent or restrict any consolidation or merger after the consummation of which the Company would be the surviving or resulting corporation or any conveyance or other transfer, or lease of any part of the properties of the Company which does not constitute the entirety, or substantially the entirety, thereof.

SECTION 1005. TRANSFER OF LESS THAN THE ENTIRETY.

(a) If the Company shall have conveyed or otherwise transferred any part of its properties which does not constitute the entirety, or substantially the entirety, thereof to another corporation meeting the requirements set forth in clause (a) of the first paragraph of Section 1001 and if:

(i) the transferee of such part of the properties of the Company shall have executed and delivered to the Trustee an indenture supplemental hereto, in form reasonably satisfactory to the Trustee, which contains an assumption by such transferee of the due and punctual payment of the principal of and premium, if any, and interest, if any, on all the Securities then Outstanding and the performance and observance of every covenant and condition of this Indenture to be performed or observed by the Company;

(ii) there shall have been delivered to the Trustee an Independent Expert's Certificate

(A) describing the property so conveyed or otherwise transferred (such description of property to be made by reference either to specific items, units and/or elements of property or portions thereof, on a percentage or Dollar basis, or to properties reflected in specified accounts in the Company's books of account or portions thereof, on a Dollar basis); provided, however, that such property shall be identified in such certificate as facilities for the generation, transmission or distribution of electric energy or for the storage, transportation or distribution of natural gas;

(B) stating, in the judgment of the signers, the Fair Value to the transferee of the property so conveyed or otherwise transferred;

(C) stating an amount equal to seventy percent (70%) of the amount stated pursuant to clause (B) above; provided, however, that there shall be excluded from the property so evaluated any property subject to any mortgage, deed of trust, security interest or other lien which secures indebtedness for borrowed money or for the deferred purchase price of property;

(D) stating an amount equal to the aggregate principal amount of the Securities then Outstanding; and

(E) stating that the amount stated pursuant to clause (D) above does not exceed the amount stated pursuant to clause (C) above;

(iii) the Company shall have assigned or otherwise transferred to such transferee all Trust Securities (initially issued and sold to the Company) then outstanding, and such transferee shall have expressly assumed all obligations under all Trust Securities Guarantees; and

(iv) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel each of which shall state that such conveyance or other transfer and such supplemental indenture comply with this Section and that all conditions precedent relating to such transactions provided for in this Section and otherwise in this Indenture have been complied with;

then, upon the satisfaction of all such conditions,

(x) the Company shall be released and discharged from all obligations and covenants under this Indenture and on and under all Securities then Outstanding (unless the Company shall have delivered to the Trustee an instrument in which it shall waive such

release and discharge), and the Trustee shall acknowledge in writing that the Company has been so released and discharged; and

(y) if the Company shall have been released and discharged as contemplated in clause (x) above, such transferee shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such transferee had been named the "Company" herein; and without limiting the generality of the foregoing, such transferee shall be deemed a "Successor" for purposes of Section 1002 and for all other purposes of this Indenture.

(b) For purposes of this Section:

"FAIR VALUE" means the fair value of such property so conveyed or otherwise transferred as may be determined by reference to (a) the amount which would be likely to be obtained in an arm's-length transaction with respect to such property between an informed and willing buyer and an informed and willing seller, under no compulsion, respectively, to buy or sell, (b) the amount of investment with respect to such property which, together with a reasonable return thereon, would be likely to be recovered through ordinary business operations or otherwise, (c) the cost, accumulated depreciation and replacement cost with respect to such property and/or (d) any other relevant factors; provided, however, that (x) the Fair Value of property shall be determined without deduction for any mortgage, deed of trust, pledge, security interest, encumbrance, lease, reservation, restriction, servitude, charge or similar right or any other lien of any kind on such property and (y) the Fair Value to the transferee of any property shall not reflect any reduction relating to the fact that such property may be of less value to a Person which is not the owner or operator of the property or any portion thereof than to a Person which is such owner or operator. Fair Value may be determined, without physical inspection, by the use of accounting and engineering records and other data maintained by the Company or the transferee or otherwise available to the Expert certifying the same.

"INDEPENDENT EXPERT'S CERTIFICATE" means a certificate signed by an authorized officer of the transferee and by an Independent Expert (which Independent Expert shall be selected either by the board of directors or by an authorized officer of the transferee, the execution of such certificate by such authorized officer to be conclusive evidence of such selection) and delivered to the Trustee. For purposes of this definition, (a) "EXPERT" means a Person which is an engineer, appraiser or other expert and which, with respect to any certificate to be signed by such Person and delivered to the Trustee, is qualified to pass upon the matter set forth in such certificate; (b) "ENGINEER" means a Person engaged in the engineering profession or otherwise qualified to pass upon engineering matters (including, but not limited to, a Person licensed as a professional engineer, whether

or not then engaged in the engineering profession) and (c) "APPRAISER" means a Person engaged in the business of appraising property or otherwise qualified to pass upon the Fair Value or fair market value of property. "INDEPENDENT", when applied to any Expert, means such a Person who (a) is in fact independent, (b) does not have any direct material financial interest in the transferee or in any obligor upon the Securities or in any Affiliate of the transferee, (c) is not connected with the transferee or such other obligor as an officer, employee, promoter, underwriter, trustee, partner, director or any person performing similar functions and (d) is approved by the Trustee in the exercise of reasonable care.

ARTICLE ELEVEN

SUPPLEMENTAL INDENTURES

SECTION 1101. SUPPLEMENTAL INDENTURES WITHOUT CONSENT OF HOLDERS.

Without the consent of any Holders, the Company and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form reasonably satisfactory to the Trustee, for any of the following purposes:

(a) to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants of the Company herein and in the Securities, all as provided in Article Ten; or

(b) to add one or more covenants of the Company or other provisions for the benefit of all Holders or for the benefit of the Holders of, or to remain in effect only so long as there shall be Outstanding, Securities of one or more specified series, or one or more specified Tranches thereof, or to surrender any right or power herein conferred upon the Company; or

(c) to change or eliminate any provision of this Indenture or to add any new provision to this Indenture; provided, however, that if such change, elimination or addition shall adversely affect the interests of the Holders of Outstanding Securities of any series or Tranche in any material respect, such change, elimination or addition shall become effective with respect to such series or Tranche only in accordance with the provisions of Section 1102 or when no Security of such series or Tranche remains Outstanding; or

(d) to provide collateral security for the Securities or any series thereof; or

(e) to establish the form or terms of Securities of any series or Tranche as contemplated by Sections 201 and 301; or

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

(g) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 811(b); or

(h) to provide for the procedures required to permit the Company to utilize, at its option, a non-certificated system of registration for all, or any series or Tranche of, the Securities; or

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

(j) 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 changes to the provisions hereof or to add other provisions with respect to matters or questions arising under this Indenture, provided that such other changes or additions shall not adversely affect the interests of the Holders of Securities of any series or Tranche in any material respect.

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

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

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

SECTION 1102. SUPPLEMENTAL INDENTURES WITH CONSENT OF HOLDERS.

Subject to the provisions of Section 1101, with the consent of the Holders of a majority in aggregate principal amount of the Securities of all series then Outstanding under this Indenture, considered as one class, by Act of said Holders delivered to the Company and the Trustee, the Company and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Indenture; provided, however, that if there shall be Securities of more than one series Outstanding hereunder and if a proposed supplemental indenture shall directly affect the rights of the Holders of Securities of one or more, but less than all, of such series, then the consent only of the Holders of a majority in aggregate principal amount of the Outstanding Securities of all series so directly affected, considered as one class, shall be required; and provided, further, that if the Securities of any series shall have been issued in more than one Tranche and if the proposed supplemental indenture shall directly affect the rights of the Holders of Securities of one or more, but less than all, of such Tranches, then the consent only of the Holders of a majority in aggregate principal amount of the Outstanding Securities of all Tranches so directly affected, considered as one class, shall be required; and provided, further, that no such supplemental indenture shall:

(a) change the Stated Maturity of the principal of, or any installment of principal of or interest on, any Security other than pursuant to the terms thereof, or reduce the principal amount thereof or the rate of interest thereon (or the amount of any installment of interest thereon) or change the method of calculating such rate or reduce any premium payable thereon, or reduce the amount of the principal of any Discount Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 702, or change the coin or currency (or other property), in which any Security or premium, if any, or interest, if any, thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Maturity of any Security, without, in any such case, the consent of the Holder of such Security; or

(b) reduce the percentage in principal amount of the Outstanding Securities of any series (or, if applicable, in liquidation preference of any series of Trust Securities), or any Tranche thereof, the consent of the Holders of which is required for any such supplemental indenture, or the consent of the Holders of which

is required for any waiver of compliance with any provision of this Indenture or of any default hereunder and its consequences, or reduce the requirements of Section 1204 for quorum or voting, without, in any such case, the consent of the Holder of each Outstanding Security of such series or Tranche; or

(c) modify any of the provisions of this Section, Section 506 or Section 713 with respect to the Securities of any series or any Tranche thereof (except to increase the percentages in principal amount referred to in this Section or such other Sections or to provide that other provisions of this Indenture cannot be modified or waived) without, in any such case, the consent of the Holder of each Outstanding Security of such series or Tranche; provided, however, that this clause shall not be deemed to require the consent of any Holder with respect to changes in the references to "the Trustee" and concomitant changes in this Section, or the deletion of this proviso, in accordance with the requirements of Sections 811(b) and 1101(g).

A supplemental indenture which (x) changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of the Holders of, or which is to remain in effect only so long as there shall be Outstanding, Securities of one or more specified series, or one or more Tranches thereof, or (y) modifies the rights of the Holders of Securities of such series or Tranches with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series or Tranche.

Notwithstanding the foregoing, so long as any of the Preferred Securities remain outstanding, the Trustee may not consent to a supplemental indenture under this Section 1102 without the prior consent, obtained as provided in a Declaration pertaining to a Trust which issued such Preferred Securities of the holders of not less than a majority in aggregate liquidation preference of all Trust Securities issued by such Trust affected, considered as one class, or, in the case of changes described in clauses (a), (b) and (c) above, 100% in aggregate liquidation preference of all such Preferred Securities then outstanding which would be affected thereby, considered as one class.

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

Anything in this Indenture to the contrary notwithstanding, if the Officer's Certificate, supplemental indenture or Board Resolution, as the case may be, establishing the Securities of any series or Tranche shall so provide, (a) the Holders of such Securities shall be deemed to have consented to a supplemental indenture containing the additions, changes or eliminations to or from the Indenture which shall be specified in such Officer's Certificate, supplemental indenture or Board Resolution establishing such series or Tranche, (b) no Act of such Holders shall be required to evidence such consent and (c) such consent may be counted in the

determination of whether or not the Holders of the requisite principal amount of Securities shall have consented to such supplemental indenture.

SECTION 1103. 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 801) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties, immunities or liabilities under this Indenture or otherwise.

SECTION 1104. EFFECT OF SUPPLEMENTAL INDENTURES.

Upon the execution and delivery 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. Any supplemental indenture permitted by this Article may restate this Indenture in its entirety, and, upon the execution and delivery thereof, any such restatement shall supersede this Indenture as theretofore in effect for all purposes.

SECTION 1105. CONFORMITY WITH TRUST INDENTURE ACT.

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

SECTION 1106. REFERENCE IN SECURITIES TO SUPPLEMENTAL INDENTURES.

Securities of any series, or any Tranche thereof, authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of any series, or any Tranche thereof, so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities of such series or Tranche.

SECTION 1107. MODIFICATION WITHOUT SUPPLEMENTAL INDENTURE.

To the extent, if any, that the terms of any particular series of Securities shall have been established in or pursuant to an Officer's Certificate or a Board Resolution as contemplated by Section 301, and not in a supplemental indenture hereto, additions to, changes in or the elimination of any of such terms may be effected by means of a supplemental Officer's Certificate or a

supplemental Board Resolution, as the case may be, delivered to, and accepted by, the Trustee; provided, however, that such supplemental Officer's Certificate or supplemental Board Resolution shall not be accepted by the Trustee or otherwise be effective unless all conditions set forth in this Indenture which would be required to be satisfied if such additions, changes or elimination were contained in a supplemental indenture shall have been appropriately satisfied. Upon the acceptance thereof by the Trustee, any supplemental Officer's Certificate or supplemental Board Resolution shall be deemed to be a "supplemental indenture" for purposes of Section 1104 and 1106.

ARTICLE TWELVE

MEETINGS OF HOLDERS; ACTION WITHOUT MEETING

SECTION 1201. PURPOSES FOR WHICH MEETINGS MAY BE CALLED.

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

SECTION 1202. CALL, NOTICE AND PLACE OF MEETINGS.

(a) The Trustee may at any time call a meeting of Holders of Securities of one or more, or all, series, or any Tranche or Tranches thereof, for any purpose specified in Section 1201, to be held at such time and (except as provided in subsection (b) of this Section) at such place in the Borough of Manhattan, The City of New York, as the Trustee shall determine, or, with the approval of the Company, at any other place. Notice of every such meeting, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 106, not less than twenty-one (21) nor more than one hundred eighty (180) days prior to the date fixed for the meeting.

(b) The Trustee may be asked to call a meeting of the Holders of Securities of one or more, or all, series, or any Tranche or Tranches thereof, by the Company or by the Holders of thirty-three per centum (33%) in aggregate principal amount of all of such series and Tranches, considered as one class, for any purpose specified in Section 1201, by written request setting forth in reasonable detail the action proposed to be taken at the meeting. If the Trustee shall have been asked by the Company to call such a meeting, the Company shall determine the time and place for such meeting and may call such meeting by giving notice thereof in the manner provided in subsection (a) of this Section, or shall direct the Trustee, in the name and at the expense of the Company, to give such notice. If the Trustee shall have been asked to call such a meeting by Holders in accordance with this subsection (b), and the Trustee shall not have given the notice of such meeting within twenty-one (21) days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Holders of Securities of such

series and Tranches, in the principal amount above specified, may determine the time and the place in the Borough of Manhattan, The City of New York, or in such other place as shall be determined or approved by the Company for such meeting and may call such meeting for such purposes by giving notice thereof as provided in subsection (a) of this Section.

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

SECTION 1203. PERSONS ENTITLED TO VOTE AT MEETINGS.

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

SECTION 1204. QUORUM; ACTION.

The Persons entitled to vote a majority in aggregate principal amount of the Outstanding Securities of the series and Tranches with respect to which a meeting shall have been called as hereinbefore provided, considered as one class, shall constitute a quorum for a meeting of Holders of Securities of such series and Tranches; provided, however, that if any action is to be taken at such meeting which this Indenture expressly provides may be taken by the Holders of a specified percentage, which is less than a majority, in principal amount of the Outstanding Securities of such series and Tranches, considered as one class, the Persons entitled to vote such specified percentage in principal amount of the Outstanding Securities of such series and Tranches, considered as one class, shall constitute a quorum. In the absence of a quorum within one hour of the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Securities of such series and Tranches, be dissolved. In any other case the meeting may be adjourned for such period as may be determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any such adjourned meeting, such adjourned meeting may be further adjourned for such period as may be determined by the chairman of the meeting prior to the adjournment of such adjourned meeting. Except as provided by Section 1205(e), notice of the reconvening of any meeting adjourned for more than thirty (30) days shall be given as provided in Section 106 not less than ten (10) days prior to the date on which the meeting

is scheduled to be reconvened. Notice of the reconvening of an adjourned meeting shall state expressly the percentage, as provided above, of the principal amount of the Outstanding Securities of such series and Tranches which shall constitute a quorum.

Except as limited by Section 1102, any resolution presented to a meeting or adjourned meeting duly reconvened at which a quorum is present as aforesaid may be adopted only by the affirmative vote of the Holders of a majority in aggregate principal amount of the Outstanding Securities of the series and Tranches with respect to which such meeting shall have been called, considered as one class; provided, however, that, except as so limited, any resolution with respect to any action which this Indenture expressly provides may be taken by the Holders of a specified percentage, which is less than a majority, in principal amount of the Outstanding Securities of such series and Tranches, considered as one class, may be adopted at a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid by the affirmative vote of the Holders of such specified percentage in principal amount of the Outstanding Securities of such series and Tranches, considered as one class.

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

SECTION 1205. ATTENDANCE AT MEETINGS; DETERMINATION OF VOTING RIGHTS; CONDUCT AND ADJOURNMENT OF MEETINGS.

(a) Attendance at meetings of Holders of Securities may be in person or by proxy; and, to the extent permitted by law, any such proxy shall remain in effect and be binding upon any future Holder of the Securities with respect to which it was given unless and until specifically revoked by the Holder or future Holder (except as provided in Section 104(g)) of such Securities before being voted.

(b) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Securities in regard to proof of the holding of such Securities and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations and approved by the Company, the holding of Securities shall be proved in the manner specified in Section 104 and the appointment of any proxy shall be proved in the manner specified in Section 104. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Section 104 or other proof.

(c) The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders as provided in Section 1202(b), in which case the Company or the Holders of Securities of the series and Tranches calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote a majority in aggregate principal amount of the Outstanding Securities of all series and Tranches represented at the meeting, considered as one class.

(d) At any meeting each Holder or proxy shall be entitled to one vote for each One Thousand Dollars (\$1,000) principal amount of Outstanding Securities held or represented by such Holder; provided, however, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote, except as a Holder of a Security or proxy.

(e) Any meeting duly called pursuant to Section 1202 at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in aggregate principal amount of the Outstanding Securities of all series and Tranches represented at the meeting, considered as one class; and the meeting may be held as so adjourned without further notice.

SECTION 1206. COUNTING VOTES AND RECORDING ACTION OF MEETINGS.

The vote upon any resolution submitted to any meeting of Holders shall be by written ballots on which shall be subscribed the signatures of the Holders or of their representatives by proxy and the principal amounts and serial numbers of the Outstanding Securities, of the series and Tranches with respect to which the meeting shall have been called, held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to such record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that such notice was given as provided in Section 1202 and, if applicable, Section 1204. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Company, and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

SECTION 1207. ACTION WITHOUT MEETING.

In lieu of a vote of Holders at a meeting as hereinbefore contemplated in this Article, any request, demand, authorization, direction, notice, consent, waiver or other action may be made, given or taken by Holders by written instruments as provided in Section 104.

ARTICLE THIRTEEN

IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS
AND DIRECTORS

SECTION 1301. LIABILITY SOLELY CORPORATE.

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

ARTICLE FOURTEEN

SUBORDINATION OF SECURITIES

SECTION 1401. SECURITIES SUBORDINATE TO SENIOR INDEBTEDNESS.

The Company, for itself, its successors and assigns, covenants and agrees, and each Holder of the Securities of each series, by its acceptance thereof, likewise covenants and agrees, that the payment of the principal of and premium, if any, and interest, if any, on each and all of the Securities is hereby expressly subordinated and subject to the extent and in the manner set forth in this Article, in right of payment to the prior payment in full of all Senior Indebtedness of the Company.

Each Holder of the Securities of each series, by its acceptance thereof, authorizes and directs the Trustee on its behalf to take such action as may be necessary or appropriate to effectuate the subordination as provided in this Article, and appoints the Trustee its attorney-in-fact for any and all such purposes.

SECTION 1402. PAYMENT OVER OF PROCEEDS OF SECURITIES.

In the event (a) of any insolvency or bankruptcy proceedings or any receivership, liquidation, reorganization or other similar proceedings in respect of the Company or a substantial part of its property, or of any proceedings for liquidation, dissolution or other winding-up of the Company, whether or not involving insolvency or bankruptcy, or (b) subject to the provisions of Section 1403, that (i) a default shall have occurred with respect to the payment of principal of or interest on or other monetary amounts due and payable on any Senior Indebtedness of the Company, or (ii) there shall have occurred a default (other than a default in the payment of principal or interest or other monetary amounts due and payable) in respect of any Senior Indebtedness, as defined therein or in the instrument under which the same is outstanding, permitting the holder or holders thereof to accelerate the maturity thereof (with notice or lapse of time, or both), and such default shall have continued beyond the period of grace, if any, in respect thereof, and, in the case of subclauses (i) and (ii) of this clause (b), such default shall not have been cured or waived or shall not have ceased to exist, or (c) that the principal of and accrued interest on the Securities of any Series shall have been declared due and payable pursuant to Section 701 and such declaration shall not have been rescinded and annulled as provided in Section 702, then:

(1) the holders of all Senior Indebtedness of the Company shall first be entitled to receive payment of the full amount due thereon, or provision shall be made for such payment in money or money's worth, before the Holders of any of the Securities are entitled to receive a payment on account of the principal of or interest on the indebtedness evidenced by the Securities, including, without limitation, any payments made pursuant to Article Four;

(2) any payment by, or distribution of assets of, the Company of any kind or character, whether in cash, property or securities, to which any Holder or the Trustee would be entitled except for the provisions of this Article, shall be paid or delivered by the Person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to the holders of such Senior Indebtedness of the Company or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Indebtedness of the Company may have been issued, ratably according to the aggregate amounts remaining unpaid on account of such Senior Indebtedness of the Company held or represented by each, to the extent necessary to make payment in full of all Senior Indebtedness of the Company remaining unpaid after giving effect to any concurrent payment or

distribution (or provision therefor) to the holders of such Senior Indebtedness of the Company, before any payment or distribution is made to the Holders of the indebtedness evidenced by the Securities or to the Trustee under this Indenture; and

(3) in the event that, notwithstanding the foregoing, any payment by, or distribution of assets of, the Company of any kind or character, whether in cash, property or securities, in respect of principal of or interest on the Securities or in connection with any repurchase by the Company of the Securities, shall be received by the Trustee or any Holder before all Senior Indebtedness of the Company is paid in full, or provision is made for such payment in money or money's worth, such payment or distribution in respect of principal of or interest on the Securities or in connection with any repurchase by the Company of the Securities shall be paid over to the holders of such Senior Indebtedness of the Company or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any such Senior Indebtedness of the Company may have been issued, ratably as aforesaid, for application to the payment of all Senior Indebtedness of the Company remaining unpaid until all such Senior Indebtedness of the Company shall have been paid in full, after giving effect to any concurrent payment or distribution (or provision therefor) to the holders of such Senior Indebtedness of the Company.

Notwithstanding the foregoing, at any time after the 123rd day following the date of deposit of cash or Eligible Obligations pursuant to Section 601 (provided all conditions set out in such Section shall have been satisfied), the funds so deposited and any interest thereon will not be subject to any rights of holders of Senior Indebtedness of the Company including, without limitation, those arising under this Article Fourteen; provided that no event described in clause (e) of Section 701 with respect to the Company has occurred during such 123-day period.

For purposes of this Article only, the words "cash, property or securities" shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan or reorganization or readjustment which are subordinate in right of payment to all Senior Indebtedness of the Company which may at the time be outstanding to the same extent as, or to a greater extent than, the Securities are so subordinated as provided in this Article. The consolidation of the Company with, or the merger of the Company into, another corporation or the liquidation or dissolution of the Company following the conveyance or transfer of its property as an entirety, or substantially as an entirety, to another corporation upon the terms and conditions provided for in Article Ten hereof shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 1402 if such other corporation shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions stated in Article Ten hereof. Nothing in Section 1401 or in this Section 1402 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 807.

SECTION 1403. DISPUTES WITH HOLDERS OF CERTAIN SENIOR INDEBTEDNESS.

Any failure by the Company to make any payment on or perform any other obligation in respect of Senior Indebtedness of the Company, other than any indebtedness incurred by the Company or assumed or guaranteed, directly or indirectly, by the Company for money borrowed (or any deferral, renewal, extension or refunding thereof) or any other obligation as to which the provisions of this Section shall have been waived by the Company in the instrument or instruments by which the Company incurred, assumed, guaranteed or otherwise created such indebtedness or obligation, shall not be deemed a default under clause (b) of Section 1402 if (i) the Company shall be disputing its obligation to make such payment or perform such obligation and (ii) either (A) no final judgment relating to such dispute shall have been issued against the Company which is in full force and effect and is not subject to further review, including a judgment that has become final by reason of the expiration of the time within which a party may seek further appeal or review, or (B) in the event that a judgment that is subject to further review or appeal has been issued, the Company shall in good faith be prosecuting an appeal or other proceeding for review and a stay or execution shall have been obtained pending such appeal or review.

SECTION 1404. SUBROGATION.

Senior Indebtedness of the Company shall not be deemed to have been paid in full unless the holders thereof shall have received cash (or securities or other property satisfactory to such holders) in full payment of such Senior Indebtedness of the Company then outstanding. Subject to the prior payment in full of all Senior Indebtedness of the Company, the rights of the Holders of the Securities shall be subrogated to the rights of the holders of Senior Indebtedness of the Company to receive any further payments or distributions of cash, property or securities of the Company applicable to the holders of the Senior Indebtedness of the Company until all amounts owing on the Securities shall be paid in full; and such payments or distributions of cash, property or securities received by the Holders of the Securities, by reason of such subrogation, which otherwise would be paid or distributed to the holders of such Senior Indebtedness of the Company shall, as between the Company, its creditors other than the holders of Senior Indebtedness of the Company, and the Holders, be deemed to be a payment by the Company to or on account of Senior Indebtedness of the Company, it being understood that the provisions of this Article are and are intended solely for the purpose of defining the relative rights of the Holders, on the one hand, and the holders of the Senior Indebtedness of the Company, on the other hand.

SECTION 1405. OBLIGATION OF THE COMPANY UNCONDITIONAL.

Nothing contained in this Article or elsewhere in this Indenture or in the Securities is intended to or shall impair, as among the Company, its creditors other than the holders of Senior Indebtedness of the Company and the Holders, the obligation of the Company, which is absolute and unconditional, to pay to the Holders the principal of and interest on the Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the Holders and creditors of the Company other than the holders of

Senior Indebtedness of the Company, nor shall anything herein or therein prevent the Trustee or any Holder from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article of the holders of Senior Indebtedness of the Company in respect of cash, property or securities of the Company received upon the exercise of any such remedy.

Upon any payment or distribution of assets or securities of the Company referred to in this Article, the Trustee and the Holders shall be entitled to rely upon any order or decree of a court of competent jurisdiction in which such dissolution, winding-up, liquidation or reorganization proceedings are pending for the purpose of ascertaining the Persons entitled to participate in such distribution, the holders of the Senior Indebtedness of the Company and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon, and all other facts pertinent thereto or to this Article.

[The Trustee shall be entitled to conclusively rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Indebtedness of the Company (or a representative of such holder or a trustee under any indenture under which any instruments evidencing any such Senior Indebtedness of the Company may have been issued) to establish that such notice has been given by a holder of such Senior Indebtedness of the Company or such representative or trustee on behalf of such holder. In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Indebtedness of the Company to participate in any payment or distribution pursuant to this Article, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness of the Company held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the right of such Person under this Article, and, if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment or distribution.]

SECTION 1406. PRIORITY OF SENIOR INDEBTEDNESS UPON MATURITY.

Upon the maturity of the principal of any Senior Indebtedness of the Company by lapse of time, acceleration or otherwise, all matured principal of Senior Indebtedness of the Company and interest and premium, if any, thereon shall first be paid in full before any payment of principal or premium, if any, or interest, if any, is made upon the Securities or before any Securities can be acquired by the Company or any sinking fund payment is made with respect to the Securities (except that required sinking fund payments may be reduced by Securities acquired before such maturity of such Senior Indebtedness of the Company).

SECTION 1407. TRUSTEE AS HOLDER OF SENIOR INDEBTEDNESS.

The Trustee shall be entitled to all rights set forth in this Article with respect to any Senior Indebtedness of the Company at any time held by it, to the same extent as any other holder

of Senior Indebtedness of the Company. Nothing in this Article shall deprive the Trustee of any of its rights as such holder.

SECTION 1408. NOTICE TO TRUSTEE TO EFFECTUATE SUBORDINATION.

Notwithstanding the provisions of this Article or any other provision of the Indenture, the Trustee shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment of moneys to or by the Trustee unless and until a Responsible Officer of the Trustee shall have received written notice thereof from the Company, from a Holder or from a holder of any Senior Indebtedness of the Company or from any representative or representatives of such holder or any trustee or trustees under any indenture under which any instruments evidencing any such Senior Indebtedness of the Company may have been issued and, prior to the receipt of any such written notice, the Trustee shall be entitled, subject to Section 801, in all respects to assume that no such facts exist; provided, however, that, if prior to the fifth Business Day preceding the date upon which by the terms hereof any such moneys may become payable for any purpose, or in the event of the execution of an instrument pursuant to Section 602 acknowledging that Securities or portions thereof are deemed to have been paid for all purposes of this Indenture, acknowledging that the entire indebtedness of the Company in respect thereof has been satisfied and discharged or acknowledging satisfaction and discharge of this Indenture, then if prior to the second Business Day preceding the date of such execution, the Trustee shall not have received with respect to such moneys the notice provided for in this Section, then, anything herein contained to the contrary notwithstanding, the Trustee may, in its discretion, receive such moneys and/or apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary, which may be received by it on or after such date; provided, however, that no such application shall affect the obligations under this Article of the persons receiving such moneys from the Trustee.

SECTION 1409. MODIFICATION, EXTENSION, ETC. OF SENIOR INDEBTEDNESS OF THE COMPANY.

The holders of Senior Indebtedness of the Company may, without affecting in any manner the subordination of the payment of the principal of and premium, if any, and interest, if any, on the Securities, at any time or from time to time and in their absolute discretion, agree with the Company to change the manner, place or terms of payment, change or extend the time of payment of, or renew or alter, any Senior Indebtedness of the Company, or amend or supplement any instrument pursuant to which any Senior Indebtedness of the Company is issued, or exercise or refrain from exercising any other of their rights under the Senior Indebtedness of the Company including, without limitation, the waiver of default thereunder, all without notice to or assent from the Holders or the Trustee.

SECTION 1410. TRUSTEE HAS NO FIDUCIARY DUTY TO HOLDERS OF SENIOR INDEBTEDNESS OF THE COMPANY.

With respect to the holders of Senior Indebtedness of the Company, the Trustee undertakes to perform or to observe only such of its covenants and objectives as are specifically set forth in this Indenture, and no implied covenants or obligations with respect to the holders of Senior Indebtedness of the Company shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness of the Company, and shall not be liable to any such holders if it shall mistakenly pay over or deliver to the Holders or the Company or any other Person, money or assets to which any holders of Senior Indebtedness of the Company shall be entitled by virtue of this Article or otherwise.

SECTION 1411. PAYING AGENTS OTHER THAN THE TRUSTEE.

In case at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article shall in such case (unless the context shall otherwise require) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article in addition to or in place of the Trustee; provided, however, that Sections 1407, 1408 and 1410 shall not apply to the Company if it acts as Paying Agent.

SECTION 1412. RIGHTS OF HOLDERS OF SENIOR INDEBTEDNESS NOT IMPAIRED.

No right of any present or future holder of Senior Indebtedness of the Company to enforce the subordination herein shall at any time or in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

SECTION 1413. EFFECT OF SUBORDINATION PROVISIONS; TERMINATION.

Notwithstanding anything contained herein to the contrary, other than as provided in the immediately succeeding sentence, all the provisions of this Indenture shall be subject to the provisions of this Article, so far as the same may be applicable thereto.

Notwithstanding anything contained herein to the contrary, the provisions of this Article Fourteen shall be of no further effect and the Securities shall no longer be subordinated in right of payment to the prior payment of such Senior Indebtedness of the Company if the Company shall have delivered to the Trustee a notice to such effect. Any such notice delivered by the Company shall not be deemed to be a supplemental indenture for purposes of Article Twelve hereof.

[ARTICLE FIFTEEN

EXCHANGE OF PREFERRED SECURITIES FOR SECURITIES

SECTION 1501. EXCHANGE OF PREFERRED SECURITIES FOR SECURITIES.

(a) If at any time the Company or any of its Affiliates (in either case, a "Company Affiliated Owner/Holder") is the owner or Holder of any Preferred Securities of a Trust, such Company Affiliated Owner/Holder shall have the right to deliver to the Institutional Trustee of such Trust all or such portion of its Preferred Securities as it elects and receive, in exchange therefore, a like amount of Securities. Such election (i) shall be exercisable effective on any Interest Payment Date by such Sponsor Affiliated Owner/Holder delivering to the Institutional Trustee a written notice of such election specifying the liquidation amount of Preferred Securities with respect to which such election is being made and the Interest Payment Date on which such exchange shall occur, which Interest Payment Date shall be not less than ten Business Days after the date of receipt by the Institutional Trustee or its designee the Preferred Securities which are the subject of such election by 10:00 A.M. New York time, on the Interest Payment Date on which such exchange is to occur. After the exchange, such Preferred Securities will be canceled and will no longer be deemed to be outstanding and all rights of the Company or its Affiliate(s) with respect to such Preferred Securities will cease.

(b) In the case of an exchange described in Section 1501(a), the Trust will, on the date of such exchange, exchange Securities having a principal amount equal to the aggregate liquidation amount of the outstanding Common Securities of such Trust, multiplied by the ratio of the aggregate liquidation amount of the Preferred Securities exchanged pursuant to Section 1501(a) divided by the aggregate liquidation amount of the Preferred Securities outstanding immediately prior to such exchange, for such proportional amount of Common Securities held by the Sponsor (which contemporaneously shall be canceled and no longer be deemed to be outstanding); provided, that the Sponsor delivers or caused to be delivered to the Institutional Trustee or its designee the required amount of Common Securities to be exchanged by 10:00 A.M. New York time, on the Interest Payment Date on which such exchange is to occur.]

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

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

AVISTA CORPORATION

By: -----

Name: Malyn K. Malquist
Title: Senior Vice President,
Chief Financial Officer and Treasurer

UNION BANK OF CALIFORNIA, N.A., Trustee

By: -----

=====

AVISTA CORPORATION

OFFICER'S CERTIFICATE

(Under Section 301 of the Indenture,
dated as of _____, 2004)

Establishing Series of Securities Designated
Subordinated Debt Securities, Series _____

_____, 2004

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AVISTA CORPORATION

OFFICER'S CERTIFICATE

(Under Section 301 of the Indenture,
dated as of _____, 2004)

I, _____, _____ of AVISTA CORPORATION (the "Company"), in accordance with Section 301 of the Indenture, dated as of _____, 2004 (the "Indenture", capitalized terms used herein and not defined herein having the meanings specified in the Indenture), of the Company to Union Bank of California, N.A., trustee (the "Trustee"), do hereby establish a series of Securities having the terms and characteristics set forth in this Officer's Certificate.

PART I

Set forth below in this Part I are the terms and characteristics of the series of Securities established hereby referred to in clauses (a) through (u) in the second paragraph of Section 301 of the Indenture (the lettered clauses set forth herein corresponding to such clauses in said Section 301).

(a) the title of the Securities of such series, being Series No. 1 under the Indenture, shall be "Subordinated Debt Securities, Series ____" (the Securities of such series, for purposes of this Officer's Certificate, being sometimes hereinafter called the "Notes"); the Notes are to be issued and sold to AVA Capital Trust III; and all references herein to the Declaration, the Institutional Trustee and the Trust Securities relate to the Trust;

(b) the aggregate principal amount of Notes which may be authenticated and delivered under the Indenture shall be limited to _____, except as contemplated in Section 301(b) of the Indenture;

(c) interest on the Notes shall be payable to the Person or Persons in whose names the Notes are registered at the close of business on the Regular Record Date for such interest, except as otherwise expressly provided in the form of Note attached hereto and hereby authorized and approved;

(d) the principal of the Notes shall be payable on _____, _____;

(e) Article 4 of the Declaration sets forth the procedures to determine the Distribution Rate, Distribution Periods and Distribution Payment Dates for the Preferred Securities. While the Preferred Securities are outstanding, the Interest Rate, Interest Periods, Interest Payment Dates and associated terms relating to the Notes shall be the same as the Distribution Rate, Distribution Periods and Distribution Payment Dates and associated terms relating to the Preferred Securities, respectively. If the Trust is dissolved and the Notes are distributed to the holders of the Preferred Securities, the interest payable, Interest Rate, Interest Periods, Interest Payment Dates and the redemption provisions with respect to Fixed Rate Periods for the Preferred Securities and the Remarketing Procedures shall remain the same with respect to the Notes distributed to the holders of Preferred Securities except: (i) the effects of the

Declaration Events of Default will only be occasioned by the Events of Default and (ii) the cure and waiver provisions relating to the Declaration Events of Default will be superceded by the cure and waiver provisions relating to the Events of Default. In addition, if the Trust is dissolved and the Notes are distributed to the holders of the Preferred Securities, the below described procedures will be applicable to the Notes.

(i) interest payments shall accrue from the date of original issuance until Maturity or the Redemption Date. During the Initial Fixed Rate Period, interest will be payable semiannually in arrears on ____ and ____ of each year, commencing on ____, 2004. During any Fixed Rate Period, other than the Initial Fixed Rate Period, interest will be payable semiannually in arrears on Interest Payment Dates determined based on the Remarketing Date (if the Notes are remarketed for a new Fixed Rate Period that begins on ____ or ____, interest will be payable on ____ and ____ of each year, and if the Notes are remarketed for a new Fixed Rate Period that begins on ____ or ____, interest will be payable on ____ and ____ of each year). During any Floating Rate Period, interest will be payable quarterly in arrears on ____, ____, ____ and ____ of each year;

(ii) if any Interest Payment Date with respect to a Fixed Rate Period is not a Business Day, interest will be payable, without additional interest, on the immediately succeeding Business Day, with the same force and effect as if payment was made on the date such payment was originally payable (and without the accrual of any additional amount of interest). If any Interest Payment Date with respect to a Floating Rate Period is not a Business Day, then interest will be payable on the immediately succeeding Business Day and interest shall accrue to the actual payment date (except for an Interest Payment Date that coincides with Maturity or the Redemption Date);

(iii) the amount of interest payable on each Interest Payment Date relating to a Fixed Rate Period will be computed on the basis of a 360-day year of twelve 30-day months. The amount of interest payable on each Interest Payment Date in respect of a Floating Rate Period will be computed by multiplying the per annum Interest Rate in effect for such Interest Period by a fraction, the numerator of which will be the actual number of days in such Interest Period (or portion thereof) (determined by including the first day thereof and excluding the last thereof) and the denominator of which will be 360, and multiplying the rate so obtained by \$1,000;

(iv) interest on the Notes will be deferred during any Extension Period (as defined below) but will continue to accrue. The payment of such interest, together with any interest thereon, will be distributed to the holders of Notes at the end of any Extension Period;

(v) each Note upon registration of transfer or in exchange for or in lieu of any other Note shall carry the rights of interest accrued and unpaid, and to accrue, which were carried by such other Note;

(vi) during the Initial Fixed Rate Period, the Interest Rate shall be the Initial Interest Rate;

(vii) prior to the expiration of the Initial Fixed Rate Period and any subsequent Fixed Rate Period or an Interest Period with respect to a Floating Rate Period or an Interest Period in a Fixed Rate Period during a time in which the Notes are redeemable in such Fixed Rate Period, the Company will have the option to remarket the Notes to establish a new Fixed Rate for a new Fixed Rate Period (to be in effect after the expiration of the then current Interest Period). If the Company elects to conduct a Remarketing of the Notes for the purpose of establishing a new Fixed Rate for a new Fixed Rate Period, the Company shall not less than 20 nor more than 35 Business Days prior to the related Election Date, notify the Clearing Agency, the Calculation Agent, the Trustee and the Remarketing Agent. If the Notes are not issued in global, fully registered form to the Clearing Agency, such notice shall be delivered to the holders of the Notes instead of the Clearing Agency. Such notice shall indicate the length of the proposed new Fixed Rate Period, the proposed Remarketing Date and any redemption provisions that apply during such new Fixed Rate Period. The Company shall have the right to terminate a Remarketing at any time prior to the Election Date by notice of such termination to the Clearing Agency, the Remarketing Agent, the Trustee and the Calculation Agent;

(viii) if the Remarketing Agent has determined that it will be able to remarket all Notes tendered or deemed tendered for purchase in the Remarketing at a Fixed Rate and at a price of \$1,000 per Note, on such Remarketing Date, the Interest Rate for the new Fixed Rate Period will be the Fixed Rate determined by the Remarketing Agent, which will be the rate per annum (rounded to the nearest one-thousandth (0.001) of one percent per annum) which the Remarketing Agent determines, in its sole judgment, to be the lowest Fixed Rate per annum that will enable it to remarket all Notes tendered or deemed tendered for Remarketing at a price of \$1,000 per Note;

(ix) if the Company does not elect to remarket the Notes or has terminated a Remarketing or if the Remarketing Agent is unable to remarket all of the Notes tendered or deemed tendered for a purchase price of \$1,000 per Note, the Interest Rate for the next Interest Period shall be the Floating Rate and the new Interest Period shall be a Floating Rate Period;

(x) the Calculation Agent shall calculate the Floating Rate on the Floating Rate Determination Date as follows:

(A) Except as provided below, the Floating Rate for any Floating Rate Period for the Notes will be equal to the Adjustable Rate (as defined below) plus ____%. The "Adjustable Rate" for any Interest Period will be equal to the highest of the 3-month LIBOR Rate, the 10-year Treasury CMT and the 30-year Treasury CMT (each as defined below and collectively referred to as the "Benchmark Rates") for such Interest Period during the Floating Rate Period. In the event that the Calculation Agent determines in good faith that for any reason:

(1) any one of the Benchmark Rates cannot be determined for any Interest Period, the Adjustable Rate for such Interest Period will be equal to the higher of whichever two of such rates can be so determined;

(2) only one of the Benchmark Rates can be determined for any Interest Period, the Adjustable Rate for such Interest Period will be equal to whichever such rate can be so determined; or

(3) none of the Benchmark Rates can be determined for any Interest Period, the Adjustable Rate for the preceding Interest Period will be continued for such Interest Period.

(B) The "3-month LIBOR Rate" means, for each Interest Period, the arithmetic average of the two most recent weekly quotes for deposits for U.S. Dollars having a term of three months, as published on the first Business Day of each week immediately preceding the Interest Period for which the Floating Rate is being determined. Such quotes will be taken from Telerate Page 3750 at approximately 11:00 a.m. London time on the Floating Rate Determination Date. If such rate does not appear on Telerate Page 3750 on the Floating Rate Determination Date, the 3-month LIBOR Rate will be the arithmetic mean of the rates quoted by three major banks in New York City selected by the Calculation Agent, at approximately 11:00 a.m., New York City time, on the relevant date for loans in U.S. Dollars to leading European banks for a period of three months.

(C) The "10-year Treasury CMT" means the rate determined in accordance with the following provisions:

(1) With respect to any Floating Rate Determination Date and the Interest Period that begins immediately thereafter, the 10-year Treasury CMT means the rate displayed on Telerate Page 7051 under the caption "...Treasury Constant Maturities...Federal Reserve Board Release H.15...Mondays Approximately 3:45 P.M.", under the column for the Designated CMT Maturity Index (as defined below).

(2) If such rate is no longer displayed on the relevant page, or is not so displayed by 3:00 P.M., New York City time, on the applicable Floating Rate Determination Date, then the 10-year Treasury CMT for such Floating Rate Determination Date will be such treasury constant maturity rate for the Designated CMT Maturity Index as is published in H.15(519).

(3) If such rate is no longer displayed on the relevant page, or if not published by 3:00 P.M., New York City time, on the applicable Floating Rate Determination Date, then the 10-year Treasury CMT for such Floating Rate Determination Date will be such constant maturity treasury rate for the Designated CMT Maturity Index (or other United States Treasury rate for the Designated CMT Maturity Index) for the applicable Floating Rate Determination Date with respect to such interest reset date as may

then be published by either the Board of Governors of the Federal Reserve System or the United States Department of the Treasury that the Calculation Agent determines to be comparable to the rate formerly displayed on the Telerate Page 7051 and published in H.15(519).

(4) If such information is not provided by 3:00 P.M., New York City time, on the applicable Floating Rate Determination Date, then the 10-year Treasury CMT for such Floating Rate Determination Date will be calculated by the Calculation Agent and will be a yield to maturity, based on the arithmetic mean of the secondary market offered rates as of approximately 3:30 P.M., New York City time, on the Floating Rate Determination Date reported, according to their written records, by three leading primary United States government securities dealers in The City of New York (each, a "Reference Dealer") selected by the Calculation Agent (from five such Reference Dealers selected by the Calculation Agent and eliminating the highest quotation (or, in the event of equality, one of the highest) and the lowest quotation (or, in the event of equality, one of the lowest)), for the most recently issued direct noncallable fixed rate obligations of the United States ("Treasury Debentures") with an original maturity of approximately the Designated CMT Maturity Index and a remaining term to maturity of not less than such Designated CMT Maturity Index minus one year.

(5) If the Calculation Agent is unable to obtain three such Treasury Debentures quotations, the 10-year Treasury CMT for the applicable Floating Rate Determination Date will be calculated by the Calculation Agent and will be a yield to maturity based on the arithmetic mean of the secondary market offered rates as of approximately 3:30 P.M., New York City time, on the applicable Floating Rate Determination Date of three Reference Dealers in The City of New York (from five such Reference Dealers selected by the Calculation Agent and eliminating the highest quotation (or, in the event of equality, one of the highest) and the lowest quotation (or, in the event of equality, one of the lowest)), for Treasury Debentures with an original maturity of the number of years that is the next highest to the Designated CMT Maturity Index and a remaining term to maturity closest to the Designated CMT Maturity Index and in an amount of at least \$100 million.

(6) If three or four (and not five) of such Reference Dealers are quoting as set forth above, then the 10-year Treasury CMT will be based on the arithmetic mean of the offered rates obtained and neither the highest nor lowest of such quotes will be eliminated; provided, however, that if fewer than three Reference Dealers

selected by the Calculation Agent are quoting as set forth above, the 10-year Treasury CMT with respect to the applicable interest determination date will remain the 10-year Treasury CMT for the immediately preceding Interest Period. If two Treasury Debentures with an original maturity as described in the second preceding sentence have remaining terms to maturity equally close to the Designated CMT Maturity Index, then the quotes for the Treasury Debentures with the shorter remaining term to maturity will be used.

(7) "Designated CMT Maturity Index" means the original period to maturity of the U.S. Treasury securities (10 years) with respect to which the 10-year Treasury CMT will be calculated.

(8) "Telerate Page 3750" means the display designated on page 3750 on MoneyLine Telerate (or such other page as may replace the 3750 page on the service or such other service as may be nominated by the British Bankers' Association for the purpose of displaying London interbank offered rates for U.S. Dollars deposits).

(9) "Telerate Page 7051" means the display on MoneyLine Telerate (or any successor service), on such page (or any other page as may replace such page on that service), for the purpose of displaying Treasury Constant Maturities as reported in H.15(519).

(10) "30-year Treasury CMT" has the meaning specified under the definition of 10-year Treasury CMT, except that the Designated CMT Maturity Index for the 30-year Treasury CMT shall be 30 years.

(D) The 3-month LIBOR Rate, the 10-year Treasury CMT and the 30-year Treasury CMT shall each be rounded to the nearest hundredth of a percent.

(E) The Floating Rate with respect to each Floating Rate Period will be calculated as promptly as practicable by the Calculation Agent according to the appropriate method described above.

(xi) if the Company elects to defer interest during a Fixed Rate Period, interest will continue to accrue and be compounded semiannually at the Fixed Rate until the expiration of the Fixed Rate Period. Prior to the expiration of such Fixed Rate Period and any subsequent Fixed Rate Period during the Extension Period, the Company will have the option to remarket the Notes for a new Fixed Rate Period (to take effect upon expiration of such Fixed Rate Period). If the Company does not remarket the Notes, the Floating Rate during the Extension Period shall be determined as provided herein, but shall not be less than the Fixed Rate for the Fixed Rate Period just ended. If the Company elects to defer interest during a Floating Rate Period, interest will continue to

accrue and be compounded quarterly at the applicable Floating Rate, reset quarterly, subject to the right of the Company to remarket the Notes prior to any Interest Payment Date in order to establish a new Fixed Rate for a new Fixed Rate Period in accordance with the Remarketing Procedures;

(xii) in accordance with Part II, clause (b) of this Officer's Certificate and the Remarketing Procedures, the Company may, prior to the expiration of the Initial Fixed Rate Period and any subsequent Fixed Rate Period, prior to any Interest Payment Date during a time in which the Notes are redeemable in any Fixed Rate Period or prior to any Interest Payment Date with respect to a Floating Rate Period, elect to remarket the Notes to establish a new Fixed Rate for a new Fixed Rate Period (to be in effect after the then current Interest Period). A Fixed Rate Period must be for a duration of at least six months, may not extend beyond the Maturity of the Notes and may not end on a day other than a day immediately preceding an Interest Payment Date. If a new Fixed Rate for a new Fixed Rate Period is set in a Remarketing, a new Fixed Rate Period shall commence following the expiration of the then current Interest Period. If a new Fixed Rate for a new Fixed Rate Period is not set, for any reason, including after the expiration of the Initial Fixed Rate Period, a Floating Rate Period, and the Floating Rate reset quarterly shall be in effect until the Company remarkets the Notes and sets a new Fixed Rate for a new Fixed Rate Period in accordance with the Remarketing Procedures;

(xiii) so long as no Event of Default has occurred and is continuing, the Company has the right at any time, and from time to time, to defer payments of interest on the Notes by extending the interest payment period (an "Extension Period"). During an Extension Period, interest will continue to accrue on the Notes. If the Company decides to defer interest payments on the Notes, the Extension Period shall not exceed five consecutive years. An Extension Period shall not extend beyond the Maturity of the Notes. Prior to the termination of any Extension Period, the Company may further defer payments of interest provided that the Extension Period, together with all previous and further extensions thereof, may not exceed five consecutive years. There could be multiple Extension Periods of varying lengths throughout the term of the Notes. Upon the termination of any such Extension Period and upon the payment of all accrued and unpaid interest then due, the Company may select a new Extension Period, subject to the above limitations and requirements. Upon the termination of any Extension Period, which termination shall be on an Interest Payment Date, the Company shall pay all Deferred Interest on the next succeeding Interest Payment Date to the Person in whose name the Notes are registered on the Regular Record Date for such Interest Payment Date, provided that Deferred Interest payable at Maturity or on any Redemption Date will be paid to the Person to whom principal is payable. The Company shall give the Holder or Holders of the Notes, the Trustee, the Remarketing Agent and the Calculation Agent, notice as provided in Sections 105 and 106, respectively, of the Indenture of its selection or extension of an Extension Period at least one Business Day prior to the earlier of (i) the Regular Record Date relating to the Interest Payment Date on which the Extension Period is to commence or relating to the Interest Payment Date on which an Extension Period that is being extended would otherwise terminate, or (ii) the date the Company or the Trust is required to give notice to any applicable self-regulatory organization of the record date or the date such distributions are payable. The Company shall cause the Trust

to give notice of the Company's selection of such Extension Period to Holders of the Trust Securities, the Calculation Agent and the Remarketing Agent.

(f) the corporate trust office of Union Bank of California, N.A. in _____ shall be the place at which (i) the principal of, premium, if any, and interest, if any, on the Notes at Maturity shall be payable upon presentment and interest prior to Maturity shall be payable as specified in the form of Note attached hereto, (ii) registration of transfer of the Notes may be effected, (iii) exchanges of Notes may be effected and (iv) notices and demands to or upon the Company in respect of the Notes and the Indenture may be served; and Union Bank of California, N.A. shall be the Security Registrar and a Paying Agent for the Notes; PROVIDED, HOWEVER, that the Company reserves the right to change, by one or more Officer's Certificates supplemental to this Officer's Certificate, any such place or the Security Registrar or such Paying Agent; and PROVIDED, FURTHER, that the Company reserves the right to designate, by one or more Officer's Certificates supplemental to this Officer's Certificate, its principal corporate office in Spokane, Washington as any such place or itself as the Security Registrar;

(g) (i) the Notes shall be subject to redemption, in whole but not in part, without premium or penalty, on the last Interest Payment Date relating to the Initial Fixed Rate Period, on such dates with respect to any other Fixed Rate Period as the Company and the Trust may determine prior to the remarketing establishing such Fixed Rate Period or on any Interest Payment Date relating to a Floating Rate Period, at a Redemption Price equal to 100% of the principal amount to be redeemed plus accrued but unpaid interest to the Redemption Date;

(ii) the Notes shall be subject to redemption, in whole but not in part, at the election of the Company, on any date within 90 days of the occurrence, and during the continuation of, a Special Event (as defined herein) at a redemption price equal to 100% of the principal amount thereof plus accrued interest, if any to the date fixed for redemption;

"Special Event" means an "Investment Company Act Event" or "Tax Event";

"Investment Company Act Event" means the receipt by the Company and the Regular Trustees of an Opinion of Counsel to the Company experienced in these matters to the effect that, as a result of the occurrence of a change in law or regulation or a written change (including any announced prospective change) in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority, there is more than an insubstantial risk that the Trust is or will be considered an "investment company" that is required to be registered under the Investment Company Act of 1940, as amended, which change or prospective change becomes effective or would become effective, as the case may be, on or after the date of the issuance by the Trust of the Preferred Securities.

"Tax Event" means the receipt by the Company and the Regular Trustees of an opinion from independent tax counsel experienced in such matters (which may be counsel to the Company) to the effect that, as a result of (a) any amendment to, or change (including any announced proposed change) in, the laws (or any regulations thereunder)

of the United States or any political subdivision or taxing authority thereof or therein or (b) any amendment to, or change in, an interpretation or application of such laws or regulations, there is more than an insubstantial risk that (i) the Trust would be subject to United States federal income tax with respect to income accrued or received on the Notes; (ii) interest payable on the Notes would not be deductible, in whole or in part, by the Company for United States federal income tax purposes; or (iii) the Trust would be subject to more than a de minimis amount of other taxes, duties or other governmental charges, which change or amendment becomes effective on or after the date of issuance by the Trust of the Preferred Securities.

(h) inapplicable;

(i) the Notes shall be issued in denominations of \$1,000 and any integral multiple thereof;

(j) inapplicable;

(k) inapplicable;

(l) inapplicable;

(m) inapplicable;

(n) inapplicable;

(o) inapplicable;

(p) inapplicable;

(q) inapplicable;

(r) inapplicable;

(s) (i) the Notes are to be initially registered in the name of Union Bank of California, N.A., as Institutional Trustee of the Trust. The Notes shall not be transferable, nor shall any purported transfer be registered, except (A) to a nominee of such Institutional Trustee, to such Institutional Trustee by such nominee, by such Institutional Trustee to another nominee, by any such nominee to a successor nominee or by such Institutional Trustee or any nominee thereof to a successor Institutional Trustee or a nominee thereof or (B) to the holders of Trust Securities in the event of the dissolution of the Trust in accordance with the provisions of the Declaration;

(ii) no service charge shall be made for the registration of transfer or exchange of the Notes; PROVIDED, HOWEVER, that, after the distribution of the Notes contemplated in clause (i)(B) above, the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection with the exchange and transfer;

(t) reference is made to clause (e)(ii) above; and

(u) the notes are to be issued and sold to the Trust.

PART II

Set forth below in this Part II are additional terms of the series of Notes established hereby, as contemplated by clause (v) in the second paragraph of Section 301 of the Indenture.

(a) the Notes shall have such further terms as are set forth in the form of Note attached hereto; provided, however, that if the Trust is dissolved and the Notes are distributed to the holders of the Preferred Securities, the form of Note may, at the election of the Company, be revised to specifically include the provisions of the determination of the interest rate thereon, as set forth in this Officer's Certificate;

(b) Article 10 of the Declaration sets forth the Remarketing Procedures to determine the applicable Fixed Rate from time to time for the Preferred Securities. If the Trust is dissolved and the Notes are distributed to the holders of the Preferred Securities, the below described Remarketing Procedures will be applicable to the Notes;

(i) if the Company elects to conduct a Remarketing, the Company, not less than 20 nor more than 35 Business Days prior to the related Election Date, is required to give the written notice of proposed Remarketing of the Notes to the Clearing Agency, the Trustee, the Calculation Agent and the Remarketing Agent. If the Notes are not issued in global, fully registered form, such notice shall be delivered to the holders of the Notes instead of the Clearing Agency. Such notice will describe the Remarketing and will indicate the length of the proposed new Fixed Rate Period, the proposed Remarketing Date and any redemption provisions that apply during such new Fixed Rate Period. At any time prior to the Election Date, the Company may elect to terminate a Remarketing by giving the Clearing Agency (or the Holders as applicable), the Remarketing Agent, the Trustee and the Calculation Agent written notice of such termination;

(ii) not later than 4:00 p.m., New York City time, on an Election Date, each Holder of Notes may give a written notice to the Trustee of its election ("Notice of Election") (i) to retain and not to have all or any portion of the Notes owned by it remarketed in the Remarketing, or (ii) to tender all or any portion of such Notes for purchase in the Remarketing (such portion, in either case, is required to be in the Liquidation Amount of \$1,000 or any integral multiple thereof). Any Notice of Election given to the Trustee will be irrevocable and may not be conditioned upon the level at which the Fixed Rate is established in the Remarketing. Promptly after 4:30 p.m., New York City time, on such Election Date, the Trustee, based on the Notices of Election received by it through the Clearing Agency prior to such time, will notify the Company and the Remarketing Agent of the number of Notes to be retained by holders of Notes and the number of Notes tendered for purchase in the Remarketing;

(iii) if any holder of Notes gives a Notice of Election to tender Notes as described above, the Notes so subject to such Notice of Election will be deemed tendered for purchase in the Remarketing, notwithstanding any failure by such holder to deliver or properly deliver such Notes to the Remarketing Agent for purchase. If any holder of Notes fails timely to deliver a Notice of Election, as described above, such Notes will be deemed tendered for purchase in such Remarketing, notwithstanding such failure or the failure by such holder to deliver or properly deliver such Notes to the Remarketing Agent for purchase;

(iv) the right of each holder of Notes to have Notes tendered for purchase in the Remarketing shall be limited to the extent that (i) the Remarketing Agent conducts a Remarketing pursuant to the terms of the Remarketing Agreement; (ii) the Notes tendered have not been called for redemption; (iii) the Remarketing Agent is able to find a purchaser or purchasers for tendered Notes at a Fixed Rate; and (iv) such purchaser or purchasers deliver the purchase price therefor to the Remarketing Agent;

(v) any holder of Notes that desires to continue to retain a number of Notes, but only if the Fixed Rate is not less than a specified rate per annum, shall submit a Notice of Election pursuant to this clause (b) to tender such Notes and separately notify the Remarketing Agent of its interest at the telephone number set forth in the notice of Remarketing. If such holder so notifies the Remarketing Agent, the Remarketing Agent will give priority to such holder's purchase of such number of Notes in the Remarketing, providing that the Fixed Rate is not less than such specified rate;

(vi) if holders submit Notices of Election to retain all of the Notes then outstanding, the Fixed Rate will be the rate determined by the Remarketing Agent, in its sole discretion, as the rate that would have been established had a Remarketing been held on the related Remarketing Date;

(vii) on any Remarketing Date on which the Remarketing is to be conducted, the Remarketing Agent will use commercially reasonable efforts to remarket, at a price equal to 100% of the Liquidation Amount thereof, Notes tendered or deemed tendered for purchase. Except as provided in the previous paragraph of this clause (b), if, as a result of such efforts, on any Remarketing Date, the Remarketing Agent has determined that it will be able to remarket all Notes tendered or deemed tendered for purchase in the Remarketing at a Fixed Rate and at a price of \$1,000 per Note, prior to 4:00 p.m., New York City time, on such Remarketing Date, the Remarketing Agent will determine the Fixed Rate, which will be the rate per annum (rounded to the nearest one-thousandth (0.001) of one percent per annum) which the Remarketing Agent determines, in its sole judgment, to be the lowest Fixed Rate per annum that will enable it to remarket all Notes tendered or deemed tendered for Remarketing at a price of \$1,000 per Note;

(viii) if the Remarketing Agent is unable to remarket by 4:00 p.m., New York City time on the third Business Day prior to the Remarketing Settlement Date, all Notes tendered or deemed tendered for a purchase at a price of \$1,000 per Note, the Interest Rate for the next Interest Period shall be the Floating Rate and the new Interest Period shall be a Floating Rate Period. In such case, no Notes will be sold in the

Remarketing and each holder will continue to hold its Notes at the Floating Rate during such Floating Rate Period;

(ix) all Notes tendered or deemed tendered in the Remarketing will be automatically delivered to the account of the Remarketing Agent through the facilities of the Clearing Agency against payment of the purchase price therefor on the Remarketing Settlement Date. The Remarketing Agent will make payment to the Clearing Agency Participant of each tendering holder of Notes in the Remarketing through the facilities of the Clearing Agency by the close of business on the Remarketing Settlement Date;

(x) in accordance with the Clearing Agency's normal procedures, on the Remarketing Settlement Date, the transaction described above with respect to each Note tendered for purchase and sold in the Remarketing, will be executed through the Clearing Agency Participants, will be debited and credited and such Notes delivered by book entry as necessary to effect purchases and sales of such Notes. The Clearing Agency is expected to make payment in accordance with its normal procedures;

(xi) if any holder selling Notes in the Remarketing fails to deliver such Notes, the Clearing Agency Participant of such selling holder and of any other person that was to have purchased Notes in the Remarketing may deliver to any such other person a number of Notes that is less than the number of Notes that otherwise was to be purchased by such person. In such event, the number of Notes to be so delivered will be determined by such Clearing Agency Participant and delivery of such lesser number of Notes will constitute good delivery;

(xii) the Remarketing Agent is not obligated to purchase any Notes that would otherwise remain unsold in a Remarketing. Neither the Trustee, the Company nor the Remarketing Agent shall be obligated in any case to provide funds to make payment upon tender of Notes for Remarketing;

(xiii) prior to the issuance of the Notes, the Company and the Trust will enter into the Remarketing Agreement with the Remarketing Agent, providing, among other things, that the Remarketing Agent will follow the Remarketing Procedures for the purposes of determining the applicable Fixed Rate. The Company will pay the Remarketing Agent compensation for its services under the Remarketing Agreement;

(c) if the Company shall make any deposit of money and/or Government Obligations with respect to any Notes, or any portion of the principal amount thereof, as contemplated by Section 601 of the Indenture, the Company shall not deliver an Officer's Certificate described in clause (z) in the first paragraph of said Section 601 unless the Company shall also deliver to the Trustee, together with such Officer's Certificate, either:

(i) an instrument wherein the Company, notwithstanding the satisfaction and discharge of its indebtedness in respect of the Notes, shall assume the obligation (which shall be absolute and unconditional) to irrevocably deposit with the Trustee or Paying Agent such additional sums of money, if any, or additional Government Obligations (meeting the requirements of Section 601), if any, or any

combination thereof, at such time or times, as shall be necessary, together with the money and/or Government Obligations theretofore so deposited, to pay when due the principal of and premium, if any, and interest due and to become due on such Notes or portions thereof, all in accordance with and subject to the provisions of said Section 601; PROVIDED, HOWEVER, that such instrument may state that the obligation of the Company to make additional deposits as aforesaid shall be subject to the delivery to the Company by the Trustee of a notice asserting the deficiency accompanied by an opinion of an independent public accountant of nationally recognized standing showing the calculation thereof (which opinion shall be obtained at the expense of the Company); or

(ii) an Opinion of Counsel to the effect that the Holders of such Notes, or portions of the principal amount thereof, will not recognize income, gain or loss for United States federal income tax purposes as a result of the satisfaction and discharge of the Company's indebtedness in respect thereof and will be subject to United States federal income tax on the same amounts, at the same times and in the same manner as if such satisfaction and discharge had not been effected;

(d) if the Company engages in a conveyance or transfer of property as contemplated in Section 1005 of the Indenture, the Company will not be released and discharged from all obligations under the Indenture and the Notes unless the Company shall deliver to the Trustee an Opinion of Counsel to the effect that the Holders of such Notes, or portions of the principal amount thereof, will not recognize income, gain or loss for United States federal income tax purposes as a result of conveyance or transfer and will be subject to United States federal income tax on the same amounts, at the same times and in the same manner as if such conveyance or transfer had not been effected;

(e) for so long as the Notes are outstanding, the Company shall not consolidate with or merge into any other Person, or convey or otherwise transfer, or lease, all of its properties, as or substantially as an entirety, as contemplated by Section 1001 of the Indenture, to any Person if such person is organized and existing under the laws of Canada or any Province thereof.

(f) if at any time the Notes are to be held by a securities depository, the Company may at such time establish the matters contemplated in clause (q) in the second paragraph of Section 301 of the Indenture in an Officer's Certificate supplemental to this Officer's Certificate; and

(g) For all purposes of this Officer's Certificate, except as otherwise expressly provided or unless the context otherwise requires:

"Calculation Agent" means Union Bank of California, N.A., or its successor appointed by the Company and, if applicable, the Regular Trustees, acting as calculation agent.

"Clearing Agency" means an organization registered as a "clearing agency" pursuant to Section 17A of the Securities Exchange Act of 1934, as amended.

"Clearing Agency Participant" means a broker, dealer, bank, other financial institution or other Person for whom from time to time a Clearing Agency effects book-entry transfers and pledges of securities deposited with the Clearing Agency.

"Declaration" means the AVA Capital Trust III Amended and Restated Declaration of Trust dated as of _____, 2004 among the Company, the trustees named therein, and the holders of undivided beneficial interests in the assets of the Trust.

"Declaration Event of Default" means an "Event of Default" under the Declaration.

"Deferred Interest" means each installment of interest not paid during any Extension Period, and interest thereon. Deferred installments of interest shall bear interest at the rate of the prevailing Interest Rate per annum from the applicable Interest Payment Date to the date of payment, compounded on each Interest Payment Date.

"Definitive Preferred Securities Certificates" means Preferred Securities Certificates issued in certificated, fully registered form as provided in the Declaration.

"Distribution Payment Date" means each day on which Distributions are payable on the Preferred Securities determined based on the prevailing Distribution Rate.

"Distribution Period" means each semiannual period in a Fixed Rate Period and each quarterly period in a Floating Rate Period for which Distributions are payable on the Trust Securities.

"Distribution Rate" means the rate at which Distributions will accrue on the Trust Securities.

"Distributions" means amounts payable in respect of the Preferred Securities pursuant to Section 4.01 of the Declaration.

"Election Date" means a date that is no later than the fifth Business Day prior to the proposed Remarketing Date.

"Extension Period" means any period during which the Company has elected to defer payments of interest on the Notes, which deferral may be for a period of up to five years.

"Fixed Rate" means the Distribution Rate (or Interest Rate with respect to the Notes) during a Fixed Rate Period.

"Fixed Rate Period" means the Initial Fixed Rate Period and each period set by the Company and, if applicable, the Regular Trustees during a Remarketing for which the Fixed Rate determined in such Remarketing will apply; provided, however, that a Fixed Rate Period must be for a duration of at least six months, may not extend beyond the Maturity of the Notes and may not end on a day other than a day immediately

preceding a Distribution Payment Date (or Interest Payment Date with respect to the Notes).

"Floating Rate" has the meaning set forth in Part I, clause (e).

"Floating Rate Determination Date" means the second London Business Day immediately preceding the first day of the relevant Distribution Period (or Interest Period with respect to the Notes) in the Floating Rate Period.

"Floating Rate Period" means any period during which a Floating Rate is in effect.

"Initial Distribution Rate" means ___% per annum.

"Initial Fixed Rate Period" means the period from the date of original issuance through ____, 2009.

"Initial Interest Rate" means ___% per annum.

"Institutional Trustee" means the commercial bank or trust company identified as the "Institutional Trustee" in the Declaration solely in its capacity as Institutional Trustee of the Trust.

"Interest Payment Dates" means the dates on which interest on the Notes is payable.

"Interest Period" means the period for which interest on the Notes is payable.

"Interest Rate" means the rate, in effect from time to time, at which interest shall accrue on the Notes.

"Liquidation Amount" means the stated amount of \$1,000 per Trust Security or the principal amount of the Notes.

"Liquidation Distribution" has the meaning specified in Section 9.05 of the Declaration.

"London Business Day" means a day that is a Business Day and a day on which dealings in deposits in U.S. dollars are transacted, or with respect to any future date are expected to be transacted, in the London interbank market.

"Preferred Security" means an undivided beneficial ownership interest in the assets of the Trust having a Liquidation Amount of \$1,000 and having rights provided therefor in the Declaration, including the right to receive Distributions and a Liquidation Distribution as provided herein.

"Preferred Securities Certificate" means a certificate evidencing ownership of a Preferred Security or Securities, substantially in the form attached as Exhibit A to the Declaration.

"Regular Trustee" means each of the individuals identified as a "Regular Trustee" in the Declaration.

"Remarketing" means the conduct by which a Fixed Rate shall be determined in accordance with the Remarketing Procedures.

"Remarketing Agent" means Lehman Brothers Inc., its successors or assigns, or such other remarketing agent appointed to such capacity by the Company and, if applicable, the Administrative Trustees.

"Remarketing Agreement" means the agreement among the Company, the Trust and Lehman Brothers Inc., as remarketing agent, dated as of _____, 2004.

"Remarketing Date" means any Business Day no later than the third Business Day prior to any Remarketing Settlement Date.

"Remarketing Procedures" means those procedures set forth in Article 10 of the Declaration and Part II, clause (b) of this Officer's Certificate.

"Remarketing Settlement Date" means, to the extent applicable, (i) the first Business Day of the next Distribution Period (or Interest Period with respect to the Notes) following the expiration of the Initial Fixed Rate Period and any subsequent Fixed Rate Period, (ii) any Distribution Payment Date (or Interest Payment Date with respect to the Notes) during a Floating Rate Period or (iii) any Distribution Payment Date (or Interest Payment Date with respect to the Notes) during a time in which Preferred Securities or Notes are redeemable in a Fixed Rate Period subsequent to the Initial Fixed Rate Period.

"Trust" means AVA Capital Trust III, a statutory trust formed by the Company under Delaware law to issue Trust Securities, the proceeds of which will be used to purchase the Notes.

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

"Trust Security" means any one of the Common Securities (as defined in the Declaration) or the Preferred Securities.

IN WITNESS WHEREOF, I have executed this Officer's Certificate
this ___ day of _____, 2004.

Name:
Title:

(See legend at the end of this Security for restrictions on transfer and change of form)

AVISTA CORPORATION
_____, Series _____

[ORIGINAL INTEREST ACCRUAL DATE:
STATED MATURITY:
INTEREST RATE: DETERMINED BY PROCEDURES SET FORTH IN THE INDENTURE
INTEREST PAYMENT DATES: DETERMINED BY PROCEDURES SET FORTH IN THE INDENTURE
REGULAR RECORD DATES: THE OPENING OF BUSINESS ON THE BUSINESS DAY IMMEDIATELY PRECEDING THE RELEVANT INTEREST PAYMENT DATE
OTHER PROVISIONS:]

REDEEMABLE: YES____ NO____
INITIAL REDEMPTION DATE:
INITIAL REDEMPTION PRICE:
REDUCTION PERCENTAGE:
REDEMPTION LIMITATION DATE:

OID: YES ___ NO ___
TOTAL AMOUNT OF OID (%):
YIELD TO MATURITY (%):
INITIAL ACCRUAL PERIOD OID (%):
(CONSTANT - YIELD METHOD)

This Security is not a Discount Security within the meaning of the within-mentioned Indenture.

Principal Amount
\$

Registered No.
CUSIP

AVISTA CORPORATION, a corporation organized and existing under the laws of the State of Washington (herein called the "Company", which term includes any successor corporation under the Indenture referred to below), for value received, hereby promises to pay to

or registered assigns, the principal sum of

DOLLARS

on the Stated Maturity specified above (or upon earlier redemption), and to pay interest thereon from the Original Interest Accrual Date specified above or from the most recent Interest Payment Date to which interest has been paid or duly provided for, on each Interest Payment Date, commencing with the Interest Payment Date next succeeding the Original Interest Accrual Date specified above, and at Maturity (or upon earlier redemption), at the Interest Rate then in effect, until the principal hereof and any overdue interest is paid or duly provided for. The interest so payable, and paid or duly provided for, on any Interest Payment Date shall, as provided in such Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date

specified above next preceding such Interest Payment Date. Notwithstanding the foregoing, (a) if the Original Interest Accrual Date of this Security is after a Regular Record Date and before the corresponding Interest Payment Date, interest so payable for the period from and including the Original Interest Accrual Date to but excluding such Interest Payment Date shall be paid on the next succeeding Interest Payment Date to the Holder hereof on the related Regular Record Date; and (b) interest payable at Maturity shall be paid to the Person to whom principal shall be paid. Except as otherwise provided in said Indenture, any such interest not so paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Unpaid Interest to be fixed by the Trustee, notice of which shall be given to Holders of Securities of this series not less than 15 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture.

So long as no Event of Default shall have occurred and be continuing, the Company has the right to defer payments of interest on this Security by extending the interest payment period from time to time on this Security (an "Extension Period"). If the Company decides to defer interest payments on this Security, the Extension Period shall not exceed five consecutive years. An Extension Period shall not extend beyond the Stated Maturity of this Security. Prior to the termination of any Extension Period, the Company may further defer payments of interest provided that the Extension Period, together with all such previous and further extensions thereof, may not exceed five consecutive years. Upon termination of any Extension Period and the payments of all amounts then due, the Company may select a new Extension Period, subject to the above requirements. There could be multiple Extension Periods of varying lengths throughout the term of this Security. During an Extension Period, Unpaid Interest (together with interest thereon) will compound on each Interest Payment Date at the prevailing Interest Rate ("Deferred Interest"). Upon the termination of each Extension Period, which shall be an Interest Payment Date, the Company shall pay all Deferred Interest on the next succeeding Interest Payment Date to the Person in whose name this Debenture is registered at the close of business on the Regular Record Date for such Interest Payment Date, provided that any Deferred Interest payable at Stated Maturity or on any Redemption Date will be paid to the Person to whom principal is payable.

The Company shall give the Holder of this Security, the Trustee, the Remarketing Agent and the Calculation Agent notice of its selection or extension of an Extension Period at least one Business Day prior to the earlier of (i) the Regular Record Date relating to the Interest Payment Date on which the Extension Period is to commence or relating to the Interest Payment Date on which an Extension Period that is being extended would otherwise terminate or (ii) the date the Company or Trust is required to give notice to any applicable self-regulatory organization of the record date or the date distributions are payable.

Payment of the principal of and premium, if any, on this Security and interest hereon at Maturity shall be made upon presentation of this Security at the Corporate Trust Office of Union Bank of California, N.A. in _____, or at such other office or agency as may be

designated for such purpose by the Company from time to time. Payment of interest on this Security (other than interest at Maturity) shall be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register, except that if such Person shall be a Trust or securities depository, such payment may be made by such other means in lieu of check, as shall be agreed upon by the Company, the Trustee and such Person. Payment of the principal of and premium, if any, and interest on this Security, as aforesaid, shall be made 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.

This Security is one of a duly authorized issue of securities of the Company (herein called the "Securities"), issued and issuable in one or more series under and equally secured by an Indenture, dated as of _____, 2004 (such Indenture as originally executed and delivered and as supplemented or amended from time to time thereafter, together with any constituent instruments establishing the terms of particular Securities, being herein called the "Indenture"), between the Company and _____, trustee (herein called the "Trustee," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the respective rights, limitations of rights, duties and immunities of the Company, the Trustee and the Holders of the Securities thereunder and of the terms and conditions upon which the Securities are, and are to be, authenticated and delivered and secured. The acceptance of this Security shall be deemed to constitute the consent and agreement by the Holder hereof to all terms and provisions of the Indenture. This Security is one of the series designated above.

The Securities of this series are subject to redemption, in whole but not in part, without premium or penalty, on the last Interest Payment Date relating to the Initial Fixed Rate Period, on such dates with respect to any other Fixed Rate Period as the Company and the Trust may determine prior to the remarketing establishing such Fixed Rate Period or on any Interest Payment Date relating to a Floating Rate Period, at a Redemption Price equal to 100% of the principal amount to be redeemed plus accrued but unpaid interest to the Redemption Date

The Securities of this series are subject to redemption, in whole but not in part, at the election of the Company, on any date within 90 days of the occurrence, and during the continuation of, a Special Event (as defined herein) at a redemption price equal to 100% of the principal amount thereof plus accrued interest, if any to the date fixed for redemption.

"Special Event" means an "Investment Company Act Event" or "Tax Event".

"Investment Company Act Event" means the receipt by the Company and the Regular Trustees of an Opinion of Counsel to the Company experienced in these matters to the effect that, as a result of the occurrence of a change in law or regulation or a written change (including any announced prospective change) in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority, there is more than an insubstantial risk that the Trust is or will be considered an "investment company" that is required to be registered under the 1940 Act, which change or prospective change becomes effective or would become effective, as the case may be, on or after the date of the issuance by the Trust of the Preferred Securities.

"Tax Event" means receipt by the Company and the Regular Trustees of an opinion from independent tax counsel experienced in such matters (which may be counsel to the Company) to the effect that, as a result of (a) any amendment to, or change (including any announced proposed change) in, the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein or (b) any amendment to, or change in, an interpretation or application of such laws or regulations, there is more than an insubstantial risk that (i) the Trust would be subject to United States federal income tax with respect to income accrued or received on the Notes; (ii) interest payable on the Notes would not be deductible, in whole or in part, by the Company for United States federal income tax purposes; or (iii) the Trust would be subject to more than a de minimis amount of other taxes, duties or other governmental charges, which change or amendment becomes effective on or after the date of issuance by the Trust of the Preferred Securities.

Notice of redemption shall be given by mail to Holders of Securities, not less than 30 days nor more than 60 days prior the date fixed for redemption, all as provided in the Indenture. As provided in the Indenture, notice of redemption at the election of the Company as aforesaid may state that such redemption shall be conditional upon the receipt by the Trustee of money sufficient to pay the principal of and premium, if any and interest, if any, on this Security on or prior the date fixed for such redemption; a notice of redemption so conditioned shall be of no force or effect if such money is not so received and, in such event, the Company shall not be required to redeem this Security.

The Company also shall be obligated to pay when due and without extension all additional amounts as may be required so that the net amount received and retained by the Holder of this Security (if the Holder is a Trust) after paying taxes, duties, assessments or governmental charges of any nature (other than withholding taxes) imposed by the United States or any other taxing authority will not be less than the amounts such Holder would have received had no such taxes, duties, assessments or other governmental charges been imposed.

If an Event of Default shall occur and be continuing, the principal of this Security may be declared due and payable in the manner and with the effect provided in the Indenture.

The indebtedness evidenced by this Security is, to the extent provided in the Indenture, subordinated and subject in right of payment to the prior payment in full of all Senior Indebtedness, and this Security is issued subject to the provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination so provided and (c) appoints the Trustee his attorney-in-fact for any and all such purposes. Each Holder hereof, by his acceptance hereof, hereby waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Indebtedness, whether now outstanding or hereafter incurred, and waives reliance by each such Holder upon said provisions.

Each Holder hereof, by his acceptance hereof, agrees to treat this Security as indebtedness for all United States tax purposes.

The Indenture permits, with certain exceptions as therein provided, the Trustee to

enter into one or more supplemental indentures for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, the Indenture with the consent of the Holders of not less than a majority in aggregate principal amount of the Securities of all series then Outstanding under the Indenture, considered as one class; provided, however, that if there shall be Securities of more than one series Outstanding under the Indenture and if a proposed supplemental indenture shall directly affect the rights of the Holders of Securities of one or more, but less than all, of such series, then the consent only of the Holders of a majority in aggregate principal amount of the Outstanding Securities of all series so directly affected, considered as one class, shall be required; and provided, further, that if the Securities of any series shall have been issued in more than one Tranche and if the proposed supplemental indenture shall directly affect the rights of the Holders of Securities of one or more, but less than all, of such Tranches, then the consent only of the Holders of a majority in aggregate principal amount of the Outstanding Securities of all Tranches so directly affected, considered as one class, shall be required; and provided, further, that the Indenture permits the Trustee to enter into one or more supplemental indentures for limited purposes without the consent of any Holders of Securities. The Indenture also contains provisions permitting the Holders of a majority in principal amount of the Securities then Outstanding, on behalf of the Holders of all Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange thereof or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

As provided in the Indenture and subject to certain limitations therein set forth, this Security or any portion of the principal amount hereof will be deemed to have been paid for all purposes of the Indenture and to be no longer Outstanding thereunder, and, at the election of the Company, the Company's entire indebtedness in respect thereof will be satisfied and discharged, if there has been irrevocably deposited with the Trustee or any Paying Agent (other than the Company), in trust, money in an amount which will be sufficient and/or Eligible Obligations, the principal of and interest on which when due, without regard to any reinvestment thereof, will provide moneys which, together with moneys so deposited, will be sufficient to pay when due the principal of and interest on this Security when due.

The Indenture contains terms, provisions and conditions relating to the consolidation or merger of the Company with or into, and the conveyance or other transfer, or lease, of assets to, another Person, to the assumption by such other Person, in certain circumstances, of all of the obligations of the Company under the Indenture and on the Securities and to the release and discharge of the Company, in certain circumstances, from such obligation.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register, upon surrender of this Security for registration of transfer at the corporate trust office of Union Bank of California, N.A. in _____, or such other office or agency as may be designated by the Company from time to time, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities of this series of authorized denominations and of like tenor and aggregate principal amount, will be issued to the designated

transferee or transferees.

If any Interest Payment Date with respect to a Fixed Rate Period is not a Business Day, interest will be payable, without additional interest, on the immediately succeeding Business Day, with the same force and effect as if payment was made on the date such payment was originally payable (and without the accrual of any additional amount of interest). If any Interest Payment Date with respect to a Floating Rate Period is not a Business Day, then interest will be payable on the immediately succeeding Business Day and interest shall accrue to the actual payment date (except for an Interest Payment Date that coincides with Maturity or the Redemption Date).

The Securities of this series are issuable only as registered Securities, without coupons, and in denominations of \$1,000 or any amount in excess thereof that is an integral multiple of \$1,000. As provided in the Indenture and subject to certain limitations therein set forth, Securities of this Series are exchangeable for a like aggregate principal amount of Securities of the same series and Tranche, of any authorized denominations, as requested by the Holder surrendering the same, and of like tenor upon surrender of the Security or Securities to be exchanged at the corporate trust office of Union Bank of California, N.A. in _____, or such other office or agency as may be designated by the Company from time to time.

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

Prior to due surrender of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the absolute owner hereof for all purposes (subject to Section 307 of the Indenture), whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

The Indenture and the Securities shall be governed by and construed in accordance with the laws of the State of New York, except to the extent that the Trust Indenture Act shall be applicable .

As used herein, "Business Day" means any day, other than an Saturday or Sunday, which is not a day on which banking institutions or trust companies in the City of New York, New York or other city in which is located any office or agency maintained for the payment of principal, premium, if any, or interest on this Security, are authorized or required by law, regulation or executive order to remain closed. All other terms used in this Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture, any supplemental indenture, Officer's Certificate or Board Resolution hereto.

As provided in the Indenture, no recourse shall be had for the payment of the principal of or premium, if any, or interest on any Securities, or any part thereof, or for any claim based thereon or otherwise in respect thereof, or of the indebtedness represented thereby, or upon any obligation, covenant or agreement under the Indenture, against, and no personal liability whatsoever shall attach to, or be incurred by, any incorporator, shareholder, officer or director, as

such, past, present or future of the Company or of any predecessor or successor corporation (either directly or through the Company or a predecessor or successor corporation), whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that the Indenture and all the Securities are solely corporate obligations and that any such personal liability is hereby expressly waived and released as a condition of, and as part of the consideration for, the execution of the Indenture and the issuance of the Securities.

Unless the certificate of authentication hereon has been executed by the Trustee or an Authenticating Agent by manual signature, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

AVISTA CORPORATION

By: -----
[Title]

CERTIFICATE OF AUTHENTICATION

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

Dated: -----

----- OR -----

as Trustee
By: -----
Authorized Officer

as Trustee
By: [-----],

AS AUTHENTICATING AGENT

By: -----
Authorized Officer

THIS SECURITY SHALL NOT BE TRANSFERABLE, NOR SHALL ANY PURPORTED TRANSFER BE REGISTERED, EXCEPT (A) TO A NOMINEE OF _____, AS INSTITUTIONAL TRUSTEE, TO SUCH INSTITUTIONAL TRUSTEE BY SUCH NOMINEE, BY SUCH INSTITUTIONAL TRUSTEE TO ANOTHER NOMINEE, BY ANY SUCH NOMINEE TO A SUCCESSOR NOMINEE OR BY SUCH INSTITUTIONAL TRUSTEE OR ANY NOMINEE THEREOF TO A SUCCESSOR INSTITUTIONAL TRUSTEE OR A NOMINEE THEREOF OR (B) TO THE HOLDERS OF TRUST SECURITIES IN THE EVENT OF THE DISSOLUTION OF THE TRUST IN ACCORDANCE WITH THE PROVISIONS OF THE DECLARATION.

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

[please insert social security or other identifying number of assignee]

[please print or typewrite name and address of assignee]

the within Security of AVISTA CORPORATION and does hereby irrevocably constitute and appoint _____, Attorney, to transfer said Security on the books of the within-mentioned Company, with full power of substitution in the premises.

Dated: _____

Notice: The signature to this assignment must correspond with the name as written upon the face of the Security in every particular without alteration or enlargement or any change whatsoever.

GUARANTEE AGREEMENT

BETWEEN

AVISTA CORPORATION
(AS GUARANTOR)

AND

UNION BANK OF CALIFORNIA, N.A.
(AS TRUSTEE)

DATED AS OF

_____, 2004

(AVA CAPITAL TRUST III)

CROSS-REFERENCE TABLE(1)

Section of Trust Indenture Act of 1939, as amended	Section of Guarantee Agreement
310(a)	4.01(a)
310(b)	4.01(c), 2.08
310(c)	Inapplicable
311(a)	2.02(b)
311(b)	2.02(b)
311(c)	Inapplicable
312(a)	2.02(a)
312(b)	2.02(b)
313	2.03
314(a)	2.04
314(b)	Inapplicable
314(c)	2.05
314(d)	Inapplicable
314(e)	1.01, 2.05, 3.02
314(f)	2.01, 3.02
315(a)	3.01(d)
315(b)	2.07
315(c)	3.01
315(d)	3.01(d)
315(e)	Inapplicable
316(a)	5.04(i), 2.06
316(b)	5.03
316(c)	2.02
317(a)	Inapplicable
317(b)	Inapplicable
318(a)	2.01(b)
318(b)	2.01
318(c)	2.01(a)

(1) This Cross-Reference Table does not constitute part of the Guarantee Agreement and shall not affect the interpretation of any of its terms or provisions.

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GUARANTEE AGREEMENT

This GUARANTEE AGREEMENT ("Guarantee Agreement"), dated as of _____, 2004, between AVISTA CORPORATION, a Washington corporation (the "Guarantor"), and Union Bank of California, N.A., a California banking corporation, as trustee (the "Trustee"), for the benefit of the Holders (as defined herein) from time to time of the Preferred Securities (as defined herein) and the Common Securities (as defined herein) of AVA CAPITAL TRUST III, a Delaware statutory trust (the "Trust").

WHEREAS, pursuant to an Amended and Restated Declaration of Trust (the "Declaration"), dated as of _____, 2004, among the Trustee, the other Trustees named therein, Avista Corporation, as Sponsor, and the holders of undivided beneficial interests in the assets of the Trust, the Trust is issuing as of _____, 2004, \$_____ aggregate liquidation amount of its Flexible Trust Preferred Securities (the "Preferred Securities") representing preferred undivided beneficial interests in the assets of the Trust and having the terms set forth in the Declaration;

WHEREAS, the Preferred Securities will be issued by the Trust and the proceeds thereof will be used to purchase the Subordinated Debt Securities (as defined in the Declaration) of the Guarantor, which will be held by the Trust as trust assets; and

WHEREAS, as incentive for the Holders to purchase the Preferred Securities, the Guarantor desires to irrevocably and unconditionally agree, to the extent set forth herein, to pay to the Holders the Guarantee Payments (as defined herein) and to make certain other payments on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the payment for Common Securities and for Preferred Securities by each Holder (as defined herein) thereof, which payment the Guarantor hereby agrees shall benefit the Guarantor, the Guarantor executes and delivers this Guarantee Agreement for the benefit of the Holders from time to time of the Common Securities (as defined herein) and the Preferred Securities.

ARTICLE I

DEFINITIONS

SECTION 1.01. DEFINITIONS. As used in this Guarantee Agreement, the terms set forth below shall, unless the context otherwise requires, have the following meanings. Capitalized or otherwise defined terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Declaration as in effect on the date hereof.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. 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.

"Common Securities" means the securities representing common undivided beneficial interests in the assets of the Trust.

"Distributions" means amounts payable in respect of the Trust Securities as provided in the Declaration.

"Event of Default" means a failure by the Guarantor to perform any of its payment obligations under this Guarantee Agreement or to perform any other obligations under this Guarantee Agreement if such default remains unremedied for 30 days.

"Guarantee Payments" shall mean the following payments or distributions, without duplication, with respect to the Common Securities and the Preferred Securities, to the extent not paid or made by or on behalf of the Trust: (i) any accrued and unpaid distributions that are required to be paid on such Common Securities and Preferred Securities to the extent the Trust has funds on hand available therefor to make such payment; (ii) the redemption price, including all accrued and unpaid distributions to the date of redemption (the "Redemption Price"), with respect to the Common Securities and Preferred Securities called for redemption by the Trust to the extent that the Trust has funds on hand available therefor sufficient to make such payment; and (iii) upon a voluntary or involuntary dissolution, winding-up or liquidation of the Trust (other than in connection with the distribution of Subordinated Debt Securities to the holders of Trust Securities or the redemption of all of the Preferred Securities), the lesser of (a) the aggregate of the liquidation amount and all accumulated and unpaid distributions on the Common Securities and the Preferred Securities to the date of payment, to the extent the Trust has funds on hand available therefor, and (b) the amount of assets of the Trust remaining available for distribution to Holders in liquidation of the Trust (in either case, the "Liquidation Distribution").

"Holder" shall mean any holder, as registered on the books and records of the Trust, of any Common Securities and Preferred Securities; provided, however, that in determining whether the holders of the requisite percentage of Preferred Securities have given any request, notice, consent or waiver hereunder, "Holder" shall not include the Guarantor or any Affiliate of the Guarantor.

"Indenture" means the Indenture dated as of _____, 2004, between the Guarantor, as issuer of the Subordinated Debt Securities, and Union Bank of California, N.A., as trustee, as the same may be modified, amended or supplemented in accordance with the applicable provisions thereof.

"Majority in liquidation amount of Preferred Securities" means a vote by Holder(s) of Preferred Securities, voting separately as a class, of more than 50% of the liquidation amount of all Preferred Securities outstanding at the time of determination.

"Officers' Certificate" means a certificate signed by the Chairman of the Board, the President or a Vice President, and by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Guarantor, and delivered to the Trustee. Any Officers' Certificate delivered with respect to compliance with a condition or covenant provided for in this Guarantee Agreement shall include:

(a) a statement that each officer signing the Officers' Certificate has read the covenant or condition and the definitions relating thereto;

(b) a brief statement of the nature and scope of the examination or investigation undertaken by each officer in rendering the Officers' Certificate;

(c) a statement that each such officer has made such examination or investigation as, in such officer's opinion, is necessary to enable such officer to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such officer, such condition or covenant has been complied with.

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

"Responsible Officer" means, with respect to the Trustee, any vice president, any assistant vice president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, any senior trust officer, trust officer or assistant trust officer or any other officer of the Corporate Trust Department of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer's knowledge of and familiarity with the particular subject.

"Successor Trustee" means a successor Trustee possessing the qualifications to act as Trustee under Section 4.01.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended.

"Trust Security" means any one of the Common Securities or the Preferred Securities.

"Trustee" means Union Bank of California, N.A. until a Successor Trustee has been appointed and has accepted such appointment pursuant to the terms of this Guarantee Agreement and thereafter means each such Successor Trustee.

ARTICLE II

TRUST INDENTURE ACT

SECTION 2.01. TRUST INDENTURE ACT; APPLICATION.

(a) This Guarantee Agreement is subject to the provisions of the Trust Indenture Act that are required to be part of this Guarantee Agreement and shall, to the extent applicable, be governed by such provisions; and

(b) If and to the extent that any provision of this Guarantee Agreement limits, qualifies or conflicts with the duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control.

SECTION 2.02. LISTS OF HOLDERS OF SECURITIES.

(a) The Guarantor shall furnish or cause to be furnished to the Trustee (a) semiannually, not later than _____ and _____ in each year, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders ("List of Holders") as of a date not more than 15 days prior to the time such list is furnished, and (b) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Guarantor of any such request, a List of Holders as of a date not more than 15 days prior to the time such list is furnished; provided that, the Guarantor shall not be obligated to provide such List of Holders at any time the List of Holders does not differ from the most recent List of Holders given to the Trustee by the Guarantor or at any time the Trustee is the Securities Registrar under the Declaration. The Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

(b) The Trustee shall comply with its obligations under Sections 311(a), 311(b) and 312(b) of the Trust Indenture Act.

SECTION 2.03. REPORTS BY THE TRUSTEE. Within 60 days after _____ of each year commencing _____, 2004, the Trustee shall provide to the Holders of the Preferred Securities such reports as are required by Section 313(a) of the Trust Indenture Act, if any, in the form and in the manner provided by Section 313 of the Trust Indenture Act. The Trustee shall also comply with the other requirements of Section 313 of the Trust Indenture Act.

SECTION 2.04. PERIODIC REPORTS TO TRUSTEE. The Guarantor shall provide to the Trustee such documents, reports and information as required by Section 314 of the Trust Indenture Act (if any) in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act, and shall provide, within 120 days after the end of each of its fiscal years, the compliance certificate required by Section 314(a)(4) of the Trust Indenture Act in the form and in the manner required by such Section. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such reports, information and documents shall not constitute constructive notice of any information contained therein or determinable from information contained therein.

SECTION 2.05. EVIDENCE OF COMPLIANCE WITH CONDITIONS PRECEDENT. The Guarantor shall provide to the Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Guarantee Agreement, including an Officers' Certificate and an opinion of counsel that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to Section 314(c)(1) may be given in the form of an Officers' Certificate.

SECTION 2.06. EVENTS OF DEFAULT; WAIVER. The Holders of a Majority in liquidation amount of Preferred Securities may, by vote, on behalf of all of the Holders, waive any past Event of Default and its consequences. Upon such waiver, any such Event of Default shall cease

to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Guarantee Agreement, but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

SECTION 2.07. EVENT OF DEFAULT; NOTICE.

(a) The Trustee shall, within 90 days after the occurrence of an Event of Default, transmit by mail, first class postage prepaid, to the Holders, notices of all Events of Default actually known to the Trustee, unless such defaults have been cured before the giving of such notice, provided that 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 determines that the withholding of such notice is in the interests of the Holders.

(b) The Trustee shall not be deemed to have knowledge of any Event of Default unless the Trustee shall have received written notice, or a Responsible Officer charged with the administration of the Declaration shall have obtained written notice, of such Event of Default.

SECTION 2.08. CONFLICTING INTERESTS. The Declaration shall be deemed to be specifically described in this Guarantee Agreement for the purposes of clause (i) of the first proviso contained in Section 310(b) of the Trust Indenture Act.

ARTICLE III

POWERS, DUTIES AND RIGHTS OF TRUSTEE

SECTION 3.01. POWERS AND DUTIES OF THE TRUSTEE.

(a) This Guarantee Agreement shall be held by the Trustee for the benefit of the Holders, and the Trustee shall not transfer this Guarantee Agreement to any Person, except the Trustee shall assign rights hereunder to a Holder to the extent such assignment is necessary to exercise such Holder's rights pursuant to Section 5.04 or to a Successor Trustee upon acceptance by such Successor Trustee of its appointment to act as Successor Trustee. The right, title and interest of the Trustee shall automatically vest in any Successor Trustee, and such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered pursuant to the appointment of such Successor Trustee.

(b) If an Event of Default has occurred and is continuing, the Trustee shall enforce this Guarantee Agreement for the benefit of the Holders.

(c) The Trustee, before the occurrence of any Event of Default and after the curing or waiving of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Guarantee Agreement, and no implied covenants shall be read into this Guarantee Agreement against the Trustee. In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.06), the Trustee shall exercise such of the rights and powers vested in it by this Guarantee Agreement, and use the same degree of care and skill in its exercise thereof, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

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

(i) prior to the occurrence of any Event of Default and after the curing or waiving of all such Events of Default that may have occurred:

(A) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Guarantee Agreement, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Guarantee Agreement; and

(B) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Guarantee Agreement; but in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Guarantee Agreement;

(ii) 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 upon which such judgment was made;

(iii) 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 liquidation amount of the Preferred 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 Guarantee Agreement; and

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

SECTION 3.02. CERTAIN RIGHTS OF TRUSTEE.

(a) Subject to the provisions of Section 3.01:

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

(ii) any direction or act of the Guarantor contemplated by this Guarantee Agreement shall be sufficiently evidenced by an Officers' Certificate;

(iii) whenever, in the administration of this Guarantee Agreement, the Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and rely upon an Officers' Certificate which, upon receipt of such request, shall be promptly delivered by the Guarantor;

(iv) the Trustee may consult with counsel or other experts of its choice, and the written advice or opinion of such counsel or other experts shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with such advice or opinion; such counsel may be counsel to the Guarantor or any of its Affiliates and may include any of its employees; the Trustee shall have the right at any time to seek instructions concerning the administration of this Guarantee Agreement from any court of competent jurisdiction;

(v) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Guarantee Agreement at the request or direction of any Holder, unless such Holder shall have provided to the Trustee such adequate security and indemnity as would satisfy a reasonable person in the position of the Trustee against the costs, expenses (including attorneys' fees and expenses) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested by the Trustee; provided that nothing contained in this Section 3.02(a)(v) shall be taken to relieve the Trustee, upon the occurrence of an Event of Default, of its obligation to exercise the rights and powers vested in it by this Guarantee Agreement;

(vi) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit;

(vii) 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;

(viii) whenever in the administration of this Guarantee Agreement the Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Trustee (i) may request instructions from the Holders, (ii) may refrain from enforcing such remedy or right or taking such other action until such instructions are received, and (iii) shall be protected in acting in accordance with such instructions; and

(ix) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its rights to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its respective capacities hereunder, and to each agent, custodian and other Person employed to act hereunder.

(b) No provision of this Guarantee Agreement shall be deemed to impose any duty or obligation on the Trustee to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it in any jurisdiction in which it shall be illegal, or in which the Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts or to exercise any such right, power, duty or obligation. No permissive power or authority available to the Trustee shall be construed to be a duty.

SECTION 3.03. COMPENSATION; FEES; INDEMNITY. The Guarantor agrees:

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

(b) except as otherwise expressly provided herein, to reimburse the Trustee upon request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Guarantee Agreement (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith; and

(c) to indemnify the Trustee for, and to hold the Trustee harmless against, any and all loss, damage, claims, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this Guarantee Agreement, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

The provisions of this Section 3.03 shall survive the termination of this Guarantee Agreement.

ARTICLE IV

TRUSTEE

SECTION 4.01. TRUSTEE; ELIGIBILITY.

(a) There shall at all times be a Trustee which shall:

(i) not be an Affiliate of the Guarantor; and

(ii) be a corporation organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a corporation or Person permitted by the Securities and Exchange Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least 50 million U.S.

dollars (\$50,000,000), and subject to supervision or examination by Federal, State, Territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then, for the purposes of this Section 4.01(a)(ii), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) If at any time the Trustee shall cease to be eligible to so act under Section 4.01(a), the Trustee shall immediately resign in the manner and with the effect set out in Section 4.02(c).

(c) If the Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of the Trust Indenture Act, the Trustee and Guarantor shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act, subject to the rights of the Trustee under the penultimate paragraph thereof.

SECTION 4.02. APPOINTMENT, REMOVAL AND RESIGNATION OF TRUSTEE.

(a) Subject to Section 4.02(b), the Trustee may be appointed or removed without cause at any time by the Guarantor.

(b) The Trustee shall not be removed until a Successor Trustee has been appointed and has accepted such appointment by written instrument executed by such Successor Trustee and delivered to the Guarantor.

(c) The Trustee appointed to office shall hold office until a Successor Trustee shall have been appointed or until its removal or resignation. The Trustee may resign from office (without need for prior or subsequent accounting) by an instrument in writing executed by the Trustee and delivered to the Guarantor, which resignation shall not take effect until a Successor Trustee has been appointed and has accepted such appointment by instrument in writing executed by such Successor Trustee and delivered to the Guarantor and the resigning Trustee.

(d) If no Successor Trustee shall have been appointed and accepted appointment as provided in this Section 4.02 within 60 days after delivery to the Guarantor of an instrument of resignation, the resigning Trustee may petition any court of competent jurisdiction for appointment of a Successor Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Trustee.

ARTICLE V

GUARANTEE

SECTION 5.01. GUARANTEE. The Guarantor irrevocably and unconditionally agrees to pay in full to the Holders the Guarantee Payments (without duplication of amounts theretofore paid by or on behalf of the Trust), as and when due, regardless of any defense, right of set-off or counterclaim which the Guarantor or the Trust may have or assert against any Person, other than the defense of payment. The Guarantor's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the Trust to pay such amounts to the Holders.

SECTION 5.02. WAIVER OF NOTICE AND DEMAND. The Guarantor hereby waives notice of acceptance of this Guarantee Agreement and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Trust or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

SECTION 5.03. OBLIGATIONS NOT AFFECTED. The obligation of the Guarantor to make the Guarantee Payments under this Guarantee Agreement shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

(a) the release or waiver, by operation of law or otherwise, of the performance or observance by the Trust of any express or implied agreement, covenant, term or condition relating to the Preferred Securities to be performed or observed by the Trust;

(b) the extension of time for the payment by the Trust of all or any portion of the Distributions, Redemption Price, Liquidation Distribution or any other sums payable under the terms of the Preferred Securities or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the Preferred Securities (other than an extension of time for payment of Distributions, Redemption Price, Liquidation Distribution or other sum payable that results from the extension of any interest payment period on the Subordinated Debt Securities permitted by the Indenture);

(c) any failure, omission, delay or lack of diligence on the part of the Holders to enforce, assert or exercise any right, privilege, power or remedy conferred on the Holders pursuant to the terms of the Preferred Securities, or any action on the part of the Trust granting indulgence or extension of any kind;

(d) the voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Trust or any of the assets of the Trust;

(e) any invalidity of, or defect or deficiency in, the Preferred Securities;

(f) the settlement or compromise of any obligation guaranteed hereby or hereby incurred; or

(g) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Section 5.03 that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances.

There shall be no obligation of the Holders to give notice to, or obtain consent of, the Guarantor with respect to the happening of any of the foregoing.

SECTION 5.04. RIGHTS OF HOLDERS. The Guarantor expressly acknowledges that: (i) this Guarantee Agreement will be deposited with the Trustee to be held for the benefit of the Holders; (ii) the Trustee has the right to enforce this Guarantee Agreement on behalf of the

Holders; (iii) the Holders of a Majority in liquidation amount of the Preferred Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee in respect of this Guarantee Agreement or exercising any trust or power conferred upon the Trustee under this Guarantee Agreement; and (iv) any Holder may institute a legal proceeding directly against the Guarantor to enforce its rights under this Guarantee Agreement, without first instituting a legal proceeding against or requesting or directing that action be taken by the Trustee or any other Person; it being understood and intended that no one or more of such Holders shall have any right in any manner whatsoever by virtue of, or by availing of, any provision of this Guarantee Agreement to affect, disturb or prejudice the rights of any other of such Holders or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Guarantee Agreement, except in the manner herein provided and for the equal and ratable benefit of all of such Holders.

SECTION 5.05. GUARANTEE OF PAYMENT. This Guarantee Agreement creates a guarantee of payment and not of collection. This Guarantee Agreement will not be discharged except by payment of the Guarantee Payments in full (without duplication) or upon the distribution of Subordinated Debt Securities to the Holders in exchange for all of the Preferred Securities.

SECTION 5.06. SUBROGATION. The Guarantor shall be subrogated to all (if any) rights of the Holders against the Trust in respect of any amounts paid to the Holders by the Guarantor under this Guarantee Agreement; provided, however, that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any rights which it may acquire by way of subrogation or any indemnity, reimbursement or other agreement, in all cases as a result of payment under this Guarantee Agreement, if, at the time of any such payment, any amounts of Guarantee Payments are due and unpaid under this Guarantee Agreement. If any amount shall be paid to the Guarantor in violation of the preceding sentence, the Guarantor agrees to hold such amount in trust for the Holders and to pay over such amount to the Holders.

SECTION 5.07. INDEPENDENT OBLIGATIONS. The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Trust with respect to the Preferred Securities and that the Guarantor shall be liable as principal and as debtor hereunder to make Guarantee Payments pursuant to the terms of this Guarantee Agreement notwithstanding the occurrence of any event referred to in subsections (a) through (g), inclusive, of Section 5.03 hereof.

ARTICLE VI

SUBORDINATION

SECTION 6.01. SUBORDINATION. This Guarantee Agreement will constitute an unsecured obligation of the Guarantor and will rank (i) subordinate and junior in right of payment to all other liabilities of the Guarantor, including the Subordinated Debt Securities, except those obligations or liabilities made pari passu or subordinate by their terms; (ii) pari passu with the most senior preferred or preference stock now or hereafter issued by the Guarantor and with any guarantee now or hereafter entered into by the Guarantor in respect of any preferred or

preference securities of any Affiliate of the Guarantor; and (iii) senior to all common stock of the Guarantor.

ARTICLE VII

TERMINATION

SECTION 7.01. TERMINATION. This Guarantee Agreement shall terminate and be of no further force and effect upon: (i) full payment of the Redemption Price of all Preferred Securities; (ii) the distribution of Subordinated Debt Securities to the Holders in exchange for all of the Preferred Securities; or (iii) full payment of the amounts payable in accordance with the Declaration upon liquidation of the Trust. Notwithstanding the foregoing, this Guarantee Agreement will continue to be effective or will be reinstated, as the case may be, if at any time any Holder must restore payment of any sums paid with respect to Preferred Securities or under this Guarantee Agreement.

ARTICLE VIII

MISCELLANEOUS

SECTION 8.01. SUCCESSORS AND ASSIGNS. All guarantees and agreements contained in this Guarantee Agreement shall bind the successors, assigns, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders of the Preferred Securities then outstanding. Except in connection with a consolidation, merger, conveyance, transfer, or lease involving the Guarantor that is permitted under Article Ten of the Indenture, the Guarantor shall not assign its obligations hereunder.

SECTION 8.02. AMENDMENTS. Except with respect to any changes which do not materially adversely affect the rights of Holders (in which case no consent of Holders will be required), this Guarantee Agreement may only be amended with the prior approval of the Holders of a Majority in liquidation amount of the Preferred Securities. The provisions of Article VI of the Declaration concerning meetings of Holders shall apply to the giving of such approval.

SECTION 8.03. NOTICES. Any notice, request or other communication required or permitted to be given hereunder shall be in writing, duly signed by the party giving such notice, and delivered, telecopied or mailed by first class mail as follows:

(a) if given to the Guarantor, to the address set forth below or such other address as the Guarantor may give notice of to the Trustee and the Holders:

Avista Corporation
1411 East Mission Avenue
Spokane, Washington 99202
Facsimile No.: [(509) 482-4879]
Attn: [Treasurer]

(b) if given to the Trust, in care of the Trustee, or to the Trustee at the Trust's (and the Trustee's) address set forth below or such other address as the Trustee on behalf of the Trust may give notice to the Holders:

AVA Capital Trust III c/o Union Bank of California, N.A.

-----, -- -----
Facsimile No.: (____) ____-____
Attn: Corporate Trust Administration

(c) if given to any Holder, at the address set forth on the books and records of the Trust.

All notices hereunder shall be deemed to have been given when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid, except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

SECTION 8.04. BENEFIT. This Guarantee Agreement is solely for the benefit of the Holders and, subject to Section 3.01(a), is not separately transferable from the Common Securities and the Preferred Securities.

SECTION 8.05. INTERPRETATION. In this Guarantee Agreement, unless the context otherwise requires:

(a) capitalized terms used in this Guarantee Agreement but not defined in the preamble hereto have the respective meanings assigned to them in Section 1.01;

(b) a term defined anywhere in this Guarantee Agreement has the same meaning throughout;

(c) all references to "the Guarantee Agreement" or "this Guarantee Agreement" are to this Guarantee Agreement as modified, supplemented or amended from time to time;

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

(e) a term defined in the Trust Indenture Act has the same meaning when used in this Guarantee Agreement unless otherwise defined in this Guarantee Agreement or unless the context otherwise requires;

(f) a reference to the singular includes the plural and vice versa;

and

(g) the masculine, feminine or neuter genders used herein shall include the masculine, feminine and neuter genders.

SECTION 8.06. GOVERNING LAW. THIS GUARANTEE AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK. THE GUARANTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND ANY COURT IN THE STATE OF NEW YORK LOCATED IN THE CITY AND COUNTY OF NEW YORK IN ANY ACTION, SUIT OR PROCEEDING BROUGHT AGAINST IT AND RELATED TO OR IN CONNECTION WITH THIS GUARANTEE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE GUARANTOR HEREBY WAIVES AND AGREES NOT TO ASSERT BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURTS, THAT THE SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT THE VENUE OF THE SUIT, ACTION OR PROCEEDING IS IMPROPER, OR THAT THIS GUARANTEE AGREEMENT OR ANY DOCUMENT OR ANY INSTRUMENT REFERRED TO HEREIN OR THE SUBJECT MATTER HEREOF MAY NOT BE LITIGATED IN OR BY SUCH COURTS. THE GUARANTOR AGREES THAT SERVICE OF PROCESS MAY BE MADE UPON IT BY CERTIFIED OR REGISTERED MAIL TO THE ADDRESS FOR NOTICES SET FORTH IN THIS GUARANTEE AGREEMENT OR ANY METHOD AUTHORIZED BY THE LAWS OF NEW YORK.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

THIS GUARANTEE AGREEMENT is executed as of the day and year first above written.

AVISTA CORPORATION

By: -----
Name:
Title:

UNION BANK OF CALIFORNIA, N.A.

By: -----
Name:
Title:

[LETTERHEAD OF HELLER EHRMAN WHITE & MCAULIFFE LLP]

March 11, 2004

Avista Corporation
 1411 East Mission Avenue
 Spokane, WA 99202

RE: AVISTA CORPORATION - REGISTRATION STATEMENT ON FORM S-3
 \$60,000,000 SUBORDINATED DEBT SECURITIES AND GUARANTEE

Ladies and Gentlemen:

We have acted as counsel to Avista Corporation, a Washington corporation (the "COMPANY"), in connection with the Company's proposed offering of subordinated debt securities (the "DEBT SECURITIES") under an Indenture, to be entered into (the "INDENTURE"), from the Company to Union Bank of California, N.A. (the "TRUSTEE"), as trustee, to be issued and sold from time to time by the Company to AVA Capital Trust III, a Delaware statutory trust and with the Company's proposed issuance of a guarantee (the "GUARANTEE") with respect to certain trust preferred securities between the Company and the Trustee, as trustee, for the benefit of holders of the Debt Securities. The Debt Securities are to be issued in an aggregate principal amount of up to \$60,000,000, as contemplated in a Registration Statement on Form S-3 and Post-Effective Amendment No. 1 (the "REGISTRATION STATEMENT") of the Company proposed to be filed with the Securities and Exchange Commission on or about the date hereof under the Securities Act of 1933, as amended (the "SECURITIES ACT"), relating to such proposed offering. The Debt Securities and the Guarantee are hereinafter referred to as the "Securities".

I.

We have assumed the authenticity of all records, documents and instruments submitted to us as originals, the genuineness of all signatures, the legal capacity of natural persons and the conformity to the originals of all records, documents and instruments submitted to us as copies. We have based our opinion upon our review of the following records, documents, instruments and certificates and such additional certificates relating to factual matters as we have deemed necessary or appropriate for our opinion:

- (a) the Registration Statement;
- (b) the form of the Indenture;
- (c) the form of the Debt Securities;
- (d) the form of the Guarantee;

Heller Ehrman White & McAuliffe LLP
 701 Fifth Avenue, Suite 6100 Seattle, WA 98104-7098 www.hewm.com

 SEATTLE Portland Anchorage San Francisco Silicon Valley Los Angeles
 San Diego New York Washington D.C. Hong Kong Singapore

Affiliated Cernelutti Offices: Milan Rome Paris Padua Naples

Heller Ehrman
 ATTORNEYS

Avista Corporation
 March 11, 2004
 Page 2

- (e) the Restated Articles of Incorporation, as amended, of the Company certified by the Washington Secretary of State as of March 3, 2004, and certified to us by an officer of the Company as being complete and in full force and effect as of the date of this opinion;
- (f) the Bylaws of the Company certified by an officer of the Company as being complete and in full force and effect as of the date of this opinion;
- (g) a Certificate of Existence/Authorization relating to the Company and issued by the Washington Secretary of State, dated March 4, 2004;
- (h) records certified to us by an officer of the Company as constituting all records of proceedings and actions of the Company's board of directors relating to the transactions contemplated by the Registration Statement;
- (i) Decision No. 00-06-064, entered June 22, 2000, of the Public Utilities Commission of the State of California;
- (j) Default Order No. 4535, entered July 2, 1979, in Docket No. 6690 of the Public Service Commission of the State of Montana(1); and
- (k) a Certificate of an officer of the Company as to certain factual matters.

Notwithstanding any provisions of the Securities or any other agreements or instruments examined for purposes of these opinions to the effect that such

agreement or instrument reflects the entire understanding of the parties with respect to the matters described therein, the courts of the States of Washington may consider extrinsic evidence of the circumstances surrounding the entering into of such agreement to ascertain the intent of the parties in using the language employed in such agreement, regardless of whether or not the meaning of the language used in such agreement is plain and unambiguous on its face, and may determine that additional or supplementary terms can be incorporated into such agreement. We have not considered parol evidence in connection with the opinion set forth below.

- -----

- (1) We have received and relied upon an officer's certificate certifying that at no time since the issuance of the MPSC's order have the Company's electric sales for ultimate use by Montana customers exceeded \$5,000,000 or 5% of the Company's revenue in any year.

II.

We have also assumed the following, without making any inquiry into the reasonableness or validity thereof:

- A. The applicable provisions of the Securities Act, the Trust Indenture Act of 1939, as amended, and the securities or blue sky laws of various states shall have been complied with.
- B. Each of the Securities will be duly executed, authenticated and delivered prior to its issuance as set forth in the Registration Statement and in accordance with the proceedings and actions of the Company's board of directors relating to the transactions contemplated by the Registration Statement.
- C. There are no facts or circumstances specifically relating to any parties other than the Company (the "OTHER PARTIES") that might prevent the Other Parties from enforcing any of the rights to which our opinion relates.
- D. The Company will make appropriate filings and applications with the Washington Utilities and Transportation Commission, the Idaho Public Utilities Commission and the Public Utilities Commission of Oregon for authority to issue and sell the Securities, each of such commissions will enter appropriate orders authorizing the issuance and sale by the Company of the Securities and the Securities will be issued and sold in accordance with all applicable terms, conditions, limitations or restrictions contained in such orders.

III.

We express no opinion as to:

- (a) The applicable choice of law rules that may affect the interpretation or enforcement of any of the Securities.
- (b) Any securities, tax, anti-trust, land use, safety, environmental, hazardous materials, insurance company or banking laws, rules or regulations, or any laws, rules or regulations applicable to any of the Other Parties by virtue of their status as regulated entities, or whether governmental consents, approvals, authorizations, registrations, declarations or filings required in connection with the issuance and sale of each of the Securities will be applied for, received or made.
- (c) The enforceability of any provision of the Securities that relates to the choice of arbitration as a dispute resolution mechanism.

- (d) The effect on the obligations of the Company, and the Other Parties' rights, under the Securities of laws relating to fraudulent transfers and fraudulent obligations set forth in Sections 544 and 548 of the federal Bankruptcy Code or applicable state law.
- (e) The enforceability of any waiver of immunities contained in the Securities.
- (f) The enforceability of any liquidated damages provisions contained in the Securities.
- (g) The enforceability of any agreement or instrument, which is referred to in the Securities.

This opinion is limited to (i) the federal laws of the United States of America, (ii) the laws of the State of Washington, and (iii) the statutes (and regulations promulgated thereunder) of the States of California, Idaho, Montana and Oregon pertaining to the regulation of public utilities in those States. We note that the Securities, by their express terms, purport to be governed by the laws of the State of New York. For purposes of this opinion, we have assumed that the law applicable to the Securities is identical in all respects to the internal laws of the State of Washington (including judicial interpretations relating thereto but without reference to conflict of laws statutes or principles). We disclaim any opinion as to the laws of any other jurisdiction, including the laws of the State of New York. We further disclaim any opinion as to any statute, rule, regulation, ordinance, order or other promulgation of any regional or local governmental body or as to any related judicial or administrative opinion.

IV.

Based upon the foregoing and our examination of such questions of law as we have deemed necessary or appropriate for our opinion, and subject to the assumptions, limitations and qualifications expressed herein, it is our opinion that each of the Securities, when issued and delivered as contemplated in the Registration Statement, will be legally issued and will be binding obligations of the Company, subject (i) to bankruptcy, insolvency, reorganization, arrangement, moratorium and other laws of general applicability relating to or affecting creditors' rights and (ii) to general principles of equity, whether such enforceability is considered in a proceeding in equity or at law.

V.

We further advise you that:

- A. As noted, the enforceability of each of the Securities is subject to the effect of general principles of equity. These principles include, without limitation, concepts of commercial reasonableness, materiality and good faith and fair dealing. As applied to the Securities, these principles will require the Other Parties to act reasonably, in good faith and in a manner that is not arbitrary or capricious in the administration and enforcement of the Securities and will preclude the Other Parties from invoking penalties for defaults that bear no reasonable relation to the damage suffered or that

would otherwise work a forfeiture.

- B. The enforceability of each of the Securities is subject to the effects of (i) Section 62A.1-102 of Revised Code of Washington (the "WA CODE"), which provides that obligations of good faith, diligence, reasonableness and care prescribed by the WA Code may not be disclaimed by agreement, although the parties may by agreement determine the standards by which the performance of such obligations is to be measured if those standards are not manifestly unreasonable, (ii) Section 62A.1-203 of the WA Code, which imposes an obligation of good faith in the performance or enforcement of a contract and (iii) legal principles under which a court may refuse to enforce, or may limit the enforcement of, a contract or any clause of a contract that a court finds as a matter of law to have been unconscionable at the time it was made.
- C. Pursuant to RCW 4.84.330, any provision in the Securities requiring a party to pay another party's attorneys' fees and costs in actions to enforce the provisions of the Securities will be construed to entitle the prevailing party in any action, whether or not that party is the specified party, to be awarded its reasonable attorneys' fees, costs and necessary disbursements.
- D. Provisions of the Securities requiring that waivers must be in writing may not be binding or enforceable if a non-executory oral agreement has been created modifying any such provision or an implied agreement by trade practice or course of conduct has given rise to a waiver.
- E. The effectiveness of indemnities, rights of contribution, exculpatory provisions and waivers of the benefits of statutory provisions may be limited on public policy grounds.
- F. The enforceability of the Guarantee may be subject to Washington case law to the effect that a guarantor may be exonerated if the beneficiary of the guaranty alters the original obligation of the principal, fails to inform the guarantor of material information pertinent to the principal or any collateral, elects remedies that may impair the subrogation rights of the guarantor against the principal or that may impair the value of any collateral, fails to accord the guarantor the protections afforded a debtor under Article 9A of the WA Code or otherwise takes any action that materially prejudices the guarantor unless, in any such case, the guarantor validly waives such rights or the consequences of any such action. SEE, E.G., WARREN V. WASHINGTON TRUST BANK, 92 Wash. 2d 381, 598 P.2d 701 (1979); FRANCO V. PEOPLES NAT'L BANK OF WASHINGTON, 39 Wash. App. 381; 693 P.2d 200 (1984); MGIC FINANCIAL CORP. V. H.A. BRIGGS CO., 24 Wash. App. 1, 600 P.2d 573 (1979). While express and specific waivers of a guarantor's right to be exonerated, such as those contained in the Guarantee, are generally enforceable under Washington law, we express no opinion as to whether the Guarantee contains an express and specific waiver of each exoneration defense a guarantor might assert or as to whether each of the waivers contained in the Guarantee is fully enforceable.

G. The enforceability of the subordination provisions of a subordination agreement may be limited by exoneration defenses similar to those that may be asserted by a guarantor. Subordination provisions may become unenforceable if the senior creditor alters the terms of the senior debt, fails to inform the subordinated creditor of material information pertinent to the senior debt or any collateral securing the senior debt, elects remedies that impair rights against the debtor or rights in any collateral securing the senior debt that the subordinated creditor would acquire by becoming subrogated to the claims of the senior creditor as a result of performance of the subordination provisions, fails to accord the subordinated creditor the same protections accorded a debtor under Article 9A of the WA Code (RCW Chapter 62A.9A) or otherwise takes any action that materially prejudices the subordinated creditor, unless in any such case the subordinated creditor validly waives such rights or the consequences of any such action. While express and specific waivers of exoneration defenses available to a subordinated creditor should be generally enforceable, we express no opinion as to whether the Securities contain an express and specific waiver of each exoneration defense that a subordinated creditor might assert or as to whether each of the waivers contained in the Securities is fully enforceable.

VI.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the references to this firm, as counsel, in the Registration Statement and in the prospectus contained therein. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations promulgated thereunder.

VII.

The foregoing opinion is being delivered solely to you in connection with the filing of the Registration Statement and is solely for your benefit and the benefit of the holders of the Securities. This opinion may not be relied on by you or the holders of the Securities for any other purpose or by any other person for any purpose without our written consent. We disclaim any obligation to advise you of any change of law that occurs, or any facts of which we become aware, after the date of this opinion.

Very truly yours,

/S/ Heller Ehrman White & McAuliffe LLP

DEWEY BALLANTINE LLP

1301 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10019-6092
TEL 212 259-8000 FAX 212 259-6333

March 11, 2004

Avista Corporation
1411 East Mission Avenue
Spokane, Washington 99202

Ladies and Gentlemen:

We are acting as counsel to Avista Corporation, a Washington corporation (the "Company"), and to AVA Capital Trust III, a Delaware statutory trust (the "Trust") in connection with the proposed issuance of (i) Preferred Securities (the "Preferred Securities") of the Trust to be offered in an underwritten public offering; (ii) Subordinated Debt Securities (the "Debt Securities") of the Company to be issued pursuant to the terms of an indenture from the Company to Union Bank of California, N.A., as trustee (the "Indenture"), to be issued and sold by the Company to the Trust; and (iii) Guarantees of the Company with respect to the Preferred Securities (the "Guarantees") pursuant to a guarantee agreement between the Company and Union Bank of California, N.A., as trustee (the "Guarantee Agreement"). The Preferred Securities and the Debt Securities are to be issued in a combined aggregate liquidation amount or principal amount of up to \$60,000,000, as contemplated by the registration statement on Form S-3 proposed to be filed by the Company and the Trust with the Securities and Exchange Commission on or about the date hereof for the registration of the Preferred Securities, the Debt Securities and the Guarantees under the Securities Act of 1933, as amended (the "Act"), said registration statement, as it may be amended, being hereinafter called the "Registration Statement".

We have examined and are familiar with originals or copies, certified or otherwise identified to our satisfaction, of (i) the Registration Statement, (ii) the form of Indenture, and (iii) the form of Guarantee Agreement. We have also examined such other documents and satisfied ourselves as to such other matters as we have deemed necessary in order to render this opinion.

Based upon the foregoing and subject to the qualifications hereinafter expressed, we are of the opinion that when:

(a) the Washington Utilities and Transportation Commission, the Idaho Public Utilities Commission and the Public Utility Commission of Oregon shall have issued, pursuant to applications filed by the Company with said regulatory authorities, appropriate orders authorizing the issuance and sale by the Company of the Debt Securities and the Guarantees (such matters having been addressed in the opinion of

NEW YORK WASHINGTON, D.C. LOS ANGELES EAST PALO ALTO HOUSTON AUSTIN
LONDON WARSAW BUDAPEST PRAGUE FRANKFURT MILAN ROME

Heller Ehrman White & McAuliffe LLP, which is being filed as Exhibit 5(a) to the Registration Statement); and

(b) the Debt Securities and the Guarantees have been issued, sold and paid for as contemplated in the aforesaid orders in the authorizing resolutions of the Company's Board of Directors and in the Registration Statement.

then the Debt Securities and the Guarantees will be legally issued and will be binding obligations of the Company, subject to (i) bankruptcy, insolvency, reorganization, arrangement, moratorium and other law of general applicability relating to or affecting the rights of creditors (including beneficiaries of guarantees).

We are further of the opinion that the statements contained in the preliminary prospectus constituting a part of the Registration Statement under the caption "Certain United States Federal Income Tax Considerations", subject to the exceptions and limitations set forth therein, fairly summarize the material United States federal income tax consequences of the purchase, ownership and disposition of the Preferred Securities to the holders addressed therein.

The opinions expressed herein are limited to the laws of the State of New York and the federal law of the United States (excluding therefrom principles of conflicts of laws, state securities or blue sky laws). To the extent that such opinions relate to or are dependent upon matters governed by the laws of other States, we have assumed the legal conclusions set forth in the opinion of Heller Ehrman White & McAuliffe LLP, which is being filed as Exhibit 5(a) to the Registration Statement.

This letter is not being delivered for the benefit of, nor may it be relied upon by, the holders of the Debt Securities, the Guarantees or the

Preferred Securities or any other party to which it is not specifically addressed or to which reliance is not expressly permitted hereby.

We hereby consent to the filing of this opinion as Exhibits 5(b) and 8 to the Registration Statement and to the references to our firm, as counsel, in the Registration Statement and in the prospectus contained therein. In giving the foregoing consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Act or the rules and regulations promulgated thereunder.

Very truly yours,

/s/ Dewey Ballantine LLP

DEWEY BALLANTINE LLP

[Letterhead of Richards, Layton & Finger, P.A.]

March 11, 2004

AVA Capital Trust III
c/o Avista Corporation
1411 East Mission Avenue
Spokane, Washington 99202

Re: AVA CAPITAL TRUST III

Ladies and Gentlemen:

We have acted as special Delaware counsel for Avista Corporation, a Washington corporation (the "Company"), and AVA Capital Trust III, a Delaware statutory trust (the "Trust"), in connection with the matters set forth herein. At your request, this opinion is being furnished to you.

For purposes of giving the opinions hereinafter set forth, our examination of documents has been limited to the examination of originals or copies of the following:

(a) The Certificate of Trust of the Trust, dated as of November 4, 1996, as filed in the office of the Secretary of State of the State of Delaware (the "Secretary of State") on November 4, 1996;

(b) The Amended and Restated Certificate of Trust of the Trust, effective as of March 9, 2004 (the "Certificate"), as filed in the office of the Secretary of State on March 9, 2004;

(c) The Declaration of Trust of the Trust, dated as of November 4, 1996, among the Company, as successor in interest to The Washington Water Power Company, as Sponsor, and the trustees of the Trust named therein, as amended by the Removal and Appointment of Trustees and Amendment of Declaration of Trust of the Trust, dated as of March 9, 2004, among the Company, as Sponsor, Malyn K. Malquist and Diane C. Thoren, as Regular Trustees, Union Bank of California, N.A., as Institutional Trustee, and SunTrust Delaware Trust Company, as Delaware Trustee;

(d) The Registration Statement (the "Registration Statement") on Form S-3, including a preliminary prospectus (the "Prospectus") relating to the Flexible Trust Preferred Securities of the Trust representing preferred undivided beneficial interests in the assets of the Trust (each, a "Preferred Security" and collectively, the "Preferred Securities"), as proposed to be

AVA Capital Trust III
March 11, 2004
Page 2

filed by the Company and the Trust as set forth therein with the Securities and Exchange Commission on or about March 11, 2004;

(e) A form of Amended and Restated Declaration of Trust of the Trust, to be entered into among the Company, as Sponsor, the trustees of the Trust named therein, and the holders, from time to time, of undivided beneficial interests in the assets of the Trust (including Exhibits A, B and C thereto) (the "Declaration"), attached as an exhibit to the Registration Statement; and

(f) A Certificate of Good Standing for the Trust as of March 9, 2004, obtained from the Secretary of State.

Capitalized terms used herein and not otherwise defined are used as defined in the Declaration.

For purposes of this opinion, we have not reviewed any documents other than the documents listed in paragraphs (a) through (f) above. In particular, we have not reviewed any document (other than the documents listed in paragraphs (a) through (f) above) that is referred to in or incorporated by reference into the documents reviewed by us. We have assumed that there exists no provision in any document that we have not reviewed that is inconsistent with the opinions stated herein. We have conducted no independent factual investigation of our own but rather have relied solely upon the foregoing documents, the statements and information set forth therein and the additional matters recited or assumed herein, all of which we have assumed to be true, complete and accurate in all material respects.

With respect to all documents examined by us, we have assumed (i) the authenticity of all documents submitted to us as authentic originals, (ii) the conformity with the originals of all documents submitted to us as copies or forms, and (iii) the genuineness of all signatures.

For purposes of this opinion, we have assumed (i) that the Declaration and the Certificate are in full force and effect and have not been

amended, (ii) except to the extent provided in paragraph 1 below, the due creation or due organization or due formation, as the case may be, and valid existence in good standing of each party to the documents examined by us under the laws of the jurisdiction governing its creation, organization or formation, (iii) the legal capacity of natural persons who are parties to the documents examined by us, (iv) that each of the parties to the documents examined by us has the power and authority to execute and deliver, and to perform its obligations under, such documents, (v) the due authorization, execution and delivery by all parties thereto of all documents examined by us, (vi) the receipt by each Person to whom a Preferred Security is to be issued by the Trust (collectively, the "Preferred Security Holders") of a Preferred Securities Certificate for such Preferred Security and the payment for the Preferred Security acquired by it, in accordance with the Declaration and the Registration Statement, and (vii) that the Preferred Securities are issued and sold to the Preferred Security

Holders in accordance with the Declaration and the Registration Statement. We have not participated in the preparation of the Registration Statement and assume no responsibility for its contents.

This opinion is limited to the laws of the State of Delaware (excluding the securities laws of the State of Delaware), and we have not considered and express no opinion on the laws of any other jurisdiction, including federal laws and rules and regulations relating thereto. Our opinions are rendered only with respect to Delaware laws and rules, regulations and orders thereunder which are currently in effect.

Based upon the foregoing, and upon our examination of such questions of law and statutes of the State of Delaware as we have considered necessary or appropriate, and subject to the assumptions, qualifications, limitations and exceptions set forth herein, we are of the opinion that:

1. The Trust has been duly created and is validly existing in good standing as a statutory trust under the Delaware Statutory Trust Act.

2. The Preferred Securities will represent valid and, subject to the qualifications set forth in paragraph 3 below, fully paid and nonassessable undivided beneficial interests in the assets of the Trust.

3. The Preferred Security Holders, as beneficial owners of the Trust, will be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware. We note that the Preferred Security Holders may be obligated to make payments as set forth in the Declaration.

We consent to the filing of this opinion with the Securities and Exchange Commission as an exhibit to the Registration Statement. In addition, we hereby consent to the use of our name under the heading "Legal Opinions" in the Prospectus. In giving the foregoing consents, we do not thereby admit that we come within the category of Persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Securities and Exchange Commission thereunder. Except as stated above, without our prior written consent, this opinion may not be furnished or quoted to, or relied upon by, any other Person for any purpose.

Very truly yours,

/s/ Richards, Layton & Finger, P.A

INDEPENDENT AUDITORS' CONSENT

We consent to the incorporation by reference in this Registration Statement on Form S-3 of our report dated February 27, 2004, which includes an explanatory paragraph for certain changes in accounting and presentation resulting from the impact of recently adopted accounting standards, appearing in the Annual Report on Form 10-K of Avista Corporation for the year ended December 31, 2003, and to the reference to us under the heading "Experts" in the Prospectus, which is part of this registration statement.

/s/ Deloitte & Touche LLP

Seattle, Washington
March 10, 2004

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM T-1

STATEMENT OF ELIGIBILITY UNDER
THE TRUST INDENTURE ACT OF 1939 OF A
CORPORATION DESIGNATED TO ACT AS TRUSTEE
Check if an Application to Determine Eligibility of
a Trustee Pursuant to Section 305(b)(2)

UNION BANK OF CALIFORNIA, NATIONAL ASSOCIATION
(Exact name of Trustee as specified in its charter)

94-0304228
I.R.S. Employer Identification No.

400 California Street
San Francisco, California 94104

(Address of principal executive offices) (Zip Code)

Sonia N. Flores
Union Bank of California, N.A.
475 Sansome Street
Corporate Trust - 12th Floor
San Francisco, CA 94111
(415) 296-6754

(Name, address and telephone number of agent for service)

AVISTA CORPORATION
(Issuer with respect to the Securities)

Washington 91-0462470

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

1411 East Mission Avenue
Spokane, Washington 99202

(Address of Principal Executive Offices) (Zip Code)

AVISTA CORPORATION
SUBORDINATED DEBT SECURITIES

FORM T-1

ITEM 1. GENERAL INFORMATION. Furnish the following information as to the Trustee.

- a) NAME AND ADDRESS OF EACH EXAMINING OR SUPERVISING AUTHORITY TO WHICH IT IS SUBJECT.
Comptroller of the Currency
Washington, D.C.
- b) WHETHER IT IS AUTHORIZED TO EXERCISE CORPORATE TRUST POWERS.
Trustee is authorized to exercise corporate trust powers.

ITEM 2. AFFILIATIONS WITH OBLIGOR. IF THE OBLIGOR IS AN AFFILIATE OF THE TRUSTEE, DESCRIBE EACH SUCH AFFILIATION.
None

IN ANSWERING THIS ITEM, THE TRUSTEE HAS RELIED, IN PART, UPON INFORMATION FURNISHED BY THE OBLIGOR AND THE UNDERWRITERS, AND THE TRUSTEE DISCLAIMS RESPONSIBILITY FOR THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. THE TRUSTEE HAS ALSO EXAMINED ITS OWN BOOKS AND RECORDS FOR THE PURPOSE OF ANSWERING THIS ITEM.

ITEMS 3-15 ITEMS 3-15 ARE NOT APPLICABLE BECAUSE TO THE BEST OF THE TRUSTEE'S KNOWLEDGE, THE OBLIGOR IS NOT IN DEFAULT UNDER ANY INDENTURE FOR WHICH THE TRUSTEE ACTS AS TRUSTEE.

ITEM 16. LIST OF EXHIBITS: LIST BELOW ALL EXHIBITS FILED AS A PART OF THIS STATEMENT OF ELIGIBILITY AND QUALIFICATION.

1. A copy of the Articles of Association of the Trustee.*
2. A copy of the certificate of authority of the Trustee to commence business.*
3. A copy of the certificate of authority of the Trustee to exercise corporate trust powers.*
4. A copy of the existing bylaws of the Trustee.*
5. A copy of each Indenture referred to in Item 4. Not applicable.
6. The consent of the Trustee required by Section 321(b) of the Trust Indenture Act of 1939. Attached as Exhibit 6.
7. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority. Attached as Exhibit 7.

* Exhibits 1 through 4 are incorporated by reference to T-1 as presented on S-4 Registration No. 333-103873 filed with the SEC.

NOTE

The answers to this statement insofar as such answers relate to what persons have been underwriters for any securities of the obligors within three years prior to the date of filing this statement, or what persons are owners of 10% or more of the voting securities of the obligors, or affiliates, are based upon information furnished to the Trustee by the obligors. While the Trustee has no reason to doubt the accuracy of any such information, it cannot accept any responsibility therefor.

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the Trustee, Union Bank of California, National Association, a national banking association organized and existing under the laws of the United States of America, has duly caused this statement of eligibility and qualification to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of San Francisco, State of California on the 10th day of March, 2004.

UNION BANK OF CALIFORNIA, N.A.

By: /s/ Sonia N. Flores

Vice President

EXHIBIT 6

CONSENT OF THE TRUSTEE
REQUIRED BY SECTION 321(b) OF THE ACT

March 10, 2004

Securities and Exchange Commission
Washington, D.C. 20549

Ladies and Gentlemen:

In connection with the qualification of an indenture for subordinated indebtedness between Avista Corporation (the "Company") and Union Bank of California, N.A. (the "Trustee"), the undersigned, in accordance with Section 321(b) of the Trust Indenture Act of 1939, as amended, hereby consents that reports of examinations of the undersigned by federal, state, territorial, or district authorities authorized to make such examinations may be furnished by such authorities to the Securities and Exchange Commission upon request therefor.

Sincerely,

Union Bank of California, N.A.

By: /s/ Sonia N. Flores

Corporate Trust Vice President

Consolidated Report of Condition of
Union Bank of California, National Association

of San Francisco in the State of California, at the close of business December 31, 2004, published in response to call made by the Comptroller of the Currency, under Title 12, United States Code, Section 161. Charter 21541

BALANCE SHEET

Dollar Amounts
In Thousands

ASSETS	
Cash and balances due from depository institutions:	
Noninterest-bearing balances and currency and coin	\$ 2,493,956
Interest-bearing balances	223,661
Securities:	
Held-to-maturity securities	0
Available-for-sale securities	10,764,189
Federal funds sold and securities purchased under agreements to resell:	
Federal funds sold in domestic offices	769,720
Securities purchased under agreements to resell	0
Loans and lease financing receivables:	
Loans and leases held for sale	12,151
Loans and leases, net of unearned income	25,320,167
LESS: Allowance for loan and lease losses	504,570
Loans and leases, net of unearned income and allowance	24,815,597
Trading assets	276,613
Premises and fixed assets	496,912
Other real estate owned	5,689
Investments in unconsolidated subsidiaries and associated companies	166
Customers' liability to this bank on acceptances outstanding	71,078
Intangible assets:	
Goodwill	219,796
Other intangible assets	57,714
Other assets	1,721,465
Total assets	----- 41,928,707 -----

LIABILITIES

Deposits:	
In domestic offices	33,824,680
Noninterest-bearing	16,668,476
Interest-bearing	17,156,204
In foreign offices, Edge and Agreement subsidiaries, and IBFs	3,039,651
Noninterest-bearing	619,328
Interest-bearing	2,420,323
Federal funds purchased and securities sold under agreements to repurchase:	
Federal funds purchased in domestic offices	175,666
Securities sold under agreements to repurchase	105,302
Trading liabilities	117,522
Other borrowed money	212,089
Bank's liability on acceptances executed and outstanding	71,078
Subordinated notes and debentures	100,000
Other liabilities	545,451
Total liabilities	38,191,439

Minority interest in consolidated subsidiaries 0

EQUITY CAPITAL

Perpetual preferred stock and related surplus	0
Common stock	604,577
Surplus	1,126,015
Retained earnings	1,955,154
Accumulated other comprehensive income	51,522
Other equity capital components	0
Total equity capital	3,737,268
Total liabilities, minority interest, and equity capital	41,928,707

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM T-1

STATEMENT OF ELIGIBILITY UNDER
THE TRUST INDENTURE ACT OF 1939 OF A
CORPORATION DESIGNATED TO ACT AS TRUSTEE
Check if an Application to Determine Eligibility of
a Trustee Pursuant to Section 305(b)(2)

UNION BANK OF CALIFORNIA, NATIONAL ASSOCIATION
(Exact name of Trustee as specified in its charter)

94-0304228
I.R.S. Employer Identification No.

400 California Street
San Francisco, California 94104

(Address of principal executive offices) (Zip Code)

Sonia N. Flores
Union Bank of California, N.A.
475 Sansome Street
Corporate Trust - 12th Floor
San Francisco, CA 94111
(415) 296-6754

(Name, address and telephone number of agent for service)

AVA CAPITAL TRUST III
(Issuer with respect to the Securities)

Delaware

To Be Applied For

(State or other jurisdiction of incorporation or
organization)

(I.R.S. Employer Identification No.)

1411 East Mission Avenue
Spokane, Washington

99202

(Address of Principal Executive Offices)

(Zip Code)

AVA CAPITAL TRUST III
FLEXIBLE TRUST PREFERRED SECURITIES

FORM T-1

ITEM 1. GENERAL INFORMATION. Furnish the following information as to the Trustee.

- a) NAME AND ADDRESS OF EACH EXAMINING OR SUPERVISING AUTHORITY TO WHICH IT IS SUBJECT.
Comptroller of the Currency
Washington, D.C.
- b) WHETHER IT IS AUTHORIZED TO EXERCISE CORPORATE TRUST POWERS.
Trustee is authorized to exercise corporate trust powers.

ITEM 2. AFFILIATIONS WITH OBLIGOR. IF THE OBLIGOR IS AN AFFILIATE OF THE TRUSTEE, DESCRIBE EACH SUCH AFFILIATION.
None

IN ANSWERING THIS ITEM, THE TRUSTEE HAS RELIED, IN PART, UPON INFORMATION FURNISHED BY THE OBLIGOR AND THE UNDERWRITERS, AND THE TRUSTEE DISCLAIMS RESPONSIBILITY FOR THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. THE TRUSTEE HAS ALSO EXAMINED ITS OWN BOOKS AND RECORDS FOR THE PURPOSE OF ANSWERING THIS ITEM.

ITEMS 3-15 ITEMS 3-15 ARE NOT APPLICABLE BECAUSE TO THE BEST OF THE TRUSTEE'S KNOWLEDGE, THE OBLIGOR IS NOT IN DEFAULT UNDER ANY INDENTURE FOR WHICH THE TRUSTEE ACTS AS TRUSTEE.

ITEM 16. LIST OF EXHIBITS: LIST BELOW ALL EXHIBITS FILED AS A PART OF THIS STATEMENT OF ELIGIBILITY AND QUALIFICATION.

1. A copy of the Articles of Association of the Trustee.*
2. A copy of the certificate of authority of the Trustee to commence business.*
3. A copy of the certificate of authority of the Trustee to exercise corporate trust powers.*
4. A copy of the existing bylaws of the Trustee.*
5. A copy of each Indenture referred to in Item 4. Not applicable.
6. The consent of the Trustee required by Section 321(b) of the Trust Indenture Act of 1939. Attached as Exhibit 6.
7. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority. Attached as Exhibit 7.

* Exhibits 1 through 4 are incorporated by reference to T-1 as presented on S-4 Registration No. 333-103873 filed with the SEC.

NOTE

The answers to this statement insofar as such answers relate to what persons have been underwriters for any securities of the obligors within three years prior to the date of filing this statement, or what persons are owners of 10% or more of the voting securities of the obligors, or affiliates, are based upon information furnished to the Trustee by the obligors. While the Trustee has no reason to doubt the accuracy of any such information, it cannot accept any responsibility therefor.

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the Trustee, Union Bank of California, National Association, a national banking association organized and existing under the laws of the United States of America, has duly caused this statement of eligibility and qualification to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of San Francisco, State of California on the 10th day of March, 2004.

UNION BANK OF CALIFORNIA, N.A.

By: /s/ Sonia N. Flores

Vice President

EXHIBIT 6

CONSENT OF THE TRUSTEE
REQUIRED BY SECTION 321(b) OF THE ACT
March 10, 2004

Securities and Exchange Commission
Washington, D.C. 20549

Ladies and Gentlemen:

In connection with the qualification of an Amended and Restated Declaration of Trust for Preferred Securities and Common Securities among Avista Corporation, as Sponsor, SunTrust Delaware Trust Company, as Delaware Trustee and Malyn K. Malquist and Diane C. Thoren, as Regular Trustees and Union Bank of California, N.A. (the "Institutional Trustee"), the undersigned, in accordance with Section 321(b) of the Trust Indenture Act of 1939, as amended, hereby consents that reports of examinations of the undersigned by federal, state, territorial, or district authorities authorized to make such examinations may be furnished by such authorities to the Securities and Exchange Commission upon request therefor.

Sincerely,

Union Bank of California, N.A.

By: /s/ Sonia N. Flores

Corporate Trust Vice President

Consolidated Report of Condition of
Union Bank of California, National Association

of San Francisco in the State of California, at the close of business December 31, 2004, published in response to call made by the Comptroller of the Currency, under Title 12, United States Code, Section 161. Charter 21541

BALANCE SHEET

Dollar Amounts
In Thousands

ASSETS	
Cash and balances due from depository institutions:	
Noninterest-bearing balances and currency and coin	\$ 2,493,956
Interest-bearing balances	223,661
Securities:	
Held-to-maturity securities	0
Available-for-sale securities	10,764,189
Federal funds sold and securities purchased under agreements to resell:	
Federal funds sold in domestic offices	769,720
Securities purchased under agreements to resell	0
Loans and lease financing receivables:	
Loans and leases held for sale	12,151
Loans and leases, net of unearned income	25,320,167
LESS: Allowance for loan and lease losses	504,570
Loans and leases, net of unearned income and allowance	24,815,597
Trading assets	276,613
Premises and fixed assets	496,912
Other real estate owned	5,689
Investments in unconsolidated subsidiaries and associated companies	166
Customers' liability to this bank on acceptances outstanding	71,078
Intangible assets:	
Goodwill	219,796
Other intangible assets	57,714
Other assets	1,721,465
Total assets	----- 41,928,707 -----

LIABILITIES

Deposits:	
In domestic offices	33,824,680
Noninterest-bearing	16,668,476
Interest-bearing	17,156,204
In foreign offices, Edge and Agreement subsidiaries, and IBFs	3,039,651
Noninterest-bearing	619,328
Interest-bearing	2,420,323
Federal funds purchased and securities sold under agreements to repurchase:	
Federal funds purchased in domestic offices	175,666
Securities sold under agreements to repurchase	105,302
Trading liabilities	117,522
Other borrowed money	212,089
Bank's liability on acceptances executed and outstanding	71,078
Subordinated notes and debentures	100,000
Other liabilities	545,451
Total liabilities	38,191,439

Minority interest in consolidated subsidiaries	0

EQUITY CAPITAL

Perpetual preferred stock and related surplus	0
Common stock	604,577
Surplus	1,126,015
Retained earnings	1,955,154
Accumulated other comprehensive income	51,522
Other equity capital components	0

Total equity capital	3,737,268

Total liabilities, minority interest, and equity capital	41,928,707

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM T-1

STATEMENT OF ELIGIBILITY UNDER
THE TRUST INDENTURE ACT OF 1939 OF A
CORPORATION DESIGNATED TO ACT AS TRUSTEE
Check if an Application to Determine Eligibility of
a Trustee Pursuant to Section 305(b)(2)

UNION BANK OF CALIFORNIA, NATIONAL ASSOCIATION
(Exact name of Trustee as specified in its charter)

94-0304228
I.R.S. Employer Identification No.

400 California Street
San Francisco, California 94104

(Address of principal executive offices) (Zip Code)

Sonia N. Flores
Union Bank of California, N.A.
475 Sansome Street
Corporate Trust - 12th Floor
San Francisco, CA 94111
(415) 296-6754
(Name, address and telephone number of agent for service)

AVISTA CORPORATION
(Issuer with respect to the Securities)

Delaware To Be Applied For

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

1411 East Mission Avenue
Spokane, Washington 99202

(Address of Principal Executive Offices) (Zip Code)

AVISTA CORPORATION GUARANTEE
WITH RESPECT TO AVA CAPITAL TRUST III PREFERRED SECURITIES
AND OBLIGATIONS WITH RESPECT TO SUCH PREFERRED SECURITIES
UNDER AN INDENTURE AND AN AMENDED AND RESTATED DECLARATION OF TRUST

FORM T-1

ITEM 1. GENERAL INFORMATION. Furnish the following information as to the Trustee.

- a) NAME AND ADDRESS OF EACH EXAMINING OR SUPERVISING AUTHORITY TO WHICH IT IS SUBJECT.
Comptroller of the Currency
Washington, D.C.
- b) WHETHER IT IS AUTHORIZED TO EXERCISE CORPORATE TRUST POWERS.
Trustee is authorized to exercise corporate trust powers.

ITEM 2. AFFILIATIONS WITH OBLIGOR. IF THE OBLIGOR IS AN AFFILIATE OF THE TRUSTEE, DESCRIBE EACH SUCH AFFILIATION.
None

IN ANSWERING THIS ITEM, THE TRUSTEE HAS RELIED, IN PART, UPON INFORMATION FURNISHED BY THE OBLIGOR AND THE UNDERWRITERS, AND THE TRUSTEE DISCLAIMS RESPONSIBILITY FOR THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. THE TRUSTEE HAS ALSO EXAMINED ITS OWN BOOKS AND RECORDS FOR THE PURPOSE OF ANSWERING THIS ITEM.

ITEMS 3-15 ITEMS 3-15 ARE NOT APPLICABLE BECAUSE TO THE BEST OF THE TRUSTEE'S KNOWLEDGE, THE OBLIGOR IS NOT IN DEFAULT UNDER ANY INDENTURE FOR WHICH THE TRUSTEE ACTS AS TRUSTEE.

ITEM 16. LIST OF EXHIBITS: LIST BELOW ALL EXHIBITS FILED AS A PART OF THIS STATEMENT OF ELIGIBILITY AND QUALIFICATION.

1. A copy of the Articles of Association of the Trustee.*
2. A copy of the certificate of authority of the Trustee to commence business.*
3. A copy of the certificate of authority of the Trustee to exercise corporate trust powers.*
4. A copy of the existing bylaws of the Trustee.*
5. A copy of each Indenture referred to in Item 4. Not applicable.
6. The consent of the Trustee required by Section 321(b) of the Trust Indenture Act of 1939. Attached as Exhibit 6.
7. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority. Attached as Exhibit 7.

* Exhibits 1 through 4 are incorporated by reference to T-1 as presented on S-4 Registration No. 333-103873 filed with the SEC.

NOTE

The answers to this statement insofar as such answers relate to what persons have been underwriters for any securities of the obligors within three years prior to the date of filing this statement, or what persons are owners of 10% or more of the voting securities of the obligors, or affiliates, are based upon information furnished to the Trustee by the obligors. While the Trustee has no reason to doubt the accuracy of any such information, it cannot accept any responsibility therefor.

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the Trustee, Union Bank of California, National Association, a national banking association organized and existing under the laws of the United States of America, has duly caused this statement of eligibility and qualification to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of San Francisco, State of California on the 10th day of March, 2004.

UNION BANK OF CALIFORNIA, N.A.

By: /s/ Sonia N. Flores

Vice President

EXHIBIT 6

CONSENT OF THE TRUSTEE
REQUIRED BY SECTION 321(b) OF THE ACT

March 10, 2004

Securities and Exchange Commission
Washington, D.C. 20549

Ladies and Gentlemen:

In connection with the qualification of a guarantee agreement between Avista Corporation and Union Bank of California, N.A. (the "Trustee"), the undersigned, in accordance with Section 321(b) of the Trust Indenture Act of 1939, as amended, hereby consents that reports of examinations of the undersigned by federal, state, territorial, or district authorities authorized to make such examinations may be furnished by such authorities to the Securities and Exchange Commission upon request therefor.

Sincerely,

Union Bank of California, N.A.

By: /s/ Sonia N. Flores

Corporate Trust Vice President

Consolidated Report of Condition of

Union Bank of California, National Association

of San Francisco in the State of California, at the close of business December 31, 2004, published in response to call made by the Comptroller of the Currency, under Title 12, United States Code, Section 161. Charter 21541

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