

# SECURITIES AND EXCHANGE COMMISSION

## FORM S-3

Registration statement for specified transactions by certain issuers

Filing Date: **1999-03-26**  
SEC Accession No. **0001047469-99-011640**

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### FILER

#### POGO PRODUCING CO

CIK:**230463** | IRS No.: **741659398** | State of Incorp.:**DE** | Fiscal Year End: **1231**  
Type: **S-3** | Act: **33** | File No.: **333-75105** | Film No.: **99574144**  
SIC: **1311** Crude petroleum & natural gas

Mailing Address  
*5 GREENWAY PLAZA SUITE  
2700  
P O BOX 2504  
HOUSTON TX 77046-0504*

Business Address  
*5 GREENWAY PLAZA STE  
2700  
P O BOX 2504  
HOUSTON TX 77046-0504  
7132975017*

#### POGO TRUST I

CIK:**1082507** | State of Incorp.:**DE** | Fiscal Year End: **1231**  
Type: **S-3** | Act: **33** | File No.: **333-75105-01** | Film No.: **99574145**

Mailing Address  
*POGO PRODUCING CO  
5 GREENWAY PLZ STE 2700  
HOUSTON TX 77046*

Business Address  
*POGO PRODUCING CO  
5 GREENWAY PLZ STE 2700  
HOUSTON TX 77046  
7132975017*

#### POGO TRUST II

CIK:**1082508** | State of Incorp.:**DE** | Fiscal Year End: **1231**  
Type: **S-3** | Act: **33** | File No.: **333-75105-02** | Film No.: **99574146**

Mailing Address  
*POGO PRODUCING CO  
5 GREENWAY PLZ STE 2700  
HOUSTON TX 77046*

Business Address  
*POGO PRODUCING CO  
5 GREENWAY PLZ STE 2700  
HOUSTON TX 77046  
7132975017*

AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON MARCH 26, 1999.

REGISTRATION NO. 333-

REGISTRATION NO. 333-

-01

REGISTRATION NO. 333-

-02

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM S-3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

POGO PRODUCING COMPANY  
POGO TRUST I  
POGO TRUST II

(Exact name of Registrants as specified in their charters)

<TABLE>

<S>

<C>

DELAWARE

74-1659398

DELAWARE

APPLIED FOR

DELAWARE

APPLIED FOR

(State or other jurisdiction of incorporation or  
organization)

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

5 GREENWAY PLAZA,  
SUITE 2700  
HOUSTON, TEXAS 77046  
(713) 297-5000  
(713) 297-4900 (FAX)

GERALD A. MORTON, ESQ.  
VICE PRESIDENT--LAW  
AND CORPORATE SECRETARY  
POGO PRODUCING COMPANY  
5 GREENWAY PLAZA, SUITE 2700  
HOUSTON, TEXAS 77046  
(713) 297-5017  
(713) 297-4970 (FAX)

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

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

</TABLE>

COPY TO:

Stephen A. Massad, Esq.  
Baker & Botts, L.L.P.  
3000 One Shell Plaza  
910 Louisiana  
Houston, Texas 77002-4995  
(713) 229-1234  
(713) 229-1522 (Fax)

Approximate date of commencement of proposed sale to the public: From time  
to time after this 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 being 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, please check the following box. /X/

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

If this Form is a post-effective amendment filed pursuant to Rule 462(c)  
under the Securities Act, please check the following box and list the Securities  
Act 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. / /

(continued on next page)

CALCULATION OF REGISTRATION FEE

<TABLE> <CAPTION>				
TITLE OF EACH CLASS OF SECURITIES TO BE REGISTERED	AMOUNT TO BE REGISTERED(1)	PROPOSED MAXIMUM OFFERING PRICE PER UNIT(1), (2), (3)	PROPOSED MAXIMUM AGGREGATE OFFERING PRICE(1), (2), (3)	AMOUNT OF REGISTRATION FEE
<S>	<C>	<C>	<C>	<C>
Senior Debt Securities and Subordinated Debt Securities (collectively, "Debt Securities") of Pogo Producing Company				
Preferred Stock (\$1.00 par value) of Pogo Producing Company ("Preferred Stock")				
Common Stock (\$1.00 par value) of Pogo Producing Company ("Common Stock") (4)				
Junior Subordinated Debt Securities of Pogo Producing Company for issuance directly to Pogo Trust I and Pogo Trust II ("Junior Subordinated Debt Securities")				
Preferred Trust Securities of Pogo Trust I and Pogo Trust II ("Preferred Securities")				
Guarantees of Preferred Securities of Pogo Trust I and Pogo Trust II by Pogo Producing Company ("Guarantees")				
TOTAL	\$250,000,000	100%	\$250,000,000	\$69,500
</TABLE>				

- (1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) and exclusive of accrued interest and dividends, if any. The aggregate initial offering price of all securities issued from time to time pursuant to this Registration Statement will not exceed \$250,000,000.00 or the equivalent thereof in foreign currencies, foreign currency units or composite currencies. Any securities registered hereunder may be sold separately or as units with other securities registered hereunder.
- (2) There are being registered hereunder such indeterminate number or amount of Debt Securities, Junior Subordinated Debt Securities, Preferred Stock and Common Stock of Pogo Producing Company and Preferred Securities of Pogo Trust I and Pogo Trust II as may from time to time be issued at indeterminate prices. Junior Subordinated Debt Securities may be issued and sold to Pogo Trust I and Pogo Trust II, in which event such Junior Subordinated Debt Securities may later be distributed to the holders of Preferred Securities upon a dissolution of Pogo Trust I and Pogo Trust II and the distribution of their assets.
- (3) Pogo Producing Company is also registering under this Registration Statement all other obligations that it may have with respect to Preferred Securities issued by Pogo Trust I and Pogo Trust II. No separate consideration will be received for the Guarantee or any other such obligations.
- (4) Pogo Producing Company is registering Common Stock solely for issuance upon conversion of any securities sold under this Registration Statement that are convertible into Common Stock.

THE REGISTRANTS HEREBY AMEND THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANTS 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 OF 1933, OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(A), MAY DETERMINE.

EXPLANATORY NOTE

The Registration Statement contains two forms of prospectuses to be used in connection with offerings of the following securities:

- (1) Common Stock, Debt Securities (consisting of Senior Debt Securities and Subordinated Debt Securities), and Preferred Stock. Common Stock is being registered solely for issuance upon conversion of any securities sold under this Registration Statement that are convertible into Common Stock.

(2) Preferred Securities of Pogo Trust I or Pogo Trust II, Junior Subordinated Debt Securities of Pogo Producing Company and the Guarantees by Pogo Producing Company of Preferred Securities issued by Pogo Trust I or Pogo Trust II.

SUBJECT TO COMPLETION, DATED MARCH 26, 1999

PROSPECTUS

\$250,000,000  
POGO PRODUCING COMPANY

Debt Securities  
Preferred Stock  
Common Stock

Pogo Producing Company  
5 Greenway Plaza, Suite 2700  
Houston, Texas 77046  
(713) 297-5000

<TABLE>

<S>  
CONSIDER CAREFULLY THE RISK FACTORS BEGINNING ON PAGE 6. The information 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. We will provide additional terms of our securities in one or more supplements to this Prospectus. You should read this Prospectus and the related Prospectus Supplement carefully before you invest in our securities. This Prospectus may not be used to offer and sell our securities unless accompanied by a Prospectus Supplement.  
</TABLE>

<C>  
THE OFFERING  
THE SECURITIES  
By this Prospectus, the Company may offer from time to time in one or more series:  
- our unsecured debt securities consisting of senior debt securities, subordinated debt securities, or other unsecured evidences of indebtedness (which may be convertible into our common stock)  
- shares of our preferred stock (which may be convertible into our common stock)  
The common stock trades on the New York Stock Exchange and the Pacific Stock Exchange under the symbol "PPP".  
RELATED OFFERING  
Related to this offering, Pogo Trust I and Pogo Trust II, subsidiaries of the Company, may offer by a separate Trust Prospectus preferred securities guaranteed by the Company, and the Company may offer junior subordinated debt securities. The separate Trust Prospectus is contained in the same Registration Statement filed with the Securities and Exchange Commission as contains this Prospectus. The aggregate initial offering price of the securities offered by this Prospectus and the Trust Prospectus will not exceed \$250,000,000.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED THESE SECURITIES OR DETERMINED IF THIS PROSPECTUS IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The date of this Prospectus is , 1999

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PROSPECTUS

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#### ABOUT THIS PROSPECTUS

This Prospectus is part of a Registration Statement filed by Pogo Producing Company ("we" or the "Company") with the Securities and Exchange Commission (the "SEC") using a "shelf" registration process that registers Debt Securities and Preferred Stock (any of which may be convertible into Common Stock) of the Company that may be sold under this Prospectus (the "Securities") and preferred securities of Pogo Trust I and Pogo Trust II and debt securities and guarantees of the Company that may be sold under a separate Trust Prospectus. The definitions of Common Stock and Preferred Stock are on page 12 of this Prospectus under "Description of Capital Stock" and the definition of Debt Securities is on page 15 of this Prospectus under "Description of Debt Securities." Under this shelf process, we may sell any combination of the securities described in this Prospectus or the related Trust Prospectus, either separately or in units, in one or more offerings up to an aggregate initial offering price of \$250,000,000. This Prospectus provides you with a general description of the Securities. Each time we sell Securities, we will provide a Prospectus Supplement that will contain specific information about the terms of that offering. The Prospectus Supplement may also add, update or change information contained in this Prospectus. You should read this Prospectus and the applicable Prospectus Supplement together with the additional information described under the heading "Where You Can Find More Information" below.

The Registration Statement that contains this Prospectus (including the exhibits to the Registration Statement) contains additional information about the Company and the Securities. That Registration Statement can be read at the SEC's web site or at the SEC's offices mentioned under the heading "Where You Can Find More Information."

#### WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and special reports, proxy statements and other information with the SEC. Our SEC filings are available to the public over the Internet at the SEC's web site at

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<http://www.sec.gov>. You may also read and copy any document we file with the SEC at its public reference facilities at 450 Fifth Street, N.W., Washington, D.C. 20549. You can also obtain copies of the documents at prescribed rates by writing to the Public Reference Section of the SEC at 450 Fifth Street, N.W., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference facilities.

#### INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

We "incorporate by reference" into this Prospectus the information we file with the SEC, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is an important part of this Prospectus and information that we subsequently file with the SEC will automatically update this Prospectus. We incorporate by reference the documents listed below and any filings we make with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") after the initial filing of the Registration Statement that contains this Prospectus and prior to the time that we sell all the Securities offered by this Prospectus:

- Our Annual Report on Form 10-K for the year ended December 31, 1998;
- The description of the Common Stock contained in our Registration Statement on Form 8-A, as may be amended from time to time to update that description;
- The descriptions of the Company's Rights associated with the Common Stock contained in our Registration Statement on Form 8-A, as may be amended from time to time to update that description.

You may request a copy of these filings (other than an exhibit to a filing unless that exhibit is specifically incorporated by reference into that filing) at no cost, by writing to or telephoning us at the following address:

Pogo Producing Company  
Corporate Secretary  
5 Greenway Plaza, Suite 2700  
Houston, Texas 77046  
(713) 297-5017

You should rely only on the information incorporated by reference or set forth in this Prospectus or the applicable Prospectus Supplement. We have not authorized anyone else to provide you with different information. We may only use this Prospectus to sell Securities if it is accompanied by a Prospectus Supplement. We are only offering these Securities in states where the offer is permitted. You should not assume that the information in this Prospectus or the applicable Prospectus Supplement is accurate as of any date other than the dates on the front of those documents.

#### THE COMPANY

The Company is an independent oil and gas exploration and production company, based in Houston, Texas. Incorporated in 1970, the Company has, in recent years, established a record of increasing its proven hydrocarbon reserves, principally through exploration, exploitation and development of its properties and the selective acquisition of additional interests in producing properties in which the Company already has an interest. Through a portfolio of domestic and international properties, the Company concentrates its efforts on a mix of both offshore and onshore opportunities which provide a balanced exposure to oil and natural gas production. In recent years, the Company has concentrated its efforts in selected areas where it believes that its expertise, competitive acreage position, or ability to quickly take advantage of new opportunities offer the possibility of relatively high rates of return. Domestically, the Company has an extensive Gulf of Mexico reserve and

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acreage position and is also active in the Permian Basin of southeast New Mexico and west Texas and in other selected areas of Texas and Louisiana. Internationally, the Company, through its subsidiary Thaipo Limited, owns an interest in the 734,000 acre Block B8/32 concession license in the Gulf of Thailand (the "Thailand Concession") and, through its subsidiary Pogo Canada, Ltd. Inc., also owns interests in approximately 142,000 gross acres in Canada.

Rutherford-Moran Oil Corporation, one of the parties to the joint operating agreement for the Thailand Concession under which Thaipo is currently the operator, has become a wholly owned subsidiary of Chevron Corporation. Chevron has also entered into an agreement to acquire a majority of the stock of Palang Sophon Limited (another party to that joint operating agreement). As a result of these transactions, Chevron owns or controls, directly or indirectly, 53.66% of the working interests in the Thailand Concession. Subject to approval by the government of Thailand, Thaipo has agreed to transfer operatorship to a subsidiary of Chevron on or about September 30, 1999.

#### BUSINESS STRATEGY

The Company's business strategy is to maximize profitability and shareholder value by:

- (1) increasing hydrocarbon production levels, leading to increased revenues, cash flow and earnings,
- (2) replacing and expanding its proven hydrocarbon reserves base,
- (3) maintaining appropriate levels of debt and interest, and controlling overhead and operating costs, and
- (4) expanding exploration and production activities into new and promising geographic areas consistent with Company expertise.

The principal executive offices of the Company are located at the following address:

Pogo Producing Company  
5 Greenway Plaza, Suite 2700  
Houston, Texas 77046  
(713) 297-5017

Additional information concerning the Company and its subsidiaries is included in the Company reports and other documents incorporated by reference in this Prospectus. See "Where you can Find More Information" and "Incorporation of Certain Documents by Reference."

#### FORWARD-LOOKING STATEMENTS

Certain of the statements contained or incorporated by reference in this Prospectus and the accompanying Prospectus Supplement are forward-looking

statements. The use of any of the words "anticipate," "estimate," "expect," "may," "project," "believe" and similar expressions are intended to identify uncertainties. Although the Company believes the expectations reflected in those forward-looking statements are reasonable, they do involve certain assumptions, risks and uncertainties, and the Company cannot assure that those expectations will prove to have been correct. The Company's actual results could differ materially from those anticipated in these forward-looking statements. The following are some of the factors that could cause actual results to differ from those expressed or implied in the forward-looking statements contained herein:

- the cyclical nature of the oil and natural gas industries
- uncertainties associated with the United States and worldwide economies

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- current and potential governmental regulatory actions in countries where the Company owns an interest
- substantial competitor production increases resulting in oversupply and declining prices
- the Company's ability to implement cost reductions
- the Company's ability to raise additional capital or sell assets
- operating interruptions (including leaks, explosions, fires, mechanical failure, unscheduled downtime, transportation interruptions, and spills and releases and other environmental risks)
- fluctuations in foreign currency exchange rates in areas of the world where the Company owns an interest, particularly Southeast Asia
- covenant restrictions in the Company's indebtedness
- the impact of the Year 2000 issue

Many of those factors are beyond the Company's ability to control or predict. Management cautions against putting undue reliance on forward-looking statements or projecting any future results based on such statements or present or prior earnings levels.

All subsequent written and oral forward-looking statements attributable to the Company and persons acting on its behalf are qualified in their entirety by the cautionary statements contained in this section and elsewhere in this Prospectus.

USE OF PROCEEDS

Except as otherwise described in any Prospectus Supplement, the Company anticipates that any net proceeds from the sale of Securities will be used for general corporate purposes, which may include, but are not limited to:

- repayments or refinancings of indebtedness
- working capital
- capital expenditures
- acquisitions and repurchases or redemptions of the Company's equity securities
- investment in short-term securities

RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth the Company's consolidated ratio of earnings to fixed charges for the periods as shown.

<TABLE>  
<CAPTION>

	YEAR ENDED DECEMBER 31,			
	1994	1995	1996	1997
<S> Ratio of earnings to fixed charges.....	<C> 5.1x	<C> 2.1x	<C> 4.6x	<C> 3.2x

<CAPTION>

1998  
-----  
<C>

<S>  
Ratio of earnings to fixed charges..... (1)

-----  
(1) Earnings are insufficient to cover fixed charges by \$80,230,000.

The ratio of earnings to fixed charges was computed by dividing earnings by fixed charges. For this purpose, earnings are defined as income before income taxes plus fixed charges excluding capitalized interest. Fixed charges consist of interest expense and the estimated interest component of rent expense.

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#### RISK FACTORS

YOUR INVESTMENT IN ANY OF THE SECURITIES INVOLVES CERTAIN RISKS. YOU SHOULD CAREFULLY CONSIDER THE FOLLOWING RISK FACTORS AND THOSE IN THE ACCOMPANYING PROSPECTUS SUPPLEMENT BEFORE DECIDING WHETHER AN INVESTMENT IN THAT SECURITY IS SUITABLE FOR YOU.

#### VOLATILITY OF OIL AND GAS MARKETS AFFECTS US

##### MARKET PRICES ARE VOLATILE

Our profitability and cash flow depend greatly on the market prices of oil and natural gas. Those market prices have historically been seasonal, cyclical and volatile. They depend on many factors, including weather, economic, political and regulatory conditions that we cannot control. Commencing in 1997, the average prices for our production have generally declined. Oil prices have reached lows that, on a historic inflation adjusted basis, are almost unprecedented. In the past, we have at times curtailed production to mitigate the effects of low market prices. We may do so again. The significant drop in oil and gas prices has had a serious adverse effect on our cash flow and continued low prices could seriously affect our operations and financial condition and could in some cases result in a further reduction in funds available under our bank credit agreement.

##### HEDGING TRANSACTIONS MAY NOT PREVENT LOSSES

We cannot predict future oil and gas prices with certainty. Accordingly, we sometimes execute contracts on a portion of our production to hedge against market price changes. In the past, we have not entered hedging transactions exceeding 50% of our total oil and gas production on an energy equivalent basis for any given period. Hedging transactions are intended to limit the negative effect of further price declines, but could also limit our participation in significant price increases for the covered period. We cannot be certain that hedging transactions will reduce the effect of any substantial declines in oil and gas prices. As of March 15, 1999, we were not a party to any natural gas futures contracts, crude oil swap agreements or other commodity hedging agreements.

#### WE ARE SUBJECT TO UNCERTAINTIES IN RESERVE ESTIMATES AND FUTURE NET REVENUES

There is substantial uncertainty in estimating quantities of proved reserves and projecting future production rates and the timing of development expenditures. No one can measure underground accumulations of oil and gas in an exact way. Accordingly, oil and gas reserve engineering requires subjective estimations of those accumulations. Estimates of other engineers might differ widely from those of our independent reserve engineers, Ryder Scott Company Petroleum Engineers ("Ryder Scott"). Accuracy of reserve estimates depends on the quality of available data and on engineering and geological interpretation and judgment. Ryder Scott may make material changes to reserve estimates based on the results of actual drilling, testing, and production. As a result, our reserve estimates often differ from the quantities of oil and gas we ultimately recover. Also, we make certain assumptions regarding future oil and gas prices, production levels, and operating and development costs that may prove incorrect. Any significant variance from these assumptions could greatly affect our estimates of reserves and future net revenues.

#### WE ARE SUBJECT TO OPERATING AND UNINSURED RISKS

We must continually acquire or explore for and develop new oil and natural gas reserves to replace those produced and sold. Our hydrocarbon reserves and revenues will decline if we are not successful in our drilling, acquisition or exploration activities. Although we have historically maintained our reserves base primarily through successful exploration and development operations, we cannot assure that future efforts will be similarly successful. Casualty risks and other operating risks could cause reserves and revenues to decline.

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#### WE ARE SUBJECT TO VARIOUS CASUALTY RISKS



Our onshore and offshore operations are subject to the following inherent casualty risks:

- blowouts, cratering, and explosions
- uncontrollable flows of oil, natural gas or well fluids
- fires
- pollution and other environmental risks
- hazards of marine and helicopter operations (capsizing, collision and adverse weather and sea conditions)

We could suffer substantial financial losses due to any of the following:

- injury or loss of life
- severe damage to and destruction of property and equipment
- pollution and other environmental damage
- suspension of operations

WE MAY NOT HAVE ENOUGH INSURANCE TO COVER SOME OPERATING RISKS

We carry insurance which we believe is in accordance with customary industry practices, but we are not fully insured against all casualty risks incident to our business.

WE ARE SUBJECT TO VARIOUS OTHER OPERATING RISKS

Numerous risks affect our drilling activities, including the risk of drilling non-productive wells or dry holes. The cost of drilling, completing and operating wells and of installing production facilities and pipelines is often uncertain. Also, our drilling operations could diminish or cease because of any of the following:

- title problems
- weather conditions
- noncompliance with governmental requirements
- shortages or delays in the delivery or availability of equipment or fabrication yards

Moreover, effective marketing of our natural gas production depends on a number of factors, such as the following:

- existing market supply of and demand for natural gas
- the proximity of our reserves to pipelines
- the available capacity of such pipelines
- government regulations

The marketing of oil and gas production similarly depends on the availability of pipelines and other transportation, processing and refining facilities, and the existence of adequate markets. As a result, even if hydrocarbons are discovered in commercial quantities, a substantial period of time may elapse before commercial production commences. If pipeline facilities in an area are insufficient, we may have to wait for the construction or expansion of pipeline capacity before we can market production from that area. See "--We face additional risks related to our operations in the Kingdom of Thailand."

WE DEPEND ON OTHER OPERATORS

Even on properties we do not operate, we try to maintain significant influence over the nature and timing of exploration and development activities to the extent we can. However, we have limited influence over operations on a significant percentage of our oil and gas properties, including control over the maintenance of safety and environmental standards. For those properties:

- operators could refuse to initiate exploration or development projects (in which case we may propose desired exploration or development activities)
- if we proceed with any of those projects the operator has refused to initiate, we may not receive any funding from the operator with respect to that project

- the operators may initiate exploration or development projects on a slower schedule than we prefer
- the operator may propose to drill more wells or build more facilities on a project than we have funds for, which may mean that we cannot participate in those projects or share in a substantial share of the revenues from those projects

Any of these events could significantly affect our anticipated exploration and development activities.

#### WE HAVE SUBSTANTIAL CAPITAL REQUIREMENTS

We have substantial anticipated capital requirements. Our ongoing capital requirements consist primarily of the following items:

- funding our 1999 capital and exploration budget
- other allocations for acquisition, development, production, exploration and abandonment of oil and gas reserves
- costs associated with our Thailand operations
- future dividend payments

From 1996 to 1998, we increased our capital and exploration expenditures from \$206.2 million to \$214.8 million. Our 1999 capital and exploration budget has been established by our Board of Directors at \$170 million (excluding purchased reserves and interest capitalized).

We plan to finance anticipated ongoing expenses and capital requirements with funds generated from the following sources:

- available cash and cash investments
- cash provided by operating activities
- funds available under our bank credit agreement after the application of proceeds from the notes offering
- our uncommitted bank line of credit and banker's acceptances
- capital we believe we can raise through debt and convertible preferred equity offerings
- asset sales

We believe the funds provided by these sources will be sufficient to meet our 1999 cash requirements. However, the uncertainties and risks associated with future performance and revenues, as described in this section, will ultimately determine our liquidity and ability to meet our anticipated capital requirements.

#### WE FACE SIGNIFICANT COMPETITION

The oil and gas industry is highly competitive. We compete with major oil companies, other independent oil and gas concerns and individual producers and operators. Many of these competitors have much greater financial and other resources than us. Moreover, the oil and gas industry competes with other industries in supplying the energy and fuel needs of industrial, commercial and other consumers. Increased competition causing oversupply or depressed prices could greatly affect our operations revenues.

#### WE ARE SUBJECT TO VARIOUS GOVERNMENT REGULATIONS AND ENVIRONMENTAL RISKS

##### WE ARE SUBJECT TO VARIOUS LEGAL LIMITATIONS

We and our subsidiaries are subject to various foreign and domestic laws and regulations on taxation, exploration and development, and environmental and safety matters in countries where we own or operate properties. Many laws and regulations require drilling permits and govern the spacing of wells, the prevention of waste, rates of production and other matters. These statutes and regulations, and any others that are passed by the jurisdictions where we have production could limit the total number of wells drilled or the total allowable production from successful wells, which could limit revenues.

##### WE ARE SUBJECT TO VARIOUS ENVIRONMENTAL LIABILITIES

We could incur liability to governments or third parties for any unlawful discharge of oil, gas or other pollutants into the air, soil or water, including

responsibility for remedial costs. We could potentially discharge oil or natural gas into the environment in any of the following ways:

- from a well or drilling equipment at a drill site
- leakage from storage tanks, pipelines or other gathering and transportation facilities
- damage to oil or natural gas wells resulting from accidents during normal operations
- blowouts, cratering or explosions

Environmental discharges may move through soil to water supplies or adjoining properties, giving rise to additional liabilities. Some laws and regulations could impose liability for failure to notify the proper authorities of a discharge and other failures to comply with those laws. Environmental laws may also affect the costs of our acquisitions of properties. We do not believe that its environmental risks are materially different from those of comparable companies in the oil and gas industry. However, we cannot assure that environmental laws will not, in the future, result in decreased production, substantially increased costs of operations or other adverse effects to our combined operations and financial condition. Pollution and similar environmental risks generally are not fully insurable.

#### OUR FOREIGN OPERATIONS SUBJECT US TO ADDITIONAL RISKS

Our ownership and operations in Thailand, Canada, and any other foreign areas where we may choose to do business, are subject to the various risks inherent in foreign operations. These risks may include the following:

- currency restrictions and exchange rate fluctuations
- loss of revenue, property and equipment due to expropriation, nationalization, war, insurrection and other political risks
- risks of increases in taxes and governmental royalties
- renegotiation of contracts with governmental entities and quasi-governmental agencies

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- changes in laws and policies governing operations of foreign-based companies
- other uncertainties arising out of foreign government sovereignty
- inability to fund foreign operations from the United States

United States laws and policies on foreign trade, taxation and investment may also adversely affect international operations. In addition, if a dispute arises from foreign operations, foreign courts may have exclusive jurisdiction over the dispute, or we may not be able to subject foreign persons to the jurisdiction of United States courts. We seek to manage these risks by concentrating our international operations in areas where we believe that the existing government is stable and favorably disposed towards United States oil and gas companies.

#### WE FACE ADDITIONAL RISKS RELATED TO OUR OPERATIONS IN THE KINGDOM OF THAILAND

Additional risks and uncertainties affect the marketing and sales of hydrocarbons from our Block B8/32 Concession located in the Gulf of Thailand (the "Thailand Concession"). We expect that all the natural gas we produce from the Thailand Concession will be sold to The Petroleum Authority of Thailand ("PTT"), which maintains a monopoly over gas transmission and distribution in Thailand. Two major natural gas pipelines owned and operated by PTT cross the Thailand Concession. These pipelines may become full due to production from the Tantawan Field, the Benchamas Field and other fields in the Gulf of Thailand. We cannot assure, even if we are successful in exploration efforts, that we will be able to successfully and profitably transport, process, refine and market the oil and gas we produce.

PTT has constructed a lateral pipeline from its main pipeline to the Tantawan production area and has agreed to take the gas produced from that area pursuant to a gas sales agreement (the "Gas Sales Agreement"). If the Company and our joint venture partners in the Tantawan Field fail to deliver the required reserves or production rates of natural gas at a specified quality level under the Gas Sales Agreement, we may be obligated to contribute to PTT's costs for the construction of the lateral pipeline. Also, if the Tantawan joint venturers fail to deliver the minimum daily rates under the Gas Sales Agreement, PTT has the right to take from subsequent deliveries an amount equal to the quantity of undelivered gas at 75% of the contract price. Commencing on October 1, 1998, we and our joint venture partners have been delivering less natural gas

than is being nominated by PTT under the Gas Sales Agreement. We have not been able to meet our contractual minimum delivery obligations for a number of reasons, including declining production from existing wells, the need to shut-in existing wells while drilling or working over additional wells from the same platform and our decision to emphasize oil and condensate production from the Tantawan Field. We anticipate that we will suffer a penalty on a portion of our future production. We are currently unable to predict the amount of any such penalty, but we believe the amount could be material. Thai governmental royalties, other governmental charges and income taxes also affect cash flow from our operations. We expect all gas sales to be carried out in Baht, the Thai currency. Fluctuations in the exchange rate between Thai Baht and U.S. dollars could also adversely affect the anticipated profits of our operations in Thailand.

#### SOUTHEAST ASIA ECONOMIC ISSUES AFFECT US

We conduct a substantial portion of our oil and gas production and sales in Southeast Asia. In recent months, Southeast Asia in general, and the Kingdom of Thailand in particular, have experienced severe economic difficulties, including sharply reduced economic activity, illiquidity, highly volatile foreign currency exchange rates and unstable stock markets. The Thailand government and other governments in the region are currently acting to address these issues. However, the economic difficulties in Thailand and the volatility of the Thai Baht against the U.S. dollar will continue to have a material impact on our Thailand operations and the prices we receive for our oil and gas production there. In early July 1997, the government of the Kingdom of Thailand announced that the value of the

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Baht would be set against the dollar and other currencies under a "managed float" program arrangement. This led to a substantial decline in value of the Thai Baht compared to the U.S. dollar, resulting in our experiencing foreign currency transaction losses during 1997. During 1998, the value of the Thai Baht generally strengthened against the U.S. dollar, resulting in our experiencing foreign currency transaction gains. However, we cannot predict what the Thai Baht to dollar exchange rate may be in the future. Moreover, we anticipate that this exchange rate will remain volatile.

#### LIQUIDITY AND CASH FLOW PROBLEMS OF OUR PARTNERS MAY AFFECT US

Due to the recent decline in oil and gas prices, many of our partners, particularly the smaller ones, are experiencing liquidity and cash flow problems. These problems may lead to their attempting to delay or slow down the pace of drilling or project development in order to conserve cash, to a point that we believe is detrimental to the project. In most cases, we have the ability to influence the pace of development through our joint operating agreements. Some partners may be unwilling or unable to pay their share of the costs of projects as they become due. At worst, a partner may declare bankruptcy and refuse or be unable to pay its share of the costs of a project. We would then be required to pay this partner's share of the project costs. In most instances, we believe that we are contractually protected from such an event through our ability to take over the non-paying partner's share of the project and by applicable oil and gas lien laws and bankruptcy laws. We believe that we would ultimately recover any sums that we are owed by non-paying partners that do not meet their share of the costs of a project in a timely fashion.

#### WE HAVE YEAR 2000 RISKS

Many existing computer programs and components were designed and developed to use a two-digit field to indicate the year in an applicable date field, which could result from the improper processing of dates for years after 1999. This issue is commonly known as the "Year 2000 Issue." The Year 2000 Issue is a broad business issue, which could affect financial and business applications as well as automated systems and instrumentation of ours and third parties with whom we do business. There can be no guarantee that third parties of business importance to us will successfully reprogram or replace, and test, all of their own computer hardware, software and process control systems to ensure such systems are Year 2000 ready. Failure by us, third parties of business importance to us and/or other constituents such as governments to become Year 2000 ready on a timely basis could have a material adverse effect on our financial position and results of operations.

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#### DESCRIPTION OF CAPITAL STOCK

##### AUTHORIZED AND OUTSTANDING CAPITAL STOCK

The authorized capital stock of the Company consists of 100,000,000 shares of Common Stock, par value \$1.00 per share ("Common Stock"), of which 40,135,311 shares were issued and outstanding as of March 5, 1999; and 2,000,000 shares of Preferred Stock, par value \$1.00 per share ("Preferred Stock"), of which no

shares are issued or outstanding. The following summary description of the capital stock of the Company is qualified in its entirety by reference to the Company's Restated Certificate of Incorporation and Bylaws, copies of which are filed as exhibits to documents filed with the SEC and which are available upon request.

#### COMMON STOCK

Subject to any preferential rights of any outstanding shares of Preferred Stock, the holders of Common Stock are entitled to such dividends as may be declared from time to time in the discretion of the Company's Board of Directors out of funds legally available therefor. Holders of Common Stock are entitled to share ratably in the net assets of the Company upon liquidation after payment or provision for all liabilities and any preferential liquidation rights of any Preferred Stock then outstanding. The rights of holders of Common Stock are subject to the rights of holders of any Preferred Stock which may be issued in the future. The holders of Common Stock have no pre-emptive rights to purchase additional shares of capital stock of the Company. Shares of Common Stock are not subject to any redemption or sinking fund provisions and are not convertible into any other securities of the Company. All outstanding shares of Common Stock are validly issued, fully paid and non-assessable.

The holders of shares of Common Stock are entitled to one vote for each share held on all matters submitted to a vote of holders of Common Stock. Common Stock does not have cumulative voting rights, which means that the holders of a majority of the shares of Common Stock outstanding can elect all the directors standing for election at any given time if they choose to do so. In such event, the holders of the remaining shares will not be able to elect any directors.

#### PREFERRED STOCK

The Company's Board of Directors is empowered, without approval of the stockholders, to cause shares of Preferred Stock to be issued in one or more series, with the number of shares of each series and the rights, preferences and limitations of each series to be determined by it. Among the specific matters that may be determined by the Company's Board of Directors are the description and number of shares to constitute each series, the annual dividend rate, whether such dividends shall be cumulative, the time and price of redemption and the liquidation preference applicable to the series, whether the series will be subject to the operation of a "sinking" or "purchase" fund and, if so, the terms and provisions thereof, whether the shares of such series shall be convertible into shares of any other class or classes and the terms and provisions of such conversion rights, and the voting powers, if any, of the shares of such series. The Company's Board of Directors may change the designation, rights, preferences, descriptions and terms of, and the number of shares in, any series of which no shares have theretofore been issued.

The issuance of one or more series of Preferred Stock could adversely affect the voting power of the holders of Common Stock and could have the effect of discouraging or making more difficult any attempt by a person or group to obtain control of the Company.

The Board has reserved for issuance pursuant to the Stockholder Rights Plan described below a total of 1,000,000 shares of Series A Preferred Stock. No shares of Series A Preferred Stock have been issued by the Company at the date hereof.

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#### LISTINGS

The Common Stock is traded on the New York Stock Exchange and the Pacific Stock Exchange under the symbol "PPP".

#### TRANSFER AGENT AND REGISTRAR

The Transfer Agent and Registrar for the Common Stock is Harris Trust Company of New York, New York.

#### STOCKHOLDER RIGHTS PLAN

The Company has a Stockholder Rights Plan pursuant to which one preferred share purchase right (a "Right") is attached to each outstanding share of Common Stock. The Rights become exercisable under certain circumstances, including in the event that any person or group (an "Acquiring Person") becomes the beneficial owner of 20% or more of the outstanding Common Stock, subject to certain exceptions. Each Right entitles the registered holder to purchase from the Company one one-hundredth of a share of Series A Preferred Stock at an exercise price of \$80, subject to adjustment under certain circumstances. Upon the occurrence of certain events specified in the Stockholder Rights Plan, each holder of a Right (other than the Acquiring Person) will have the right, upon exercise of such Right, to receive that number of shares of Common Stock (or, in certain circumstances, cash, property or other securities) that, at the time of

the transaction, would have a market value of two times the exercise price of the Right. Rights are redeemable by action of the Board of Directors for \$0.01 per Right at any time prior to the tenth day after a person or group becomes an Acquiring Person. The Stockholder Rights Plan and the Rights expire in April 2004.

#### DELAWARE LAW AND CERTAIN CHARTER AND BYLAW PROVISIONS

Pursuant to provisions of the General Corporation Law of the State of Delaware ("DGCL"), the Company has included in its Restated Certificate of Incorporation a provision that, to the fullest extent permitted by the DGCL, the Company's directors will not be liable for monetary damages for breach of their fiduciary duty of care to the Company and its stockholders. The Restated Certificate of Incorporation provides that directors of a company will not be personally liable for monetary damages for breach of their fiduciary duties as directors, except for liability (1) for any breach of their duty of loyalty to the Company or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) under Section 174 of the DGCL (unlawful payments of dividends or unlawful stock repurchases or redemptions), or (4) for any transaction from which the director derived an improper personal benefit. This provision also does not affect a director's responsibilities under any other laws, such as the federal securities laws or state or federal environmental laws.

The Company's Bylaws also contain provisions that require the Company to indemnify its directors, officers, employees or other agents to the fullest extent permitted by the DGCL, and to advance expenses to its officers and directors as incurred. In addition, the Company has in place employment agreements with certain of its officers providing coverage that is substantially identical to the indemnification provisions in the Bylaws.

#### CERTAIN ANTI-TAKEOVER PROVISIONS

The provisions of the Company's Restated Certificate of Incorporation summarized in the succeeding paragraphs may be deemed to have an anti-takeover effect and may delay, defer or prevent a tender offer or takeover attempt that a stockholder might consider in such stockholder's best interest, including those attempts that might result in a premium over the market price for the shares of Common Stock held by stockholders.

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The affirmative vote of the holders of at least 80% of the outstanding shares of Common Stock is required (1) to approve a merger or similar reorganization or certain other transactions involving the Company if the other party to such transaction already beneficially owns 5% or more of the outstanding Company Common Stock and the Board of Directors of the Company has not approved the transaction prior to the time such other party becomes a 5% beneficial owner; (2) to approve an amendment to the Company's Restated Certificate of Incorporation to alter or change the provision establishing a "classified" Board of Directors, elected approximately one-third annually; and (3) to amend the foregoing and certain other provisions of the Restated Certificate of Incorporation.

The Company's Board of Directors is divided into three classes having staggered terms, with approximately one-third of the directors being elected annually for a term of three years. The Company's capital stock has noncumulative voting rights, meaning that the holders of more than 50% of the voting power of the shares voting for the election of directors can elect 100% of the directors if they choose to do so. In such event, the holders of the remaining less-than-50% of the voting power of the shares voting for the election of directors will not be able to elect any directors.

Pursuant to the Company's Restated Certificate of Incorporation, the Board of Directors by resolution may establish one or more additional series of Preferred Stock having such number of shares, designation, relative voting rights, dividend rates, liquidation and other rights, preferences and limitations as may be fixed by the Board of Directors of the Company without any further stockholder approval. Such rights, preferences, privileges and limitations as may be established could have the effect of impeding or discouraging the acquisition of control of the Company. See "--Stockholder Rights Plan."

The Company's Restated Certificate of Incorporation and Bylaws further provide that (1) stockholders may act only at an annual or special meeting of stockholders and may not act by written consent; and (2) special meetings of stockholders cannot be called by stockholders.

The Company's Bylaws establish advance notice procedures with regard to the nomination, other than by or at the direction of the Company's Board of Directors or a committee thereof, of candidates for election as directors and with regard to certain matters to be brought before an annual meeting of stockholders of the Company. These procedures provide that the notice of

proposed stockholder nominations for the election of directors must be timely given in writing to the Secretary of the Company prior to the meeting at which directors are to be elected. The procedures also provide that at an annual meeting, and subject to any other applicable requirements, only such business may be conducted as has been brought before the meeting by, or at the direction of, the Company's Board of Directors or by a stockholder who has given timely prior written notice to the Secretary of the Company of such stockholder's intention to bring such business before the meeting. In all cases, to be timely, notice must be received at the principal executive offices of the Company not less than 80 days nor more than 110 days prior to the meeting (or if fewer than 90 days' notice or prior public disclosure of the meeting date is given or made by the Company, not later than the 10th day following the day on which the notice was mailed or such public disclosure was made). The notice must contain certain information specified in the Bylaws.

The Company is a Delaware corporation and is subject to Section 203 of the DGCL. The following summary of Section 203 does not purport to be complete and is qualified in its entirety by reference thereto. In general, Section 203 prevents an "interested stockholder" (defined generally as a person owning 15% or more of a corporation's outstanding voting stock) from engaging in a "business combination" (as defined) with a Delaware corporation for three years following the date such person became an interested stockholder unless (1) before such person became an interested stockholder, the board of directors of the corporation approved the transaction in which the interested stockholder became an interested stockholder or approved the business combination; (2) upon consummation of the transaction that resulted in the interested stockholder's becoming an interested stockholder, the

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interested stockholder owns at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced (excluding stock held by directors who are also officers of the corporation and by employee stock plans that do not provide employees with the rights to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer); or (3) following the transaction in which such person became an interested stockholder, the business combination is approved by the board of directors of the corporation and authorized at a meeting of stockholders by the affirmative vote of the holders of two-thirds of the outstanding voting stock of the corporation not owned by the interested stockholder. Under Section 203, the restrictions described above also do not apply to certain business combinations proposed by an interested stockholder following the announcement or notification of one of certain extraordinary transactions involving the corporation and a person who had not been an interested stockholder during the previous three years or who became an interested stockholder with the approval of a majority of the corporation's directors, if such extraordinary transaction is approved or not opposed by a majority of the directors who were directors prior to any person becoming an interested stockholder during the previous three years or were recommended for election or elected to succeed such directors by a majority of such directors.

#### DESCRIPTION OF DEBT SECURITIES

The "Debt Securities" that may be sold under this Prospectus include unsecured senior debt securities (the "Senior Debt Securities") and unsecured subordinated debt securities (the "Subordinated Debt Securities"). The following description of the Debt Securities contains some of the general terms and provisions of the Debt Securities to which any Prospectus Supplement may relate (the "Offered Debt Securities"). The particular terms of the Offered Debt Securities and the extent to which those general provisions may apply will be described in a Prospectus Supplement relating to the Offered Debt Securities.

The Debt Securities will be general unsecured obligations of the Company. The Senior Debt Securities will be issued under an Indenture (the "Senior Indenture") between the Company and a trustee under the Senior Indenture (the "Senior Trustee"), and will rank PARI PASSU with all other unsecured and unsubordinated debt of the Company. Subordinated Debt Securities will be issued under an Indenture (the "Subordinated Indenture") between the Company and a trustee under the Subordinated Indenture (the "Subordinated Trustee"), and will rank junior to all Senior Indebtedness (as defined below) of the Company (including any Senior Debt Securities) that may be outstanding from time to time. The Senior Indenture and the Subordinated Indenture are sometimes hereinafter referred to individually as an "Indenture" and collectively as the "Indentures," and the Senior Trustee and the Subordinated Trustee are sometimes hereinafter referred to individually as a "Trustee" and collectively as the "Trustees." The following description does not purport to be complete. It is qualified in its entirety by reference to the text of the form of Senior Indenture and the form of Subordinated Indenture, copies of which are filed as exhibits to this Registration Statement and may be inspected in the same manner as set forth under "Where You Can Find More Information." Certain terms defined in the Indentures are capitalized herein.

#### PROVISIONS APPLICABLE TO BOTH SENIOR AND SUBORDINATED DEBT SECURITIES



The Indentures do not limit the aggregate principal amount of Debt Securities that can be issued thereunder and provide that Debt Securities may be issued from time to time thereunder in one or more series, each in an aggregate principal amount authorized by the Company prior to issuance. The Indentures do not limit the amount of other unsecured indebtedness or securities that may be issued by the Company.

Unless otherwise indicated in a Prospectus Supplement, the Debt Securities will not benefit from any covenant or other provision that would afford Holders of the Debt Securities special protection in the event of a highly leveraged transaction involving the Company or that would give holders of the Debt Securities the right to require the Company to repurchase their securities in the event of a decline in the credit rating of the Company's debt securities resulting from a takeover, recapitalization or similar restructuring or otherwise.

Refer to the Prospectus Supplement for the following terms of the Offered Debt Securities: (1) the title and aggregate principal amount of the Offered Debt Securities; (2) whether the Offered Debt Securities will be issued in the form of one or more global securities and whether those global securities will be issued in temporary global form or permanent global form, and if so, whether beneficial owners of interests in any such global security may exchange such interests for physical securities, and the initial depository for any global security; (3) the date or dates on which the principal of and premium, if any, on the Offered Debt Securities are payable or the method of determination thereof; (4) the rate or rates, or the method of determination thereof, at which the Offered Debt Securities will bear interest, if any; (5) whether and under what circumstances Additional Amounts with respect to the Offered Debt Securities will be payable; (6) the date or dates from which such interest will accrue; (7) the Interest Payment Dates on which such interest will be payable and the record date for the interest payable on any Offered Debt Securities on any Interest Payment Date; (8) the Person to whom any interest on the Offered Debt Securities will be payable; (9) the place or places where the principal of, premium (if any) and interest and any Additional Amounts with respect to the Offered Debt Securities will be payable; (10) the period or periods within which, the price or prices at which and the terms and conditions upon which Offered Debt Securities may be redeemed, in whole or in part, at the option of the Company, if the Company is to have that option; (11) the obligation, if any, of the Company to redeem, purchase or repay Offered Debt Securities pursuant to any sinking fund or analogous provisions or at the option of a holder thereof and the period or periods within which, the price or prices (whether denominated in cash, securities or otherwise) at which and the terms and conditions upon which Offered Debt Securities will be redeemed, purchased or repaid in whole or in part pursuant to such obligation; (12) if other than denominations of \$1,000 and any integral multiple thereof, the denomination in which the Offered Debt Securities will be issuable; (13) the currency or currencies (including composite currencies), if other than U.S. dollars, in which payment of principal, premium (if any) and interest on and any Additional Amounts with respect to the Offered Debt Securities will be payable; (14) if such payments are to be payable, at the election of the Company or a holder thereof, in a currency or currencies (including composite currencies) other than that in which the Offered Debt Securities are stated to be payable, the currency or currencies (including composite currencies) in which such payments as to which such election is made will be payable, and the periods within which and the terms and conditions upon which such election is to be made; (15) if the amount of such payments may be determined with reference to any commodities, currencies or indices, values, rates or prices or any other index or formula, the manner in which such amounts will be determined; (16) if other than the entire principal amount thereof, the portion of the principal amount of Offered Debt Securities that will be payable upon declaration of acceleration of the maturity thereof; (17) any additional means of satisfaction and discharge of the applicable Indenture and any additional conditions or limitations to discharge with respect to the Offered Debt Securities pursuant to the applicable Indenture or any modifications of or deletions from such conditions or limitations; (18) any deletions or modifications of or additions to the Events of Default or covenants of the Company pertaining to the Offered Debt Securities; (19) any restrictions or other provisions with respect to the transfer or exchange of Offered Debt Securities; (20) if the Offered Debt Securities are to be convertible into or exchangeable for Capital Stock, other debt securities (including Debt Securities), warrants, other equity securities or any other securities or property of the Company or any other Person, at the option of the Company or the holder or upon the occurrence of any condition or event,

the terms and conditions for such conversion or exchange; and (21) any other terms of the Offered Debt Securities.



The Debt Securities will be issued in registered form. No service charge will be made for any registration of transfer or exchange of the Debt Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Some of the Company's operating income and cash flow is generated by its subsidiaries. As a result, funds necessary to meet the Company's debt service obligations are provided in part by distributions or advances from its subsidiaries. Under certain circumstances, contractual and legal restrictions, as well as the financial condition and operating requirements of the Company's subsidiaries, could limit the Company's ability to obtain cash from its subsidiaries for the purpose of meeting its debt service obligations, including the payment of principal and interest on Debt Securities. The claims of creditors of the subsidiaries will effectively have priority with respect to the assets and earnings of such companies over the claims of creditors of the Company, including the holders of Debt Securities.

Offered Debt Securities may be sold at a discount (which may be substantial) below their stated principal amount bearing no interest or interest at a rate that at the time of issuance is below market rates. Any material United States Federal income tax consequences and other special considerations applicable thereto will be described in the Prospectus Supplement relating to any such Offered Debt Securities.

If any of the Offered Debt Securities is sold for any foreign currency or currency unit (including a composite currency) or if the principal, premium (if any) or interest on or any Additional Amounts with respect to any of the Offered Debt Securities is payable in any foreign currency or currency unit, the restrictions, elections, tax consequences, specific terms and other information with respect to such Offered Debt Securities and such foreign currency or currency unit will be set forth in the Prospectus Supplement relating thereto.

#### CONSOLIDATION, MERGER AND SALE OF ASSETS

The Indentures provide that the Company will not, in any single transaction or series of transactions, consolidate with or merge into any Person, or sell, lease, convey, transfer or otherwise dispose of all or substantially all of its assets to any Person, unless: (1) either (a) the Company shall be the continuing corporation or (b) the Person (if other than the Company) formed by such consolidation or into which the Company is merged, or to which such sale, lease, conveyance, transfer or other disposition shall be made, is organized and validly existing under the laws of the United States of America, any political subdivision thereof or any state thereof or the District of Columbia, and shall expressly assume, by a supplemental indenture, the due and punctual payment of the principal of (and premium, if any) and interest on and Additional Amounts with respect to all the Debt Securities and the performance of the Company's covenants and obligations under such Indenture and the Debt Securities; (2) immediately after giving effect to such transaction or series of transactions, no default or Event of Default shall have occurred and be continuing or would result therefrom; and (3) the Company delivers to the Trustee an officer's certificate stating that such transaction and the supplemental indenture with respect to that transaction comply with the requirements of the Indenture and an Opinion of Counsel stating that the requirements in clause (1) of this paragraph have been complied with.

#### EVENTS OF DEFAULT

Unless otherwise provided with respect to any series of Debt Securities, the following are Events of Default under each Indenture with respect to the Debt Securities of such series issued under such Indenture: (1) default by the Company for 90 days in payment of any interest or any Additional

Amounts with respect to any Debt Securities of such series; (2) default by the Company in the payment of (a) any principal of any Debt Securities of such series at its maturity or (b) premium (if any) on any Debt Securities of such series when the same becomes due and payable; (3) default by the Company for 90 days in the deposit of any sinking fund payment, when and as due by the terms of a Debt Security of such series; (4) default by the Company in compliance with any of its other covenants or agreements in, or provisions of, the Debt Securities of such series or the applicable Indenture (other than an agreement, covenant or provision that has expressly been included in such Indenture solely for the benefit of one or more series of Debt Securities other than that series) which shall not have been remedied within 90 days after written notice by the Trustee or by the holders of at least 25% in principal amount of the then outstanding Debt Securities affected by such default; (5) certain events involving bankruptcy, insolvency or reorganization of the Company; and (6) any other Event of Default provided with respect to Debt Securities of that series. The Indentures provide that the Trustee may withhold notice to the holders of the Debt Securities of any default or Event of Default (except in payment of principal of, premium (if any) and interest on and Additional Amounts or any sinking fund installment with respect to Debt Securities of such series) if the

Trustee considers it in the interest of the holders of such Debt Securities to do so.

Each Indenture provides that if an Event of Default with respect to any Debt Securities of any series at the time outstanding occurs and is continuing (other than an Event of Default under (5) above), the applicable Trustee or the holders of at least 25% in principal amount of the then outstanding Debt Securities of the series affected by such default (or in the event of a default pursuant to (5) above, 25% in principal amount of the securities affected) may declare the principal of and accrued and unpaid interest on all then outstanding Debt Securities of such series or of all series affected, as the case may be, to be due and payable. Upon such a declaration, the amounts due and payable on such Debt Securities will be due and payable immediately. If an event of default pursuant to (5) above occurs, then the principal of and accrued and unpaid interest on all then outstanding Debt Securities shall IPSO FACTO become immediately due and payable without any declaration, notice or other act on the part of the Trustee or any holder. Under certain circumstances, the holders of a majority in principal amount of the outstanding Debt Securities of the series affected by such default or all series, as the case may be, may rescind any such acceleration and its consequences.

Each Indenture provides that no holder of a Debt Security of any series may pursue any remedy under such Indenture unless: (1) the holder gives the applicable Trustee written notice of a continuing Event of Default with respect to such series, (2) the holders of at least 25% in principal amount of the then outstanding Debt Securities of such series make a written request to the applicable Trustee to pursue such remedy, (3) such holder or holders offer to the applicable Trustee indemnity reasonably satisfactory to such Trustee, (4) the Trustee shall have failed to act for a period of 60 days after receipt of such notice and offer of indemnity and (5) during such 60-day period, the holders of a majority in principal amount of the Debt Securities of that series do not give such Trustee a direction inconsistent with the request; however, such provision does not affect the right of a holder of a Debt Security to sue for enforcement of any overdue payment thereon.

Each Indenture provides that the holders of a majority in principal amount of the then outstanding Debt Securities of a series or of all series affected, as the case may be, may direct the time, method and place of conducting any proceeding for any remedy available to the applicable Trustee or exercising any trust or power conferred on it not relating to or arising under an Event of Default, subject to certain limitations specified in such Indenture. Each Indenture requires the annual filing by the Company with the applicable Trustee of a written statement as to compliance with the covenants contained in such Indenture.

#### MODIFICATION AND WAIVER

Modifications and amendments of each Indenture or the Debt Securities may be made by the Company and the applicable Trustee with the consent of the Holders of a majority in principal amount of the outstanding Debt Securities of all series affected by such amendment (acting as one class) under the applicable Indenture; PROVIDED, HOWEVER, that no such modification or amendment, supplement or waiver, may, without the consent of each Holder of an outstanding Debt Security so affected, (1) reduce the amount of Debt Securities whose holders must consent to an amendment, supplement or waiver; (2) reduce the rate of or change the time for payment of interest, including default interest, on any Debt Security; (3) reduce the principal of or premium on, or change the stated maturity of any Debt Security; (4) reduce the premium, if any, payable upon the redemption of any Debt Security or change the time at which any Debt Security may or shall be redeemed; (5) change any obligation of the Company to pay Additional Amounts with respect to any Debt Security; (6) make any Debt Security payable in money other than that stated in the Debt Security; (7) impair the right to institute suit for the enforcement of any payment of principal of, premium (if any) or interest on or any Additional Amounts with respect to any Debt Security; (8) make any change in the percentage of principal amount of Debt Securities necessary to waive compliance with certain provisions of the applicable Indenture; or (9) waive a continuing Default or Event of Default in the payment of principal of, premium (if any) or interest on or Additional Amounts with respect to the Debt Securities. In addition, in the case of the Subordinated Debt Securities, no modification or amendment may be made to the Subordinated Indenture with respect to the subordination of any Subordinated Debt Security in a manner adverse to the Holder thereof without the consent of the Holder of each Subordinated Debt Security then outstanding affected thereby. The Indentures provide that amendments and supplements to, or waivers of any provision of, such Indenture may be made by the Company and the Trustee without the consent of any holders of Debt Securities in certain circumstances, including, among other things, (a) to cure any ambiguity, omission, defect or inconsistency, (b) to provide for the assumption of the obligations of the Company under such Indenture upon the merger, consolidation or sale or other disposition of all or substantially all of the assets of the Company, (c) to provide for uncertificated Debt Securities in addition to or in place of

certificated Debt Securities, or to provide for the issuance of bearer Debt Securities (with or without coupons), (d) to secure any series of Debt Securities or to add guarantees of any series of Debt Securities, (e) to comply with any requirement in order to effect or maintain the qualification of the Indenture under the Trust Indenture Act of 1939, or (f) to make any change that does not adversely affect any outstanding Debt Securities of any series in any material respect.

The Indentures provide that the Holders of a majority in principal amount of the then outstanding Debt Securities of any series or of all series (acting as one class) may waive any existing or past default or Event of Default with respect to such series or all series, as the case may be, except: (1) in the payment of the principal of, or premium (if any) or interest on or any Additional Amounts with respect to any Debt Securities or (2) in respect of a provision that under the proviso to the prior paragraph cannot be amended or supplemented without the consent of each Holder affected.

#### DEFEASANCE

The Indentures provide that the Company may, at its option, elect: (1) to have all of the obligations of the Company discharged with respect to the Debt Securities (except for certain obligations to register the transfer or exchange of Debt Securities, replace stolen, lost or mutilated Debt Securities or maintain paying agencies and hold moneys for payment in trust) ("legal defeasance") or (2) to have its obligations terminated with respect to certain restrictive covenants of the Indenture ("covenant defeasance"), in which event certain Events of Default will no longer constitute Events of Default with respect to any Debt Securities, upon the deposit with the Trustee, in trust, of money or U.S. Government Obligations, or a combination thereof, which through the payment of interest thereon and principal thereof in accordance with their terms will provide money in an

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amount sufficient to pay all the principal of (and premium, if any, on) and interest on such Debt Securities on the dates such payments are due in accordance with the terms of the Debt Securities on their stated maturity or any redemption date. The Company is required to deliver to the Trustee an Opinion of Counsel to the effect that the deposit and related defeasance would not cause the Holders of the Debt Securities to recognize income, gain or loss for federal income tax purposes and, in the case of a legal defeasance pursuant to clause (1), such opinion must be based upon a ruling from the United States Internal Revenue Service or a change in law to that effect.

#### GOVERNING LAW

Each Indenture and the Debt Securities will be governed by and construed in accordance with the laws of the State of New York, without giving effect to applicable principles of conflicts of laws to the extent the laws of another jurisdiction would be required thereby.

#### TRUSTEES

Each Indenture contains certain limitations on the right of the applicable Trustee, should it become a creditor of the Company, to obtain payment of claims in certain cases, or to realize on certain property received in respect of any such claim, as security or otherwise. Each Trustee is permitted to engage in other transactions; however, if it acquires any conflicting interest (as defined), it must eliminate such conflict or resign. The Company anticipates that it would designate State Street Bank and Trust Company to act as Trustee under the Indentures.

#### FORM, EXCHANGE, REGISTRATION AND TRANSFER

Debt Securities of any series will be exchangeable for other Debt Securities of the same series and of a like aggregate principal amount and tenor of different authorized denominations in accordance with the applicable Indenture. Debt Securities may be presented for registration of transfer (with the form of transfer endorsed thereon duly executed), at the office of the Security Registrar or at the office of any transfer agent designated by the Company for such purpose with respect to any series of Debt Securities and referred to in an applicable Prospectus Supplement, without service charge and upon payment of any taxes and other governmental charges as described in the applicable Indenture. Such transfer or exchange will be effected upon the Security Registrar or such transfer agent, as the case may be, being satisfied with the documents of title and identity of the Person making the request. The Company anticipates that it will appoint the Trustee under each Indenture as Security Registrar for Debt Securities issued thereunder. If a Prospectus Supplement refers to any transfer agents (in addition to the Security Registrar) initially designated by the Company with respect to any series of Debt Securities, the Company may at any time rescind the designation of any such transfer agent or approve a change in the location through which any such transfer agent acts. The Company is required to maintain an office or agency (which may be the office of the Trustee, the

Security Registrar or the Paying Agent) in each Place of Payment for such series. The Company may at any time designate additional transfer agents with respect to any series of Debt Securities.

In the event of any redemption in part, the Company shall not be required to (1) register the transfer or exchange of any Debt Security of any series during a period beginning 15 Business Days prior to the mailing of the relevant notice of redemption and ending on the close of business on the day of mailing of such notice or (2) register the transfer of or exchange any Debt Security called for redemption in whole or in part, except the unredeemed portion of any Debt Security being redeemed in part.

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#### PAYMENT AND PAYING AGENTS

Unless otherwise indicated in an applicable Prospectus Supplement, payment of principal, premium (if any) and interest on and any Additional Amounts with respect to Debt Securities will be made in Dollars at the office of the applicable Trustee, except that, at the option of the Company, payment of such amounts may be made by check mailed to the holder's registered address or with respect to Global Debt Securities, by wire transfer. Unless otherwise indicated in an applicable Prospectus Supplement, payment of any installment of interest (except defaulted interest) on Debt Securities will be made to the Person in whose name such Debt Security is registered at the close of business on the record date next preceding the Interest Payment Date for such interest.

Unless otherwise indicated in an applicable Prospectus Supplement, the Trustee will be designated as a Paying Agent for the Company for payments with respect to Debt Securities issued under the applicable Indenture. The Company may at any time designate additional Paying Agents or rescind the designation of any Paying Agent or approve a change in the office through which any Paying Agent acts.

Subject to the requirements of any applicable abandoned property laws, each Trustee and Paying Agent shall pay to the Company upon written request any money held by them for the payment of principal, premium (if any), interest or any Additional Amounts that remains unclaimed for two years after the date upon which such payment shall have become due. After payment to the Company, Holders entitled to the money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another Person, and all liability of such Trustee or Paying Agent with respect to such money shall cease.

#### BOOK-ENTRY DEBT SECURITIES

The Debt Securities of a series may be issued, in whole or in part, in the form of one or more global Debt Securities that would be deposited with a depository or its nominee identified in the applicable Prospectus Supplement. Global Debt Securities may be issued in either temporary or permanent form. The specific terms of any depository arrangement with respect to any portion of a series of Debt Securities and the rights of, and limitations on, owners of beneficial interests in any such global Debt Security representing all or a portion of a series of Debt Securities will be described in the applicable Prospectus Supplement.

#### CERTAIN DEFINITIONS

Unless otherwise provided with respect to the debt securities of a series and described in the Prospectus Supplement relating thereto, "Indebtedness" of any Person means, without duplication, (1) all indebtedness of such Person for borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof), (2) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (3) all obligations of such Person in respect of letters of credit or other similar instruments (or reimbursement obligations with respect thereto), other than standby letters of credit, performance bonds and other obligations issued by or for the account of such Person in the ordinary course of business, to the extent not drawn or, to the extent drawn, if such drawing is reimbursed not later than the third Business Day following demand for reimbursement, (4) all obligations of such Person to pay the deferred and unpaid purchase price of property or services, except trade payables and accrued expenses incurred in the ordinary course of business, (5) all obligations of such Person as lessee under capitalized leases, (6) all Indebtedness of others secured by a lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person (PROVIDED that if the obligations so secured have not been assumed in full by such Person or are not otherwise such Person's legal liability in full, then such obligations shall be deemed to be in an amount equal to the greater of (a) the lesser of (i) the full amount of such obligations and (ii) the

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fair market value of such assets, as determined in good faith by the Board of Directors of such Person, which determination shall be evidenced by a Board Resolution, and (b) the amount of obligations as have been assumed by such Person or which are otherwise such Person's legal liability), and (7) all Indebtedness of others (other than endorsements in the ordinary course of business) guaranteed by such Person to the extent of such guarantee.

#### PROVISIONS APPLICABLE SOLELY TO SUBORDINATED DEBT SECURITIES

The payment of the principal of, premium, if any, and interest on and any Additional Amounts with respect to the Subordinated Debt Securities is expressly subordinated, to the extent and in the manner set forth in the Subordinated Indenture, to the prior payment in full of all Senior Indebtedness of the Company.

The Subordinated Indenture provides that no payment may be made by or on behalf of the Company on account of the principal of, premium, if any, or interest on or any Additional Amounts with respect to the Subordinated Debt Securities, or to acquire any of the Subordinated Debt Securities (including repurchases of Subordinated Debt Securities at the option of the Holder thereof) for cash or property (other than certain junior securities of the Company), or on account of the redemption provisions of the Subordinated Debt Securities, in the event of (1) default in the payment of any principal of, premium, if any, or interest on any Senior Indebtedness of the Company when it becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise (a "Payment Default"), unless and until such Payment Default has been cured or waived or otherwise has ceased to exist or (2) any other event of default with respect to any Designated Senior Indebtedness permitting the holders of such Designated Senior Indebtedness (or a trustee or other representative on behalf of the holders thereof) to declare such Designated Senior Indebtedness due and payable prior to the date on which it would otherwise have become due and payable, upon written notice thereof to the Company and the Subordinated Trustee by any holders of such Designated Senior Indebtedness (or a trustee or other representative on behalf of the holders thereof) (the "Payment Notice"), unless and until such event of default shall have been cured or waived or otherwise has ceased to exist, PROVIDED that such payments may not be prevented under clause (2) above for more than 179 days after an applicable Payment Notice has been received by the Subordinated Trustee unless the Designated Senior Indebtedness in respect of which such event of default exists has been declared due and payable in its entirety, in which case no such payment may be made until such acceleration has been rescinded or annulled or such Designated Senior Indebtedness has been paid in full. In the case of (2) above, no event of default that existed or was continuing on the date of any Payment Notice (whether or not such event of default is on the same issue of Designated Senior Indebtedness) may be made the basis for the giving of a second Payment Notice, and only one such Payment Notice may be given in any 365-day period.

In the event that, notwithstanding the foregoing, any payment or distribution of assets of the Company (other than certain junior securities of the Company) is received by the Subordinated Trustee or the Holders of Subordinated Debt Securities at a time when such payment or distribution is prohibited by the foregoing provisions, then, unless such payment or distribution is no longer prohibited by the foregoing provisions, such payment or distribution shall be received and held in trust by the Subordinated Trustee or such Holders or the Paying Agent for the benefit of the holders of Senior Indebtedness of the Company, and shall be paid or delivered by the Subordinated Trustee or such Holders or the Paying Agent, as the case may be, to the holders of the Senior Indebtedness of the Company remaining unpaid or unprovided for or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Senior Indebtedness of the Company may have been issued, ratably according to the aggregate amounts remaining unpaid on account of the Senior Indebtedness of the Company held or represented by each,

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for application to the payment of all Senior Indebtedness in full after giving effect to any concurrent payment or distribution to or for the holders of such Senior Indebtedness.

Upon any distribution of assets of the Company or upon any dissolution, winding up, total or partial liquidation or reorganization of the Company, whether voluntary or involuntary, in bankruptcy, insolvency, receivership or a similar proceeding or upon assignment for the benefit of creditors, (1) the holders of all Senior Indebtedness of the Company will first be entitled to receive payment in full before the Holders of Subordinated Debt Securities are entitled to receive any payment on account of the principal of, premium, if any, and interest on or any Additional Amounts with respect to the Subordinated Debt Securities (other than certain junior securities of the Company) and (2) any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities (other than certain junior securities of the Company) to which the Holders of Subordinated Debt Securities or the

Subordinated Trustee on behalf of such Holders would be entitled, except for the subordination provisions contained in the Subordinated Indenture, will be paid by the liquidating trustee or agent or other person making such a payment or distribution directly to the holders of Senior Indebtedness of the Company or their representative, ratably according to the respective amounts of Senior Indebtedness held or represented by each, to the extent necessary to make payment in full of all such Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distributions to the holders of such Senior Indebtedness.

No provision contained in the Subordinated Indenture or the Subordinated Debt Securities affects the obligation of the Company, which is absolute and unconditional, to pay, when due, principal of, premium, if any, and interest on and any Additional Amounts with respect to the Subordinated Debt Securities. The subordination provisions of the Subordinated Indenture and the Subordinated Debt Securities do not prevent the occurrence of any default or Event of Default under the Subordinated Indenture or limit the rights of the Subordinated Trustee or any Holder of Subordinated Debt Securities, subject to the two preceding paragraphs, to pursue any other rights or remedies with respect to the Subordinated Debt Securities.

As a result of these subordination provisions, in the event of the liquidation, bankruptcy, reorganization, insolvency, receivership or similar proceeding or an assignment for the benefit of the creditors of the Company or any of its subsidiaries or joint ventures or a marshaling of assets or liabilities of the Company and its subsidiaries and joint ventures, Holders of Subordinated Debt Securities may receive ratably less than other creditors.

The term "Senior Indebtedness" of the Company, unless otherwise provided with respect to the Subordinated Debt Securities of a series and described in the Prospectus Supplement relating thereto, is defined in the Subordinated Indenture as (1) all Indebtedness of the Company, unless, by the terms of the instrument creating or evidencing such Indebtedness, it is provided that such Indebtedness is not superior in right of payment to the Subordinated Debt Securities or to other Indebtedness which is PARI PASSU with or subordinated to the Subordinated Debt Securities and (2) any modifications, refunding, deferrals, renewals or extensions of any such Indebtedness or securities, notes or other evidences of Indebtedness issued in exchange for such Indebtedness; provided that in no event shall "Senior Indebtedness" include (a) Indebtedness of the Company owed or owing to any subsidiary of the Company or any officer, director or employee of the Company or any subsidiary of the Company, (b) Indebtedness to trade creditors or (c) any liability for taxes owed or owing by the Company.

The term "Designated Senior Indebtedness," unless otherwise provided with respect to the Subordinated Debt Securities of a series and described in the Prospectus Supplement relating thereto, is defined in the Subordinated Indenture to mean any Senior Indebtedness of the Company that (1) in the instrument evidencing the same or the assumption or guarantee thereof (or related documents to which the Company is a party) is expressly designated as "Designated Senior Indebtedness" for purposes of the Subordinated Indenture and (2) satisfies such other conditions as may be provided with

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respect to the Subordinated Debt Securities of such series (provided that such instrument or documents may place limitations and conditions on the rights of the holders of such Senior Indebtedness to exercise the rights of Designated Senior Indebtedness).

If Subordinated Debt Securities are issued under the Subordinated Indenture, the aggregate principal amount of Senior Indebtedness outstanding as of a recent date will be set forth in the Prospectus Supplement. The Subordinated Indenture does not restrict the amount of Senior Indebtedness that the Company may incur.

#### PLAN OF DISTRIBUTION

The Company may sell the Offered Securities in any of three ways (or in any combination thereof): (1) through underwriters or dealers; (2) directly to a limited number of purchasers or to a single purchaser; or (3) through agents. The Prospectus Supplement with respect to any Offered Securities will set forth the terms of the offering of such Offered Securities, including the name or names of any underwriters, dealers or agents and the respective amounts of such Offered Securities underwritten or purchased by each of them, the initial public offering price of such Offered Securities and the proceeds to the Company from such sale, any discounts, commissions or other items constituting compensation from the Company and any discounts, commissions or concessions allowed or reallocated or paid to dealers and any securities exchanges on which such Offered Securities may be listed. Any public offering price and any discounts or concessions allowed or reallocated or paid to dealers may be changed from time to time.

If underwriters are used in the sale of any Offered Securities, such Offered



Securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Such Offered Securities may be either offered to the public through underwriting syndicates represented by managing underwriters, or directly by underwriters. Unless otherwise set forth in the Prospectus Supplement, the obligations of the underwriters to purchase such Offered Securities will be subject to certain conditions precedent and the underwriters will be obligated to purchase all of such Offered Securities if any are purchased.

Offered Securities may be sold directly by the Company or through agents designated by the Company from time to time. Any agent involved in the offer or sale of Offered Securities in respect of which this Prospectus is delivered will be named, and any commissions payable by the Company to such agent will be set forth, in the Prospectus Supplement. Unless otherwise indicated in the Prospectus Supplement, any such agent will be acting on a best efforts basis for the period of its appointment.

If so indicated in the Prospectus Supplement, the Company will authorize underwriters, dealers or agents to solicit offers by certain purchasers to purchase Offered Securities from the Company at the public offering price set forth in the Prospectus Supplement pursuant to delayed delivery contracts providing for payment and delivery on a specified date in the future. Such contracts will be subject only to those conditions set forth in the Prospectus Supplement, and the Prospectus Supplement will set forth the commission payable for solicitation of such contracts.

Agents and underwriters may be entitled under agreements entered into with the Company to indemnification by the Company against certain civil liabilities, including liabilities under the Securities Act, or to contribution with respect to payments which the agents or underwriters may be required to make in respect thereof. Agents and underwriters may be customers of, engage in transactions with, or perform services for the Company and/or any of its affiliates in the ordinary course of business.

Certain persons participating in any offering of Securities may engage in transactions that stabilize, maintain or otherwise affect the price of the Securities offered. In connection with the offering, the underwriters or agents, as the case may be, may purchase and sell the Offered Securities in the open

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market. These transactions may include overallotment and stabilizing transactions and purchases to cover syndicate short positions created in connection with the offering. Stabilizing transactions consist of certain bids or purchases for the purpose of preventing or retarding a decline in the market price of the Offered Securities; and syndicate short positions involve the sale by the underwriters or agents, as the case may be, of a greater number of Offered Securities than they are required to purchase from the Company in the offering. The underwriters may also impose a penalty bid, whereby selling concessions allowed to syndicate members or other broker-dealers for the Offered Securities sold for their account may be reclaimed by the syndicate if such Offered Securities are repurchased by the syndicate in stabilizing or covering transactions. These activities may stabilize, maintain or otherwise affect the market price of the Offered Securities, which may be higher than the price that might otherwise prevail in the open market, and, if commenced, may be discontinued at any time. These transactions may be effected on the New York Stock Exchange, on the Pacific Stock Exchange, in the over-the-counter market or otherwise. For a description of these activities, see "Plan of Distribution" or "Underwriting" in the relevant Prospectus Supplement.

Unless otherwise indicated in the Prospectus Supplement, we do not intend to list any of the Offered Securities on a national securities exchange. No assurances can be given that there will be a market for the Securities.

#### LEGAL MATTERS

Certain legal matters in connection with the Securities offered hereby will be passed upon for the Company by Gerald A. Morton, Vice President--Law and Corporate Secretary of the Company. Mr. Morton owns approximately 3,961 shares of the Company's Common Stock directly and through the Company's tax advantaged savings plan and options to purchase an aggregate of 29,000 shares of the Company's Common Stock, which are or become exercisable in periodic installments through August 1, 2001.

#### EXPERTS

The financial statements incorporated by reference in this Prospectus and elsewhere in this Registration Statement have been audited by Arthur Andersen LLP, independent public accountants, as indicated in their reports with respect thereto, and are included herein in reliance upon the authority of said firm as experts in accounting and auditing in giving said reports.

The estimates of oil and gas reserves and discounted present values of estimated future net revenues incorporated by reference in this Prospectus and elsewhere in this Registration Statement were prepared by Ryder Scott, and are included herein in reliance upon the authority of said firm as experts with respect to those matters.

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SUBJECT TO COMPLETION, DATED MARCH 26, 1999

PROSPECTUS

\$250,000,000  
POGO PRODUCING COMPANY  
Junior Subordinated Debt Securities  
Common Stock  
POGO TRUST I  
POGO TRUST II

Trust Preferred Securities fully and unconditionally guaranteed, as set forth  
herein, by  
POGO PRODUCING COMPANY

Pogo Producing Company  
5 Greenway Plaza, Suite 2700  
Houston, Texas 77046  
(713) 297-5000

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CONSIDER CAREFULLY THE  
RISK FACTORS BEGINNING ON  
PAGE 6.  
The information 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.  
We will provide additional  
terms of our securities in  
one or more supplements to  
this Prospectus. You  
should read this  
Prospectus and the related  
Prospectus Supplement  
carefully before you  
invest in our securities.  
This Prospectus may not be  
used to offer and sell our  
securities unless  
accompanied by a  
Prospectus Supplement.

THE TRUSTS

Pogo Trust I and Pogo Trust II are subsidiaries of Pogo Producing Company. The Trusts are statutory business trusts created under Delaware law. They exist for the purpose of issuing trust preferred securities.

THE OFFERING

JUNIOR SUBORDINATED DEBT SECURITIES

By this Prospectus, the Company may offer junior subordinated debt securities. The Company's obligations under these debt securities will be unsecured and subordinate and junior in right of payment to all other Senior Debt (as defined herein) of the Company. The Company may issue and sell these junior subordinated debt securities to the Trusts in connection with the Trusts' investment of proceeds from the sale of their trust preferred securities and common securities. Under certain circumstances the Trusts may be dissolved and these junior subordinated debt securities will be distributed to holders of the Trusts' trust preferred securities. The junior subordinated debt securities may be convertible into common stock of the Company.

TRUST PREFERRED SECURITIES

By this Prospectus, the Trusts may offer and sell trust preferred securities representing undivided beneficial interests in the assets of the issuing Trust. The Trusts will use the proceeds from the sale of their trust preferred securities and common securities to purchase junior subordinated debt securities of the Company.

GUARANTEE

The Company will fully and unconditionally guarantee the Trusts' payment obligations with respect to their trust preferred securities on the terms described in this Prospectus and the accompanying Prospectus Supplement.

RELATED OFFERING

Related to this offering, the Company may offer by separate Prospectus unsecured senior and subordinated debt securities and preferred stock. The aggregate initial offering price to the public of the securities offered by this Prospectus and the other Prospectus will not exceed \$250,000,000.

</TABLE>

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR DETERMINED IF THIS PROSPECTUS IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The date of this Prospectus is , 1999

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PROSPECTUS

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## ----- ABOUT THIS PROSPECTUS

This Prospectus is part of a Registration Statement filed by Pogo Producing Company ("we" or the "Company") with the Securities and Exchange Commission (the "SEC") using a "shelf" registration process that registers Preferred Securities of Pogo Trust I and Pogo Trust II and Junior Subordinated Debt Securities and Preferred Securities Guarantees of the Company, each of which may be sold under this Prospectus (the "Securities") and debt securities and preferred stock of the Company (any of which may be convertible into Common Stock of the Company) that may be sold under a separate Company Prospectus. The definition of Preferred Securities is on page 12 of this Prospectus under "The Trusts"; the definition of Junior Subordinated Debt Securities is on page 22 of this Prospectus under "Description of the Junior Subordinated Debt Securities," and the definition of Preferred Securities Guarantees is on page 19 of this Prospectus under "Description of the Preferred Securities Guarantees." Under this shelf process, we may sell any combination of the securities described in this Prospectus or the related Company Prospectus, either separately or in units, in one or more offerings up to an aggregate initial offering price of \$250,000,000. This Prospectus provides you with a general description of the Securities. Each time we sell Securities, we will provide a Prospectus Supplement that will contain specific information about the terms of that offering. The Prospectus Supplement may also add, update or change information contained in this Prospectus. You should read this Prospectus and the applicable Prospectus Supplement together with the additional information described under the heading "Where You Can Find More Information" below.

The Registration Statement that contains this Prospectus (including the exhibits to the Registration Statement) contains additional information about the Company and the Securities. That Registration Statement can be read at the SEC's web site or at the SEC's offices mentioned under the heading "Where You Can Find More Information."

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We have not included separate financial statements of the Trusts in this Prospectus. We do not consider that such financial statements would be material to holders of the Trusts' trust preferred securities because:

- Each Trust is a newly created special purpose entity;
- Each Trust has no operating history or independent operations; and
- Neither Trust is engaged in nor does it propose to engage in any activity other than holding the Junior Subordinated Debt Securities (as defined herein), issuing the Trust Securities (as defined herein) and any other activity related thereto or specifically authorized by the Trust's Declaration (as defined herein).

Furthermore, taken together, the Company's obligations under the Junior Subordinated Debt Securities, the Indenture, the Declarations and the Preferred

Securities Guarantees (each as defined herein) provide, in the aggregate, a full, irrevocable and unconditional guarantee of payments of distributions and other amounts due on the Trusts' preferred securities. See "The Trusts," "Description of the Preferred Securities," "Description of the Preferred Securities Guarantees" and "Description of the Junior Subordinated Debt Securities." In addition, we do not expect that the Trusts will file reports under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), with the Commission.

#### WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and special reports, proxy statements and other information with the SEC. Our SEC filings are available to the public over the Internet at the SEC's web site at <http://www.sec.gov>. You may also read and copy any document we file with the SEC at its public reference facilities at 450 Fifth Street, N.W., Washington, D.C. 20549. You can also obtain copies of the documents at prescribed rates by writing to the Public Reference Section of the SEC at 450 Fifth Street, N.W., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference facilities.

#### INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

We "incorporate by reference" into this Prospectus the information we file with the SEC, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is an important part of this Prospectus and information that we subsequently file with the SEC will automatically update this Prospectus. We incorporate by reference the documents listed below and any filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") after the initial filing of the Registration Statement that contains this Prospectus and prior to the time that we sell all the Securities offered by this Prospectus:

- Our Annual Report on Form 10-K, as amended, for the year ended December 31, 1998;
- The description of the Common Stock contained in our Registration Statement on Form 8-A, as may be amended from time to time to update that description;
- The descriptions of the Company's Rights associated with the Common Stock contained in our Registration Statement on Form 8-A, as may be amended from time to time to update that description.

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You may request a copy of these filings (other than an exhibit to a filing unless that exhibit is specifically incorporated by reference into that filing) at no cost, by writing to or telephoning us at the following address:

Pogo Producing Company  
Corporate Secretary  
5 Greenway Plaza, Suite 2700  
Houston, Texas 77046  
(713) 297-5017

You should rely only on the information incorporated by reference or set forth in this Prospectus or the applicable Prospectus Supplement. We have not authorized anyone else to provide you with different information. We may only use this Prospectus to sell Securities if it is accompanied by a Prospectus Supplement. We are only offering these Securities in states where the offer is permitted. You should not assume that the information in this Prospectus or the applicable Prospectus Supplement is accurate as of any date other than the dates on the front of those documents.

#### THE COMPANY

The Company is an independent oil and gas exploration and production company, based in Houston, Texas. Incorporated in 1970, the Company has, in recent years, established a record of increasing its proven hydrocarbon reserves, principally through exploration, exploitation and development of its properties and the selective acquisition of additional interests in producing properties in which the Company already has an interest. Through a portfolio of domestic and international properties, the Company concentrates its efforts on a mix of both offshore and onshore opportunities which provide a balanced exposure to oil and natural gas production. In recent years, the Company has concentrated its efforts in selected areas where it believes that its expertise, competitive acreage position, or ability to quickly take advantage of new opportunities offer the possibility of relatively high rates of return. Domestically, the Company has an extensive Gulf of Mexico reserve and acreage position and is also active in the Permian Basin of southeast New Mexico and west Texas and in other selected areas of Texas and Louisiana. Internationally, the Company, through its

subsidiary Thaipo Limited, owns an interest in the 734,000 acre Block B8/32 concession license in the Gulf of Thailand (the "Thailand Concession") and, through its subsidiary Pogo Canada, Ltd. Inc., also owns interests in approximately 142,000 gross acres in Canada.

Rutherford-Moran Oil Corporation, one of the parties to the joint operating agreement for the Thailand Concession under which Thaipo is currently the operator, has become a wholly owned subsidiary of Chevron Corporation. Chevron has also entered into an agreement to acquire a majority of the stock of Palang Sophon Limited (another party to that joint operating agreement). As a result of these transactions, Chevron owns or controls, directly or indirectly, 53.66% of the working interests in the Thailand Concession. Subject to approval by the government of Thailand, Thaipo has agreed to transfer operatorship to a subsidiary of Chevron on or about September 30, 1999.

#### BUSINESS STRATEGY

The Company's business strategy is to maximize profitability and shareholder value by:

- (1) increasing hydrocarbon production levels, leading to increased revenues, cash flow and earnings,
  - (2) replacing and expanding its proven hydrocarbon reserves base,
  - (3) maintaining appropriate levels of debt and interest, and controlling overhead and operating costs, and
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- (4) expanding exploration and production activities into new and promising geographic areas consistent with Company expertise.

The principal executive offices of the Company are located at the following address:

Pogo Producing Company  
5 Greenway Plaza, Suite 2700  
Houston, Texas 77046  
(713) 297-5017

Additional information concerning the Company and its subsidiaries is included in the Company reports and other documents incorporated by reference in this Prospectus. See "Where You Can Find More Information" and "Incorporation of Certain Documents by Reference."

#### FORWARD-LOOKING STATEMENTS

Certain of the statements contained or incorporated by reference in this Prospectus and the accompanying Prospectus Supplement are forward-looking statements. The use of any of the words "anticipate," "estimate," "expect," "may," "project," "believe" and similar expressions are intended to identify uncertainties. Although the Company believes the expectations reflected in those forward-looking statements are reasonable, they do involve certain assumptions, risks and uncertainties, and the Company cannot assure that those expectations will prove to have been correct. The Company's actual results could differ materially from those anticipated in these forward-looking statements. The following are some of the factors that could cause actual results to differ from those expressed or implied in the forward-looking statements contained herein:

- the cyclical nature of the oil and natural gas industries
- uncertainties associated with the United States and worldwide economies
- current and potential governmental regulatory actions in countries where the Company owns an interest
- substantial competitor production increases resulting in oversupply and declining prices
- the Company's ability to implement cost reductions
- the Company's ability to raise additional capital or sell assets
- operating interruptions (including leaks, explosions, fires, mechanical failure, unscheduled downtime, transportation interruptions, and spills and releases and other environmental risks)
- fluctuations in foreign currency exchange rates in areas of the world where the Company owns an interest, particularly Southeast Asia
- covenant restrictions in the Company's indebtedness

- the impact of the Year 2000 issue

Many of those factors are beyond the Company's ability to control or predict. Management cautions against putting undue reliance on forward-looking statements or projecting any future results based on such statements or present or prior earnings levels.

All subsequent written and oral forward-looking statements attributable to the Company and persons acting on its behalf are qualified in their entirety by the cautionary statements contained in this section and elsewhere in this Prospectus.

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### USE OF PROCEEDS

Except as otherwise described in any Prospectus Supplement, the Company anticipates that any net proceeds from the sale of Securities will be used for general corporate purposes, which may include, but are not limited to:

- repayments or refinancings of indebtedness
- working capital
- capital expenditures
- acquisitions and repurchases or redemptions of the Company's equity securities
- investment in short-term securities

Each Trust will use all proceeds received from the sale of its Trust Securities to purchase Junior Subordinated Debt Securities from the Company.

### RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth the Company's consolidated ratio of earnings to fixed charges for the periods as shown.

		YEAR ENDED DECEMBER 31,				
		1994	1995	1996	1997	1998
		-----	-----	-----	-----	-----
		<C>	<C>	<C>	<C>	<C>
Ratio of earnings to fixed charges.....		5.1x	2.1x	4.6x	3.2x	(1)

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(1) Earnings are insufficient to cover fixed charges by \$80,230,000.

The ratio of earnings to fixed charges was computed by dividing earnings by fixed charges. For this purpose, earnings are defined as income before income taxes plus fixed charges excluding capitalized interest. Fixed charges consist of interest expense and the estimated interest component of rent expense.

### RISK FACTORS

YOUR INVESTMENT IN ANY OF THE SECURITIES INVOLVES CERTAIN RISKS. YOU SHOULD CAREFULLY CONSIDER THE FOLLOWING RISK FACTORS AND THOSE IN THE ACCOMPANYING PROSPECTUS SUPPLEMENT BEFORE DECIDING WHETHER AN INVESTMENT IN THAT SECURITY IS SUITABLE FOR YOU.

#### VOLATILITY OF OIL AND GAS MARKETS AFFECTS US

##### MARKET PRICES ARE VOLATILE

Our profitability and cash flow depend greatly on the market prices of oil and natural gas. Those market prices have historically been seasonal, cyclical and volatile. They depend on many factors, including weather, economic, political and regulatory conditions that we cannot control. Commencing in 1997, the average prices for our production have generally declined. Oil prices have reached lows that, on a historic inflation adjusted basis, are almost unprecedented. In the past, we have at times curtailed production to mitigate the effects of low market prices. We may do so again. The significant drop in oil and gas prices has had a serious adverse effect on our cash flow and continued low prices could seriously affect our operations and financial condition and could in some cases result in a further reduction in funds available under our bank credit agreement.

We cannot predict future oil and gas prices with certainty. Accordingly, we sometimes execute contracts on a portion of our production to hedge against market price changes. In the past, we have not entered hedging transactions exceeding 50% of our total oil and gas production on an energy equivalent basis for any given period. Hedging transactions are intended to limit the negative effect of further price declines, but could also limit our participation in significant price increases for the covered period. We cannot be certain that hedging transactions will reduce the effect of any substantial declines in oil and gas prices. As of March 15, 1999, we were not a party to any natural gas futures contracts, crude oil swap agreements or other commodity hedging agreements.

WE ARE SUBJECT TO UNCERTAINTIES IN RESERVE ESTIMATES AND FUTURE NET REVENUES

There is substantial uncertainty in estimating quantities of proved reserves and projecting future production rates and the timing of development expenditures. No one can measure underground accumulations of oil and gas in an exact way. Accordingly, oil and gas reserve engineering requires subjective estimations of those accumulations. Estimates of other engineers might differ widely from those of our independent reserve engineers, Ryder Scott Company Petroleum Engineers ("Ryder Scott"). Accuracy of reserve estimates depends on the quality of available data and on engineering and geological interpretation and judgment. Ryder Scott may make material changes to reserve estimates based on the results of actual drilling, testing, and production. As a result, our reserve estimates often differ from the quantities of oil and gas we ultimately recover. Also, we make certain assumptions regarding future oil and gas prices, production levels, and operating and development costs that may prove incorrect. Any significant variance from these assumptions could greatly affect our estimates of reserves and future net revenues.

WE ARE SUBJECT TO OPERATING AND UNINSURED RISKS

We must continually acquire or explore for and develop new oil and natural gas reserves to replace those produced and sold. Our hydrocarbon reserves and revenues will decline if we are not successful in our drilling, acquisition or exploration activities. Although we have historically maintained our reserves base primarily through successful exploration and development operations, we cannot assure that future efforts will be similarly successful. Casualty risks and other operating risks could cause reserves and revenues to decline.

WE ARE SUBJECT TO VARIOUS CASUALTY RISKS

Our onshore and offshore operations are subject to the following inherent casualty risks:

- blowouts, cratering, and explosions
- uncontrollable flows of oil, natural gas or well fluids
- fires
- pollution and other environmental risks
- hazards of marine and helicopter operations (capsizing, collision and adverse weather and sea conditions)

We could suffer substantial financial losses due to any of the following:

- injury or loss of life
- severe damage to and destruction of property and equipment
- pollution and other environmental damage

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- suspension of operations

WE MAY NOT HAVE ENOUGH INSURANCE TO COVER SOME OPERATING RISKS

We carry insurance which we believe is in accordance with customary industry practices, but we are not fully insured against all casualty risks incident to our business.

WE ARE SUBJECT TO VARIOUS OTHER OPERATING RISKS

Numerous risks affect our drilling activities, including the risk of drilling non-productive wells or dry holes. The cost of drilling, completing and operating wells and of installing production facilities and pipelines is often uncertain. Also, our drilling operations could diminish or cease because of any of the following:

- title problems
- weather conditions
- noncompliance with governmental requirements
- shortages or delays in the delivery or availability of equipment or fabrication yards

Moreover, effective marketing of our natural gas production depends on a number of factors, such as the following:

- existing market supply of and demand for natural gas
- the proximity of our reserves to pipelines
- the available capacity of such pipelines
- government regulations

The marketing of oil and gas production similarly depends on the availability of pipelines and other transportation, processing and refining facilities, and the existence of adequate markets. As a result, even if hydrocarbons are discovered in commercial quantities, a substantial period of time may elapse before commercial production commences. If pipeline facilities in an area are insufficient, we may have to wait for the construction or expansion of pipeline capacity before we can market production from that area. See "--We face additional risks related to our operations in the Kingdom of Thailand."

#### WE DEPEND ON OTHER OPERATORS

Even on properties we do not operate, we try to maintain significant influence over the nature and timing of exploration and development activities to the extent we can. However, we have limited influence over operations on a significant percentage of our oil and gas properties, including control over the maintenance of safety and environmental standards. For those properties:

- operators could refuse to initiate exploration or development projects (in which case we may propose desired exploration or development activities)
- if we proceed with any of those projects the operator has refused to initiate, we may not receive any funding from the operator with respect to that project
- the operators may initiate exploration or development projects on a slower schedule than we prefer
- the operator may propose to drill more wells or build more facilities on a project than we have funds for, which may mean that we cannot participate in those projects or share in a substantial share of the revenues from those projects

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Any of these events could significantly affect our anticipated exploration and development activities.

#### WE HAVE SUBSTANTIAL CAPITAL REQUIREMENTS

We have substantial anticipated capital requirements. Our ongoing capital requirements consist primarily of the following items:

- funding our 1999 capital and exploration budget
- other allocations for acquisition, development, production, exploration and abandonment of oil and gas reserves
- costs associated with our Thailand operations
- future dividend payments

From 1996 to 1998, we increased our capital and exploration expenditures from \$206.2 million to \$214.8 million. Our 1999 capital and exploration budget has been established by our Board of Directors at \$170 million (excluding purchased reserves and interest capitalized).

We plan to finance anticipated ongoing expenses and capital requirements with funds generated from the following sources:

- available cash and cash investments
- cash provided by operating activities

- funds available under our bank credit agreement after the application of proceeds from the notes offering
- our uncommitted bank line of credit and banker's acceptances
- capital we believe we can raise through debt and convertible preferred equity offerings
- asset sales

We believe the funds provided by these sources will be sufficient to meet our 1999 cash requirements. However, the uncertainties and risks associated with future performance and revenues, as described in this section, will ultimately determine our liquidity and ability to meet our anticipated capital requirements.

#### WE FACE SIGNIFICANT COMPETITION

The oil and gas industry is highly competitive. We compete with major oil companies, other independent oil and gas concerns and individual producers and operators. Many of these competitors have much greater financial and other resources than us. Moreover, the oil and gas industry competes with other industries in supplying the energy and fuel needs of industrial, commercial and other consumers. Increased competition causing oversupply or depressed prices could greatly affect our operations revenues.

#### WE ARE SUBJECT TO VARIOUS GOVERNMENT REGULATIONS AND ENVIRONMENTAL RISKS

##### WE ARE SUBJECT TO VARIOUS LEGAL LIMITATIONS

We and our subsidiaries are subject to various foreign and domestic laws and regulations on taxation, exploration and development, and environmental and safety matters in countries where we own or operate properties. Many laws and regulations require drilling permits and govern the spacing of wells, the prevention of waste, rates of production and other matters. These statutes and regulations, and any others that are passed by the jurisdictions where we have production could limit the total

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number of wells drilled or the total allowable production from successful wells, which could limit revenues.

##### WE ARE SUBJECT TO VARIOUS ENVIRONMENTAL LIABILITIES

We could incur liability to governments or third parties for any unlawful discharge of oil, gas or other pollutants into the air, soil or water, including responsibility for remedial costs. We could potentially discharge oil or natural gas into the environment in any of the following ways:

- from a well or drilling equipment at a drill site
- leakage from storage tanks, pipelines or other gathering and transportation facilities
- damage to oil or natural gas wells resulting from accidents during normal operations
- blowouts, cratering or explosions

Environmental discharges may move through soil to water supplies or adjoining properties, giving rise to additional liabilities. Some laws and regulations could impose liability for failure to notify the proper authorities of a discharge and other failures to comply with those laws. Environmental laws may also affect the costs of our acquisitions of properties. We do not believe that its environmental risks are materially different from those of comparable companies in the oil and gas industry. However, we cannot assure that environmental laws will not, in the future, result in decreased production, substantially increased costs of operations or other adverse effects to our combined operations and financial condition. Pollution and similar environmental risks generally are not fully insurable.

#### OUR FOREIGN OPERATIONS SUBJECT US TO ADDITIONAL RISKS

Our ownership and operations in Thailand, Canada, and any other foreign areas where we may choose to do business, are subject to the various risks inherent in foreign operations. These risks may include the following:

- currency restrictions and exchange rate fluctuations
- loss of revenue, property and equipment due to expropriation, nationalization, war, insurrection and other political risks

- risks of increases in taxes and governmental royalties
- renegotiation of contracts with governmental entities and quasi-governmental agencies
- changes in laws and policies governing operations of foreign-based companies
- other uncertainties arising out of foreign government sovereignty
- inability to fund foreign operations from the United States

United States laws and policies on foreign trade, taxation and investment may also adversely affect international operations. In addition, if a dispute arises from foreign operations, foreign courts may have exclusive jurisdiction over the dispute, or we may not be able to subject foreign persons to the jurisdiction of United States courts. We seek to manage these risks by concentrating our international operations in areas where we believe that the existing government is stable and favorably disposed towards United States oil and gas companies.

#### WE FACE ADDITIONAL RISKS RELATED TO OUR OPERATIONS IN THE KINGDOM OF THAILAND

Additional risks and uncertainties affect the marketing and sales of hydrocarbons from our Block B8/32 Concession located in the Gulf of Thailand (the "Thailand Concession"). We expect that all the natural gas we produce from the Thailand Concession will be sold to The Petroleum Authority

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of Thailand ("PTT"), which maintains a monopoly over gas transmission and distribution in Thailand. Two major natural gas pipelines owned and operated by PTT cross the Thailand Concession. These pipelines may become full due to production from the Tantawan Field, the Benchamas Field and other fields in the Gulf of Thailand. We cannot assure, even if we are successful in exploration efforts, that we will be able to successfully and profitably transport, process, refine and market the oil and gas we produce.

PTT has constructed a lateral pipeline from its main pipeline to the Tantawan production area and has agreed to take the gas produced from that area pursuant to a gas sales agreement (the "Gas Sales Agreement"). If the Company and our joint venture partners in the Tantawan Field fail to deliver the required reserves or production rates of natural gas at a specified quality level under the Gas Sales Agreement, we may be obligated to contribute to PTT's costs for the construction of the lateral pipeline. Also, if the Tantawan joint venturers fail to deliver the minimum daily rates under the Gas Sales Agreement, PTT has the right to take from subsequent deliveries an amount equal to the quantity of undelivered gas at 75% of the contract price. Commencing on October 1, 1998, we and our joint venture partners have been delivering less natural gas than is being nominated by PTT under the Gas Sales Agreement. We have not been able to meet our contractual minimum delivery obligations for a number of reasons, including declining production from existing wells, the need to shut-in existing wells while drilling or working over additional wells from the same platform and our decision to emphasize oil and condensate production from the Tantawan Field. We anticipate that we will suffer a penalty on a portion of our future production. We are currently unable to predict the amount of any such penalty, but we believe the amount could be material. Thai governmental royalties, other governmental charges and income taxes also affect cash flow from our operations. We expect all gas sales to be carried out in Baht, the Thai currency. Fluctuations in the exchange rate between Thai Baht and U.S. dollars could also adversely affect the anticipated profits of our operations in Thailand.

#### SOUTHEAST ASIA ECONOMIC ISSUES AFFECT US

We conduct a substantial portion of our oil and gas production and sales in Southeast Asia. In recent months, Southeast Asia in general, and the Kingdom of Thailand in particular, have experienced severe economic difficulties, including sharply reduced economic activity, illiquidity, highly volatile foreign currency exchange rates and unstable stock markets. The Thailand government and other governments in the region are currently acting to address these issues. However, the economic difficulties in Thailand and the volatility of the Thai Baht against the U.S. dollar will continue to have a material impact on our Thailand operations and the prices we receive for our oil and gas production there. In early July 1997, the government of the Kingdom of Thailand announced that the value of the Baht would be set against the dollar and other currencies under a "managed float" program arrangement. This led to a substantial decline in value of the Thai Baht compared to the U.S. dollar, resulting in our experiencing foreign currency transaction losses during 1997. During 1998, the value of the Thai Baht generally strengthened against the U.S. dollar, resulting in our experiencing foreign currency transaction gains. However, we cannot predict what the Thai Baht to dollar exchange rate may be in the future. Moreover, we anticipate that this exchange rate will remain volatile.



## LIQUIDITY AND CASH FLOW PROBLEMS OF OUR PARTNERS MAY AFFECT US

Due to the recent decline in oil and gas prices, many of our partners, particularly the smaller ones, are experiencing liquidity and cash flow problems. These problems may lead to their attempting to delay or slow down the pace of drilling or project development in order to conserve cash, to a point that we believe is detrimental to the project. In most cases, we have the ability to influence the pace of development through our joint operating agreements. Some partners may be unwilling or unable to pay their share of the costs of projects as they become due. At worst, a partner may declare bankruptcy and refuse or be unable to pay its share of the costs of a project. We would then be required to pay

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this partner's share of the project costs. In most instances, we believe that we are contractually protected from such an event through our ability to take over the non-paying partner's share of the project and by applicable oil and gas lien laws and bankruptcy laws. We believe that we would ultimately recover any sums that we are owed by non-paying partners that do not meet their share of the costs of a project in a timely fashion.

## WE HAVE YEAR 2000 RISKS

Many existing computer programs and components were designed and developed to use a two-digit field to indicate the year in an applicable date field, which could result from the improper processing of dates for years after 1999. This issue is commonly known as the "Year 2000 Issue." The Year 2000 Issue is a broad business issue, which could affect financial and business applications as well as automated systems and instrumentation of ours and third parties with whom we do business. There can be no guarantee that third parties of business importance to us will successfully reprogram or replace, and test, all of their own computer hardware, software and process control systems to ensure such systems are Year 2000 ready. Failure by us, third parties of business importance to us and/or other constituents such as governments to become Year 2000 ready on a timely basis could have a material adverse effect on our financial position and results of operations.

## THE TRUSTS

Each of Pogo Trust I and Pogo Trust II (each a "Trust," and collectively the "Trusts") is a statutory business trust created on March 18, 1999 under the Delaware Business Trust Act (the "Business Trust Act") pursuant to separate declarations of trust among the Trustees (as defined herein) of each Trust and the Company and the filing of a certificate of trust with the Secretary of State of the State of Delaware. Each such declaration will be amended and restated in its entirety (as so amended and restated, the "Declaration," and together, the "Declarations") as of the date the respective Trust initially issues trust preferred securities representing preferred undivided beneficial interests in the assets of such Trust (the "Preferred Securities"). Each Declaration will be qualified under the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act").

The following description summarizes the material terms of the Declarations and is qualified in its entirety by reference to the form of Declaration, which has been filed as an exhibit to the Registration Statement of which this Prospectus is a part, and the Trust Indenture Act.

The address of the principal office of each Trust is c/o Pogo Producing Company, 5 Greenway Plaza, Suite 2700, Houston, Texas 77046, and the telephone number of each Trust at such address is (713) 297-5000.

## PREFERRED SECURITIES

Upon issuance of any Preferred Securities by a Trust, the holders thereof will own all of the issued and outstanding Preferred Securities of such Trust. The Company will, directly or indirectly, acquire common securities representing common undivided beneficial interests in the assets of each Trust (the "Common Securities" and, together with the Preferred Securities, the "Trust Securities") in an amount equal to 3% of the total capital of such Trust and will own, directly or indirectly, all of the issued and outstanding Common Securities of each Trust. The Preferred Securities and the Common Securities will rank PARI PASSU with each other and will have equivalent terms; provided that (1) if a Declaration Event of Default (as defined under "--Events of Default") under the Declaration of a Trust occurs and is continuing, the holders of Preferred Securities of such Trust will have a priority over holders of the Common Securities of such Trust with respect to payments in respect of distributions and payments upon liquidation, redemption and maturity and (2) the holders of Common Securities have the exclusive right (subject to the terms of the applicable Declaration) to appoint, remove or replace the

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Trustees and to increase or decrease the number of Trustees. Each Trust exists for the purposes of (a) issuing its Preferred Securities, (b) issuing its Common Securities to the Company, (c) investing the gross proceeds from the sale of its Trust Securities in Junior Subordinated Debt Securities of the Company and (d) engaging in only such other activities as are necessary, convenient or incidental thereto or are specifically authorized in its Declaration. The rights of the holders of the Preferred Securities of a Trust, including economic rights, rights to information and voting rights, are set forth in the applicable Declaration, the Business Trust Act and the Trust Indenture Act.

#### POWERS AND DUTIES OF TRUSTEES

The number of trustees (the "Trustees") of each Trust will initially be five. Three of the Trustees (the "Regular Trustees") are individuals who are officers, directors or employees of the Company. The fourth Trustee will be Wilmington Trust Company, which is unaffiliated with the Company and serves as the property trustee (the "Property Trustee") and acts as the indenture trustee under the Declaration for purposes of the Trust Indenture Act. The fifth Trustee is Wilmington Trust Company, which has its principal place of business in the State of Delaware (the "Delaware Trustee"). Pursuant to each Declaration, legal title to the Junior Subordinated Debt Securities purchased by a Trust will be owned by and held of record in the name of the Property Trustee in trust for the benefit of the holders of the Trust Securities of such Trust, and the Property Trustee will have the power to exercise all rights, powers and privileges under the Indenture (as defined under "Description of the Junior Subordinated Debt Securities") with respect to such Junior Subordinated Debt Securities. In addition, the Property Trustee will maintain exclusive control of a segregated non-interest bearing bank account (the "Property Account") to hold all payments in respect of the Junior Subordinated Debt Securities purchased by a Trust for the benefit of the holders of its Trust Securities. The Property Trustee will promptly make distributions to the holders of the Trust Securities out of funds from the Property Account. The Preferred Securities Guarantees are separately qualified under the Trust Indenture Act and will be held by Wilmington Trust Company (the "Guarantee Trustee"), acting in its capacity as indenture trustee with respect thereto, for the benefit of the holders of the applicable Preferred Securities. As used in this Prospectus and any accompanying Prospectus Supplement, the term "Property Trustee" with respect to a Trust refers to Wilmington Trust Company acting either in its capacity as a Trustee under the related Declaration and the holder of legal title to the Junior Subordinated Debt Securities purchased by such Trust or in its capacity as the Guarantee Trustee under the applicable Preferred Securities Guarantee, as the context may require. The Company, as the direct or indirect owner of all of the Common Securities of each Trust, will have the exclusive right to appoint, remove or replace Trustees and to increase or decrease the number of Trustees, provided that the number of Trustees will be, except under certain circumstances, at least five and the majority of Trustees will be Regular Trustees. The term of a Trust will be set forth in the applicable Prospectus Supplement, but may dissolve earlier as provided in the applicable Declaration.

The duties and obligations of the Trustees of a Trust will be governed by the Declaration of such Trust, the Business Trust Act and the Trust Indenture Act. Under its Declaration, each Trust will not, and the Trustees will cause such Trust not to, engage in any activity other than in connection with the purposes of such Trust or other than as required or authorized by the related Declaration. In particular, each Trust will not and the Trustees will cause each Trust not to (1) invest any proceeds received by such Trust from holding the Junior Subordinated Debt Securities purchased by such Trust but will promptly distribute from the Property Account all such proceeds to holders of Trust Securities pursuant to the terms of the related Declaration and of its Trust Securities; (2) acquire any assets other than as expressly provided in the related Declaration; (3) possess property of such Trust for other than a Trust purpose; (4) make any loans, other than loans represented by the Junior Subordinated Debt Securities; (5) possess any power or otherwise act in such a way as to vary the assets of such Trust or the terms of its Trust Securities in any way whatsoever, except as expressly provided in the related Declaration; (6) issue any securities or other evidences of beneficial ownership of, or beneficial

interests in, such Trust other than its Trust Securities; (7) incur any indebtedness for borrowed money; (8) direct the time, method and place for conducting any proceeding for any remedy available to the Indenture Trustee (as defined under "Description of the Junior Subordinated Debt Securities") or exercising any trust or power conferred upon the Indenture Trustee with respect to the Junior Subordinated Debt Securities deposited in such Trust as trust assets; (9) waive any past default that is waivable under the Indenture; (10) exercise any right to rescind or annul a declaration of acceleration of the maturity of the principal of all of the Junior Subordinated Debt Securities deposited in such Trust as trust assets without, in the case of clauses (8), (9) and (10), obtaining the prior approval of the holders of a majority in liquidation amount of all outstanding Trust Securities of such Trust; (11) consent to any amendment, modification or termination of the Indenture or the

Junior Subordinated Debt Securities deposited in such Trust as trust assets, where such consent is required, unless in the case of this clause (11) the Property Trustee shall have received an opinion of counsel experienced in such matters to the effect that such amendment, modification, or termination will not cause more than an insubstantial risk that for United States federal income tax purposes such Trust will not be classified as a grantor trust; (12) take or consent to any action that would result in the placement of a lien, pledge, charge, mortgage or other encumbrance on any of the property of such Trust; (13) vary the investment (within the meaning of Treasury Regulation Section 301.7701-4(c)) of such Trust or of the holders of its Trust Securities; (14) after the issuance of its Preferred Securities, enter into any contract or agreement (other than any depositary agreement or any agreement with any securities exchange or automated quotation system) that does not expressly provide that the holders of such Preferred Securities, in their capacities as such, have limited liability (in accordance with the provisions of the Business Trust Act) for the liabilities and obligations of such Trust or (15) revoke any action previously authorized or approved by a vote of the holders of its Preferred Securities except by subsequent vote of such holders.

#### BOOKS AND RECORDS

The books and records of each Trust will be maintained at the principal office of such Trust and will be open for inspection by a holder of Preferred Securities of such Trust or his authorized representative for any purpose reasonably related to his interest in such Trust during normal business hours.

#### VOTING

Holders of Preferred Securities generally will have limited voting rights, relating only to the modification of the Preferred Securities, and under certain circumstances, to the exercise of a Trust's rights as holder of the Junior Subordinated Debt Securities and the Preferred Securities Guarantee. The holders of the Preferred Securities will not be able to appoint, remove or replace, or to increase or decrease the number of, Trustees, which rights are vested exclusively in the holders of the Common Securities.

#### THE PROPERTY TRUSTEE

The Property Trustee, for the benefit of the holders of the Trust Securities of a Trust, is authorized under each Declaration to exercise all rights under the Indenture with respect to the Junior Subordinated Debt Securities deposited in such Trust as trust assets, including its rights as the holder of such Junior Subordinated Debt Securities to enforce the Company's obligations under such Junior Subordinated Debt Securities upon the occurrence of an Indenture Event of Default (as defined herein under "Description of the Junior Subordinated Debt Securities--Indenture Events of Default"). The Property Trustee will also be authorized to enforce the rights of holders of the Preferred Securities of a Trust under the related Preferred Securities Guarantee. If any Trust's failure to make distributions on the Preferred Securities of such Trust is a consequence of the Company's exercise of any right under

the terms of the Junior Subordinated Debt Securities deposited in such Trust as trust assets to extend the interest payment period for such Junior Subordinated Debt Securities, the Property Trustee will have no right to enforce the payment of distributions on such Preferred Securities until a Declaration Event of Default shall have occurred. If a Declaration Event of Default has occurred and is continuing, then the holders of at least a majority in liquidation amount of the Preferred Securities of a Trust will have the right to direct the Property Trustee for such Trust with respect to certain matters under the related Declaration and the related Preferred Securities Guarantee. If the Property Trustee fails to enforce its rights under the applicable series of Junior Subordinated Debt Securities, any holder of Preferred Securities, to the extent permitted by applicable law, may, after a period of 30 days has elapsed from such Holder's written request to the Property Trustee to enforce such rights, institute a legal proceeding directly against the Company to enforce such rights without first instituting any legal proceeding against the Property Trustee or any other person. Notwithstanding the foregoing, if a Declaration Event of Default under the applicable Declaration has occurred and is continuing and such event is attributable to the failure of the Company to pay interest or principal, or premium, if any, on the applicable series of Junior Subordinated Debt Securities on the date such interest, principal or premium is otherwise payable (or in the case of redemption, on the redemption date), then a holder of Preferred Securities of such Trust may directly institute a proceeding for enforcement of payment to such holder of the principal of, premium, if any, or interest on the applicable series of Junior Subordinated Debt Securities having a principal amount equal to the aggregate liquidation amount of the Preferred Securities of such holder (a "Holder Direct Action") on or after the respective due date specified in the applicable series of Junior Subordinated Debt Securities. In connection with such Holder Direct Action, the Company will be subrogated to the rights of such holder of Preferred Securities under the applicable Declaration to the extent of any payment made by the Company to such

holder of Preferred Securities in such Holder Direct Action. Except as expressly provided in the preceding sentences or in the applicable Prospectus Supplement, the holders of Preferred Securities of such Trust will not be able to exercise directly any other remedy available to the holders of the applicable series of Junior Subordinated Debt Securities.

#### DISTRIBUTIONS

Pursuant to each Declaration, distributions on the Preferred Securities of a Trust must be paid on the dates payable to the extent that the Property Trustee for such Trust has cash on hand in the applicable Property Account to permit such payment. The funds available for distribution to the holders of the Preferred Securities of a Trust will be limited to payments received by the Property Trustee in respect of the Junior Subordinated Debt Securities that are deposited in such Trust as trust assets. If the Company does not make interest payments on the Junior Subordinated Debt Securities deposited in such Trust as trust assets, the Property Trustee will not make distributions on the Preferred Securities of such Trust. Under each Declaration, if and to the extent the Company does make interest payments on the Junior Subordinated Debt Securities deposited in a Trust as trust assets, the Property Trustee is obligated to make distributions on the Trust Securities of such Trust on a Pro Rata Basis (as defined below). The payment of distributions on the Preferred Securities of a Trust is guaranteed by the Company as and to the extent set forth under "Description of the Preferred Securities Guarantees." A Preferred Securities Guarantee is a guarantee from the time of issuance of the Preferred Securities, but the Preferred Securities Guarantee covers distributions and other payments on the applicable Preferred Securities only if and to the extent that the Company has made a payment to the Property Trustee of interest or principal, or premium, if any, on the Junior Subordinated Debt Securities deposited in a Trust as trust assets. As used in this Prospectus, the term "Pro Rata Basis" shall mean pro rata to each holder of Trust Securities of a Trust according to the aggregate liquidation amount of the Trust Securities of such Trust held by the relevant holder in relation to the aggregate liquidation amount of all Trust Securities of such Trust outstanding unless, in relation to a payment, a Declaration Event of Default under the related Declaration has occurred and is continuing, in which case any funds available

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to make such payment will be paid first to each holder of the Preferred Securities of such Trust pro rata according to the aggregate liquidation amount of the Preferred Securities held by the relevant holder in relation to the aggregate liquidation amount of all the Preferred Securities of such Trust outstanding, and only after satisfaction of all amounts owed to the holders of such Preferred Securities, to each holder of Common Securities of such Trust pro rata according to the aggregate liquidation amount of such Common Securities held by the relevant holder in relation to the aggregate liquidation amount of all Common Securities of such Trust outstanding.

#### EVENTS OF DEFAULT

If an Indenture Event of Default occurs and is continuing with respect to the Junior Subordinated Debt Securities deposited in a Trust as trust assets, an Event of Default under the Declaration (a "Declaration Event of Default") of such Trust will occur and be continuing with respect to any outstanding Trust Securities of such Trust. In such event, each Declaration provides that the holders of Common Securities of such Trust will be deemed to have waived any such Declaration Event of Default with respect to the Common Securities until all Declaration Events of Default with respect to the Preferred Securities of such Trust have been cured or waived or otherwise eliminated. Until all such Declaration Events of Default with respect to the Preferred Securities of such Trust have been so cured waived or otherwise eliminated, the Property Trustee will be deemed to be acting solely on behalf of the holders of the Preferred Securities of such Trust and only the holders of such Preferred Securities will have the right to direct the Property Trustee with respect to certain matters under such Declaration and consequently under the Indenture. In the event that any Declaration Event of Default with respect to the Preferred Securities of such Trust is waived by the holders of the Preferred Securities of such Trust as provided in the Declaration, the holders of Common Securities of such Trust pursuant to such Declaration have agreed that such waiver also constitutes a waiver of such Declaration Event of Default with respect to such Common Securities for all purposes under the Declaration without any further act, vote or consent of the holders of such Common Securities. The Property Trustee will notify each holder of Preferred Securities of a Trust of any notice of default with respect to the related Junior Subordinated Debt Securities, unless such default has been cured before the giving of such notice or the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers (as that term is defined in the applicable Declaration) of the Property Trustee in good faith determines that the withholding of such notice is in the interests of the holders of the Trust Securities of such Trust.

#### RECORD HOLDERS

Each Declaration provides that the Trustees of such Trust may treat the person in whose name a certificate representing its Preferred Securities is registered on the books and records of such Trust as the sole holder thereof and of the Preferred Securities represented thereby for purposes of receiving distributions and for all other purposes and, accordingly, will not be bound to recognize any equitable or other claim to or interest in such certificate or in the Preferred Securities represented thereby on the part of any person, whether or not the Trustees of such Trust shall have actual or other notice thereof. Preferred Securities will be issued in fully registered form. Unless otherwise specified in a Prospectus Supplement, Preferred Securities will be represented by one or more global certificates registered on the books and records of such Trust in the name of a depositary (the "Depositary") named in an accompanying Prospectus Supplement or its nominee. Under each Declaration:

- (1) such Trust and the Trustees thereof will be entitled to deal with the Depositary (or any successor depositary) for all purposes, including the payment of distributions and receiving approvals, votes or consents under the related Declaration, and except as set forth in the related Declaration with respect to the issuance of definitive certificates representing the Preferred Securities, will have no obligation to persons owning a beneficial interest in

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Preferred Securities ("Preferred Security Beneficial Owners") registered in the name of and held by the Depositary or its nominee; and

- (2) the rights of Preferred Security Beneficial Owners will be exercised only through the Depositary (or any successor depositary) and will be limited to those established by law and agreements between such Preferred Security Beneficial Owners and the Depositary and/or its participants. With respect to Preferred Securities registered in the name of and held by the Depositary or its nominee, all notices and other communications required under each Declaration will be given to, and all distributions on such Preferred Securities will be given or made to, the Depositary (or its successor).

The specific terms of the depositary arrangement with respect to the Preferred Securities of a Trust will be disclosed in the applicable Prospectus Supplement.

#### DEBTS AND OBLIGATIONS

In each Declaration, the Company has agreed to pay all debts and obligations (other than with respect to the related Trust Securities) and all costs and expenses of the applicable Trust, including the fees and expenses of its Trustees and any taxes and all costs and expenses with respect thereto, to which such Trust may become subject, except for United States withholding taxes. The foregoing obligations of the Company under each Declaration are for the benefit of, and will be enforceable by, any person to whom any such debts, obligations, costs, expenses and taxes are owed (a "Creditor") whether or not such Creditor has received notice thereof. Any such Creditor may enforce such obligations of the Company directly against the Company, and the Company has irrevocably waived any right or remedy to require that any such Creditor take any action against any Trust or any other person before proceeding against the Company. The Company will be subrogated to all rights of a Trust in respect of any amounts paid to any Creditor by the Company. The Company has agreed in each Declaration to execute such additional agreements as may be necessary or desirable in order to give full effect to the foregoing.

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#### DESCRIPTION OF THE PREFERRED SECURITIES

Each Trust may issue, from time to time, only one series of Preferred Securities having terms described in the Prospectus Supplement relating thereto. The Declaration of each Trust authorizes the Regular Trustees of such Trust to issue on behalf of such Trust one series of Preferred Securities. Each Declaration will be qualified as an indenture under the Trust Indenture Act. The Preferred Securities will have such terms, including distributions, redemption, voting, liquidation rights and such other preferred, deferred or other special rights or such restrictions as set forth in the related Declaration or made part of such Declaration by the Trust Indenture Act. Reference is made to the Prospectus Supplement relating to the Preferred Securities of a Trust for specific terms, including (1) the specific designation of such Preferred Securities, (2) the number of Preferred Securities issued by such Trust, (3) the annual distribution rate (or method of calculation thereof) for Preferred Securities issued by such Trust, the date or dates upon which such distributions will be payable and the record date or dates for the payment of such distributions, (4) whether distributions on the Preferred Securities issued by such Trust will be cumulative, and, in the case of Preferred Securities having such cumulative distribution rights, the date or dates or method of determining the date or dates from which distributions on Preferred Securities issued by

such Trust will be cumulative, (5) the amount or amounts which will be paid out of the assets of such Trust to the holders of Preferred Securities of such Trust upon voluntary or involuntary dissolution, winding-up or termination of such Trust, (6) the obligation or right, if any, of such Trust to purchase or redeem Preferred Securities issued by such Trust and the price or prices at which, the period or periods within which and the terms and conditions upon which Preferred Securities issued by such Trust will or may be purchased or redeemed, in whole or in part, pursuant to such obligation or right, (7) the voting rights, if any, of Preferred Securities issued by such Trust in addition to those required by law, including the number of votes per Preferred Security and any requirement for the approval by the holders of Preferred Securities, as a condition to specified actions or amendments to the Declaration of such Trust, (8) terms for any conversion or exchange into other securities, (9) the rights, if any, to defer distributions on the Preferred Securities by extending the interest payment period on the Junior Subordinated Debt Securities and (10) any other relevant, terms, rights, preferences, privileges, limitations or restrictions of Preferred Securities issued by such Trust consistent with the Declaration of such Trust or with applicable law. All Preferred Securities offered hereby will be guaranteed by the Company as and to the extent set forth below under "Description of the Preferred Securities Guarantees." Certain United States federal income tax considerations applicable to any offering of Preferred Securities will be described in the Prospectus Supplement relating thereto.

In connection with the issuance of the Preferred Securities, each Trust will issue one series of Common Securities. The Declaration of each Trust authorizes the Regular Trustees of such Trust to issue on behalf of such Trust one series of Common Securities having such terms including distributions, redemption, voting, liquidation rights or such restrictions as set forth therein. The terms of the Common Securities issued by a Trust will be substantially identical to the terms of the Preferred Securities issued by such Trust and the Common Securities will rank PARI PASSU, and payments will be made thereon on a Pro Rata Basis with the Preferred Securities except that if a Declaration Event of Default occurs and is continuing, the rights of the holders of such Common Securities to payment in respect of distributions and payments upon liquidation, redemption and maturity will be subordinated to the rights of the holders of such Preferred Securities. The Common Securities issued by a Trust will also carry the right to vote and to appoint, remove or replace any of the Trustees of such Trust. All of the Common Securities issued by a Trust will be directly or indirectly owned by the Company.

#### DESCRIPTION OF THE PREFERRED SECURITIES GUARANTEES

The payment of periodic cash distributions with respect to the Preferred Securities of each Trust out of moneys held by the Property Trustee of each Trust, and payments on liquidation of each Trust

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and redemption of Preferred Securities of each Trust, will be fully and unconditionally guaranteed by the Company as described herein (each such guarantee, a "Preferred Securities Guarantee"). Set forth below is a summary of the Preferred Securities Guarantees that will be executed and delivered by the Company for the benefit of the holders from time to time of Preferred Securities. Each Preferred Securities Guarantee will be separately qualified under the Trust Indenture Act and will be held by Wilmington Trust Company, acting in its capacity as indenture trustee with respect thereto (the "Guarantee Trustee"), for the benefit of holders of the Preferred Securities of the applicable Trust. The terms of each Preferred Securities Guarantee will be those set forth in such Preferred Securities Guarantee and those made part of such Guarantee by the Trust Indenture Act. This description summarizes the material terms of the Preferred Securities Guarantees and is qualified in its entirety by reference to the form of Preferred Securities Guarantee, which is filed as an exhibit to the Registration Statement of which this Prospectus forms a part, and the Trust Indenture Act.

#### GENERAL

Pursuant to each Preferred Securities 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 a Trust, the Guarantee Payments (as defined herein) (without duplication of amounts theretofore paid by such Trust), as and when due, regardless of any defense, right of set-off or counterclaim that such Trust may have or assert. The following payments or distributions with respect to Preferred Securities issued by a Trust to the extent not paid or made by or on behalf of such Trust will be subject to such Preferred Securities Guarantee (without duplication): (1) any accumulated and unpaid distributions on such Preferred Securities, and the redemption price, including all accumulated and unpaid distributions to, but excluding, the date of redemption, with respect to such Preferred Securities called for redemption by such Trust but if and only to the extent that in each case the Company has made a payment to the related Property Trustee of interest or principal, or premium, if any, on the Junior Subordinated Debt Securities deposited in such Trust as trust assets and (2) upon a voluntary or involuntary



dissolution, winding-up or termination of such Trust (other than in connection with the distribution of Junior Subordinated Debt Securities to the holders of such Preferred Securities in exchange for Preferred Securities or the redemption of all of such Preferred Securities upon the maturity or redemption of the Junior Subordinated Debt Securities), the lesser of (a) the aggregate of the liquidation amount and all accumulated and unpaid distributions on such Preferred Securities to the date of payment, to the extent such Trust has funds on hand legally available therefor, and (b) the amount of assets of such Trust remaining available for distribution to holders of such Preferred Securities in liquidation of such Trust as required by applicable law (the "Guarantee Payments"). 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 such Preferred Securities or by causing the applicable Trust to pay such amounts to such holders.

The Preferred Securities Guarantee is a guarantee from the time of issuance of the applicable Preferred Securities, but the Preferred Securities Guarantee covers distributions and other payments on such Preferred Securities only if and to the extent that the Company has made a payment to the Property Trustee of interest or principal, or premium if any, on the Junior Subordinated Debt Securities deposited in the applicable Trust as trust assets. If the Company does not make interest, principal or premium, if any, payments on the Junior Subordinated Debt Securities deposited in the applicable Trust as trust assets, the Property Trustee will not make distributions on the Preferred Securities of such Trust and the Trust will not have funds available therefor.

The Company's obligations under the Declaration for each Trust, the Preferred Securities Guarantee issued with respect to Preferred Securities issued by such Trust, the Junior Subordinated Debt Securities purchased by such Trust and the Indenture, in the aggregate, will provide a full and

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unconditional guarantee on a subordinated basis by the Company of payments due on the Preferred Securities issued by such Trust.

#### CERTAIN COVENANTS OF THE COMPANY

In each Preferred Securities Guarantee, the Company will covenant that, so long as any Preferred Securities issued by the applicable Trust remain outstanding, the Company will not (1) declare or pay any dividends on, or redeem, purchase, acquire or make a distribution or liquidation payment with respect to, any of its capital stock (other than (a) dividends or distributions in shares of, or options, warrants, rights to subscribe for or purchase shares of, common stock of the Company, (b) any declaration of a dividend in connection with the implementation of a shareholders' rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto, (c) as a result of a reclassification of the Company's capital stock or the exchange or the conversion of one class or series of the Company's capital stock for another class or series of the Company's capital stock, (d) the payment of accrued dividends and the purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged, or (e) purchases of the Company's common stock related to the issuance of the Company's common stock or rights under any of the Company's benefit plans for its directors, officers or employees, any of the Company's dividend reinvestment plans or stock purchase plans, or any of the benefit plans of any of the Company's affiliates for such affiliates' directors, officers or employees), (2) make any payment of principal or of interest or premium, if any, on or repay, repurchase or redeem any debt security of the Company that ranks PARI PASSU with or junior in interest to the Junior Subordinated Debt Securities deposited in such Trust or (3) make any guarantee payments with respect to any guarantee by the Company of the debt securities of any subsidiary of the Company (other than pursuant to a Preferred Securities Guarantee) if such guarantee ranks PARI PASSU with or junior in interest to the Junior Subordinated Debt Securities deposited in such Trust, if at such time (x) the Company shall be in default with respect to its Guarantee Payments or other payment obligations under the related Preferred Securities Guarantee, (y) there shall have occurred any Declaration Event of Default under the applicable Declaration or (z) the Company shall have given notice of its election to defer payments of interest on the Junior Subordinated Debt Securities by extending the interest payment period as provided in the terms of the Junior Subordinated Debt Securities deposited in such Trust as trust assets and such period, or any extension thereof, is continuing. In addition, so long as any Preferred Securities of a Trust remain outstanding, the Company has agreed (1) to remain the sole direct or indirect owner of all of the outstanding Common Securities of such Trust and not to cause or permit such Common Securities to be transferred except to the extent permitted by the applicable Declaration; provided that any permitted successor of the Company under the Indenture may succeed to the Company's ownership of such Common Securities and (2) to use reasonable efforts to cause such Trust to continue to be treated as a grantor trust for United States federal income tax purposes except in connection with a distribution of Junior Subordinated Debt Securities to the holders of such Preferred Securities as provided in the

applicable Declaration.

#### AMENDMENTS AND ASSIGNMENT

Except with respect to any changes that do not adversely affect the rights of holders of Preferred Securities in any material respect (in which case no consent will be required), each Preferred Securities Guarantee may be amended only with the prior approval of the Company and the holders of not less than a majority in liquidation amount of the outstanding Preferred Securities issued by the applicable Trust. The manner of obtaining any such approval of holders of such Preferred Securities will be set forth in an accompanying Prospectus Supplement. All guarantees and agreements contained in a Preferred Securities Guarantee shall bind the successors, assignees, receivers, trustees and representatives of the Company and shall inure to the benefit of the holders of the Preferred Securities

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of the applicable Trust then outstanding. Except in connection with a consolidation, merger or sale involving the Company that is permitted under the Indenture, the Company may not assign its obligations under any Preferred Securities Guarantee.

#### TERMINATION OF THE PREFERRED SECURITIES GUARANTEE

Each Preferred Securities Guarantee will terminate and be of no further force and effect as to the Preferred Securities issued by the applicable Trust (1) upon full payment of the redemption price of all Preferred Securities of such Trust, (2) upon distribution of the Junior Subordinated Debt Securities to the holders of the Trust Securities of such Trust in exchange for all of the Trust Securities issued by such Trust or (3) upon full payment of the amounts payable in accordance with the applicable Declaration upon liquidation of such Trust. Notwithstanding the foregoing, each Preferred Securities 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 applicable Trust must restore payment of any sums paid with respect to such Preferred Securities or under such Preferred Securities Guarantee.

#### STATUS OF THE PREFERRED SECURITIES GUARANTEE

The Company's obligation under each Preferred Securities Guarantee to make the Guarantee Payments will constitute an unsecured obligation of the Company and will rank (1) subordinate and junior in right of payment to all other liabilities of the Company, including the Junior Subordinated Debt Securities, except those made PARI PASSU or subordinate by their terms, and (2) senior to all capital stock (other than the most senior preferred stock issued, from time to time, if any, by the Company, which preferred stock will rank PARI PASSU with each Preferred Securities Guarantee) now or hereafter issued by the Company and to any guarantee now or hereafter entered into by the Company in respect of any of its capital stock (other than the most senior preferred stock issued, from time to time, if any, by the Company). The Company's obligations under each Preferred Securities Guarantee will rank PARI PASSU with respect to obligations under other guarantee agreements which it may enter into from time to time to the extent that (1) such agreements shall be entered into in substantially the form of the Preferred Securities Guarantee and provide for comparable guarantees by the Company of payment on preferred securities issued by other trusts, partnerships or other entities affiliated with the Company that are financing vehicles of the Company and (2) the debentures or other evidences of indebtedness of the Company relating to such preferred securities are junior subordinated, unsecured indebtedness of the Company. The Company's obligations under each Preferred Securities Guarantee are effectively subordinated to all existing and future liabilities, including trade payables, of the Company's subsidiaries, except to the extent that the Company is a creditor of the subsidiaries and is recognized as such. Each Declaration provides that each holder of Preferred Securities by acceptance thereof agrees to the subordination provisions and other terms of the related Preferred Securities Guarantee.

Each Preferred Securities Guarantee will constitute a guarantee of payment and not merely of collection (that is, the guaranteed party may institute a legal proceeding directly against the guarantor to enforce its rights under the guarantee without first instituting a legal proceeding against any other person or entity). Each Preferred Securities Guarantee will be deposited with the Guarantee Trustee, as indenture trustee, to be held for the benefit of the holders of the Preferred Securities issued by the applicable Trust. The Guarantee Trustee will have the right to enforce the Preferred Securities Guarantee on behalf of the holders of the Preferred Securities issued by the applicable Trust. The holders of not less than a majority in aggregate liquidation amount of the Preferred Securities issued by the applicable Trust will 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 related Preferred Securities Guarantee or exercising any trust or other power conferred upon the Guarantee Trustee under such Preferred Securities Guarantee. If the Guarantee Trustee fails to enforce such Preferred



Securities Guarantee as above provided, any holder of Preferred Securities issued by the applicable Trust may institute a legal proceeding directly against the Company to enforce its rights under such Preferred Securities Guarantee without first instituting a legal proceeding against the applicable Trust, the Guarantee Trustee or any other person or entity. Notwithstanding the foregoing, if the Company has failed to make a Guarantee Payment, a holder of Preferred Securities may directly institute a proceeding against the Company for enforcement of the applicable Preferred Securities Guarantee for such payment without first instituting a legal proceeding against the applicable Trust, the Guarantee Trustee or any other person or entity.

#### MISCELLANEOUS

The Company will be required to provide annually to the Guarantee Trustee a statement as to the performance by the Company of certain of its obligations under each Preferred Securities Guarantee and as to any default in such performance. The Company is required to file annually with the Guarantee Trustee an officers' certificate as to the Company's compliance with all conditions under each Preferred Securities Guarantee.

The Guarantee Trustee, prior to the occurrence of an event of default under a Preferred Securities Guarantee and after the curing or waiving of all events of default that may have occurred, will undertake to perform only such duties as are specifically set forth in the applicable Preferred Securities Guarantee, and no implied covenants will be read into such Preferred Securities Guarantee. After a default with respect to a Preferred Securities Guarantee has occurred, the Guarantee Trustee shall exercise such of the rights and powers vested in it by such Preferred Securities Guarantee, 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. Subject to such provision, the Guarantee Trustee is under no obligation to exercise any of the rights or powers vested in it by a Preferred Securities Guarantee at the request or direction of any holder of the applicable Preferred Securities unless it is offered security and indemnity satisfactory to it against the costs, expenses and liabilities that might be incurred thereby.

#### GOVERNING LAW

Each Preferred Securities Guarantee will be governed by, and construed in accordance with, the laws of the State of New York.

#### DESCRIPTION OF THE JUNIOR SUBORDINATED DEBT SECURITIES

The Company may issue from time to time one or more series of Junior Subordinated Debt Securities ("Junior Subordinated Debt Securities") under a Junior Subordinated Indenture (the "Indenture") between the Company and Wilmington Trust Company, as trustee (the "Indenture Trustee"). The Indenture will be qualified under the Trust Indenture Act. The form of the Indenture has been filed as an exhibit to the Registration Statement of which this prospectus forms a part. The following description summarizes the material terms of the Indenture, and is qualified in its entirety by reference to the Indenture and the Trust Indenture Act. Whenever particular provisions or defined terms in the Indenture are referred to herein, such provisions or defined terms are incorporated by reference herein. Section and article references used herein are references to provisions of the Indenture.

#### GENERAL

The Junior Subordinated Debt Securities will be unsecured junior subordinated obligations of the Company. The Indenture does not limit the amount of additional indebtedness the Company or any of its subsidiaries may incur. The Company's rights and the rights of its creditors, including the holders of

Junior Subordinated Debt Securities, to participate in the assets of any subsidiary of the Company upon the latter's liquidation or recapitalization will be subject to the prior claims of the subsidiary's creditors, except to the extent that the Company may itself be a creditor with recognized claims against the subsidiary.

The Indenture does not limit the aggregate principal amount of indebtedness that may be issued thereunder and provides that Junior Subordinated Debt Securities may be issued thereunder from time to time in one or more series. The Junior Subordinated Debt Securities are issuable in one or more series pursuant to an indenture supplemental to the Indenture.

In the event Junior Subordinated Debt Securities are issued to a Trust in connection with the issuance of Trust Securities by such Trust, such Junior Subordinated Debt Securities subsequently may be distributed pro rata to the

holders of such Trust Securities in connection with the dissolution of such Trust at the election of the Company or upon the occurrence of certain events described in the Prospectus Supplement relating to such Trust Securities. Only one series of Junior Subordinated Debt Securities will be issued to each Trust in connection with the issuance of the Trust Securities by such Trust.

Reference is made to the Prospectus Supplement which will accompany this Prospectus for the following terms of the series of Junior Subordinated Debt Securities being offered thereby (to the extent such terms are applicable to the Junior Subordinated Debt Securities of such series): (1) the specific designation of such Junior Subordinated Debt Securities, aggregate principal amount, purchase price and premium, if any; (2) any limit on the aggregate principal amount of such Junior Subordinated Debt Securities; (3) the date or dates on which the principal of such Junior Subordinated Debt Securities is payable and the right to shorten, extend or defer such date or dates; (4) the rate or rates at which such Junior Subordinated Debt Securities will bear interest or the method of calculating such rate or rates, if any; (5) the date or dates from which such interest shall accrue, the interest payment dates on which such interest will be payable or the manner of determination of such interest payment dates and the record dates for the determination of holders to whom interest is payable on any such interest payment dates; (6) the right, if any, to extend or defer the interest payment periods and the duration of such extension; (7) the period or periods within which, the price or prices at which, and the terms and conditions upon which, such Junior Subordinated Debt Securities may be redeemed, in whole or in part, at the option of the Company; (8) the obligation, if any, of the Company to redeem or purchase such Junior Subordinated Debt Securities pursuant to any sinking fund or analogous provisions (including payments made in cash in anticipation of future sinking fund obligations) or at the option of the holder thereof and the period or periods for which, the price or prices at which, the currency or currencies (including currency unit or units) in which and the terms and conditions upon which, such Junior Subordinated Debt Securities will be redeemed or purchased, in whole or part, pursuant to such obligation; (9) any exchangeability, conversion or prepayment provisions of the Junior Subordinated Debt Securities; (10) any applicable United States federal income tax consequences, including whether and under what circumstances the Company will pay additional amounts on the Junior Subordinated Debt Securities held by a person who is not a U.S. person in respect of any tax, assessment or governmental charge withheld or deducted and, if so, whether the Company will have the option to redeem such Junior Subordinated Debt Securities rather than pay such additional amounts; (11) the form of such Junior Subordinated Debt Securities; (12) if other than denominations of \$25 or any integral multiple thereof, the denominations in which such Junior Subordinated Debt Securities will be issuable; (13) any and all other terms with respect to such series, including any modification of or additions to the events of default or covenants provided for with respect to such series, and any terms which may be required by or advisable under applicable laws or regulations not inconsistent with the Indenture; and (14) whether such Junior Subordinated Debt Securities are issuable as a global security, and in such case, the identity of the depository. (Section 2.01)

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Unless otherwise indicated in the Prospectus Supplement relating thereto, the Junior Subordinated Debt Securities will be issued in United States dollars in fully registered form without coupons in denominations of \$25 or integral multiples thereof. Junior Subordinated Debt Securities may be presented for exchange and Junior Subordinated Debt Securities in registered form may be presented for transfer in the manner, at the places and subject to the restrictions set forth in the Junior Subordinated Debt Securities and the Prospectus Supplement. Such services will be provided without charge, other than any tax or other governmental charge payable in connection therewith, but subject to the limitations provided in the Junior Subordinated Debt Securities.

Junior Subordinated Debt Securities may bear interest at a fixed rate or a floating rate. Junior Subordinated Debt Securities bearing no interest or interest at a rate that at the time of issuance is below the prevailing market rate will be sold at a discount below their stated principal amount. Special United States federal income tax considerations applicable to any such discounted Junior Subordinated Debt Securities or to certain Junior Subordinated Debt Securities issued at par which are treated as having been issued at a discount for United States federal income tax purposes will be described in the relevant Prospectus Supplement.

CERTAIN COVENANTS OF THE COMPANY APPLICABLE TO THE JUNIOR SUBORDINATED DEBT SECURITIES

If Junior Subordinated Debt Securities are issued to a Trust in connection with the issuance of Trust Securities by such Trust, the Company will covenant in the Indenture that, so long as the Preferred Securities issued by the applicable Trust remain outstanding, the Company will not (1) declare or pay any dividends on, or redeem, purchase, acquire or make a distribution or liquidation payment with respect to, any of its capital stock (other than (a) dividends or distributions in shares of, or options, warrants, rights to subscribe for or

purchase shares of, common stock of the Company, (b) any declaration of a dividend in connection with the implementation of a stockholders' rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto, (c) as a result of a reclassification of the Company's capital stock or the exchange or the conversion of one class or series of the Company's capital stock for another class or series of the Company's capital stock, (d) the payment of accrued dividends and the purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged, or (e) purchases of the Company's common stock related to the issuance of the Company's common stock or rights under any of the Company's benefit plans for its directors, officers, employees, any of the Company's dividend reinvestment plans or stock purchase plans, or any of the benefit plans of any of the Company's affiliates for such affiliates' directors, officers or employees), (2) make any payment of principal or of interest or premium, if any, on or repay, repurchase or redeem any debt security of the Company that, ranks PARI PASSU with or junior in interest to the Junior Subordinated Debt Securities deposited in such Trust or (3) make any guarantee payments with respect to any guarantee by the Company of the debt securities of any subsidiary of the Company (other than pursuant to a Preferred Securities Guarantee) if such guarantee ranks PARI PASSU with or junior in interest to the Junior Subordinated Debt Securities deposited in such Trust, if at such time (x) the Company shall be in default with respect to its Guarantee Payments or other payment obligations under the related Preferred Securities Guarantee, (y) there shall have occurred any Indenture Event of Default with respect to the Junior Subordinated Debt Securities deposited in such Trust as Trust assets or (z) the Company shall have given notice of its election to defer payments of interest on the Junior Subordinated Debt Securities by extending the interest payment period as provided in the terms of the Junior Subordinated Debt Securities deposited in such Trust as Trust assets and such period, or any extension thereof, is continuing. In addition, if Junior Subordinated Debt Securities are issued to a Trust in connection with the issuance of Trust Securities by such Trust, for so long as any Preferred Securities issued by the applicable Trust remain outstanding, the Company has agreed (1) to remain the sole direct or indirect owner of all of the outstanding Common Securities issued by the applicable Trust and not to cause or permit such

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Common Securities to be transferred except to the extent permitted by the applicable Declaration; provided that any permitted successor of the Company under the Indenture may succeed to the Company's ownership of the Common Securities issued by the applicable Trust, (2) to comply fully with all of its obligations and agreements contained in the related Declaration and (3) to use reasonable efforts to cause the applicable Trust to continue to be treated as a grantor trust for United States federal income tax purposes except in connection with a distribution of Junior Subordinated Debt Securities to holders of Preferred Securities issued by the applicable Trust as provided in the related Declaration.

#### SUBORDINATION

The payment of principal of, premium, if any, and interest on the Junior Subordinated Debt Securities will, to the extent and in the manner set forth in the Indenture, be subordinated and junior in right of payment to the prior payment in full, in cash or cash equivalents, of all Senior Debt of the Company whether outstanding on the date of this prospectus or thereafter incurred.

Upon any payment by the Company or distribution of assets of the Company to creditors upon any liquidation, dissolution, winding up, receivership, reorganization, assignment for the benefit of creditors, marshaling of assets and liabilities or any bankruptcy, insolvency or similar proceedings of the Company, the holders of all Senior Debt will first be entitled to receive payment in full of all amounts due or to become due thereon before the holders of the Junior Subordinated Debt Securities will be entitled to receive any payment in respect of the principal of, premium, if any, or interest on the Junior Subordinated Debt Securities.

In the event and during the continuation of any default by the Company in the payment of principal, premium, interest or any other payment due on any Senior Debt, or in the event that the maturity of any Senior Debt has been accelerated because of a default, then, in either case, no payment shall be made by the Company with respect to the principal (including redemption payments) of or premium, if any, or interest on the Junior Subordinated Debt Securities until such default shall have been cured or waived in writing or shall have ceased to exist or such Senior Debt shall have been discharged or paid in full.

In the event of the acceleration of the maturity of the Junior Subordinated Debt Securities, then no payments shall be made by the Company with respect to the principal (including redemption payments) of or premium, if any, or interest on the Junior Subordinated Debt Securities until the holders of all Senior Debt outstanding at the time of such acceleration shall receive payment in full of such Senior Debt (including any amounts due upon acceleration).

In the event that, notwithstanding the foregoing, any payment shall be received by the Indenture Trustee or any holder of Junior Subordinated Debt Securities when such payment is prohibited by the preceding paragraphs, such payment shall be held in trust for the benefit of, and shall be paid over or delivered to, the holders of Senior Debt or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any of such Senior Debt may have been issued, as their respective interests may appear.

By reason of such subordination, in the event of insolvency of the Company, funds that would otherwise be payable to holders of Junior Subordinated Debt Securities will be paid to the holders of Senior Debt of the Company to the extent necessary to pay such Senior Debt in full, and the Company may be unable to meet fully its obligations with respect to the Junior Subordinated Debt Securities.

"Debt" is defined to mean, with respect to any person at any date of determination (without duplication), (1) all indebtedness of such person for borrowed money, (2) all obligations of such person evidenced by bonds, debentures, notes or other similar instruments, including obligations incurred in connection with the acquisition of property, assets or businesses, (3) all obligations of such person in

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respect of letters of credit or bankers' acceptances or other similar instruments (or reimbursement obligations with respect thereto) issued on the account of such person, (4) all obligations of such person to pay the deferred purchase price of property or services, except certain trade payables, (5) all obligations of such person as lessee under capitalized leases, (6) all Debt of others secured by a lien on any asset of such person, whether or not such Debt is assumed by such person; provided that, for purposes of determining the amount of any Debt of the type described in this clause, if recourse with respect to such Debt is limited to such asset, the amount of such Debt shall be limited to the lesser of the fair market value of such asset or the amount of such Debt, (7) all Debt of others guaranteed by such person to the extent such Debt is guaranteed by such person and (8) to the extent not otherwise included in this definition, all obligations of such person for claims in respect of derivative products, including interest rate, foreign exchange rate and commodity prices, forward contracts, options, swaps, collars and similar arrangements.

"Senior Debt" is defined to mean the principal of (and premium, if any) and interest on all Debt of the Company whether created, incurred or assumed before, on or after the date of the Indenture; provided that such Senior Debt shall not include (1) Debt of the Company that, when incurred and without respect to any election under Section 1111(b) of Title 11, U.S. Code, was without recourse and (2) any other Debt of the Company which by the terms of the instrument creating or evidencing the same is specifically designated as being subordinated to or PARI PASSU with the Junior Subordinated Debt Securities, and in particular the Junior Subordinated Debt Securities shall rank PARI PASSU with all other debt securities and guarantees issued to any trust, partnership or other entity affiliated with the Company which is a financing vehicle of the Company in connection with an issuance of preferred securities by such financing entity.

#### INDENTURE EVENTS OF DEFAULT

The Indenture provides that any one or more of the following described events, which has occurred and is continuing, constitutes an "Indenture Event of Default" with respect to each series of Junior Subordinated Debt Securities:

- (1) failure for 90 days to pay interest on the Junior Subordinated Debt Securities of such series when due; provided that a valid extension of the interest payment period by the Company shall not constitute a default in the payment of interest for this purpose;
- (2) failure to pay principal of or premium, if any, on the Junior Subordinated Debt Securities of such series when due whether at maturity, upon redemption, by declaration or otherwise;
- (3) failure for 90 days to pay any sinking fund or analogous fund payment with respect to the Junior Subordinated Debt Securities of such series;
- (4) failure to duly observe or perform, in any material respect, any other covenant or agreement contained in the Indenture with respect to such series for 90 days after written notice to the Company from the Indenture Trustee or the holders of at least 25% in principal amount of the outstanding Junior Subordinated Debt Securities of such series;
- (5) certain events in bankruptcy, insolvency or reorganization of the Company; or
- (6) any other Indenture Event of Default applicable to the Junior Subordinated Debt Securities of such series. (Section 6.01)

In each and every such case, unless the principal of all the Junior Subordinated Debt Securities of that series shall have already become due and payable, either the Indenture Trustee or the holders of not less than 25% in aggregate principal amount of the Junior Subordinated Debt Securities of that series then outstanding, by notice in writing to the Company (and to the Indenture Trustee if given by such holders), may declare the principal of all the Junior Subordinated Debt Securities of that series to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable. (Section 6.01)

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The holders of a majority in aggregate outstanding principal amount of the Junior Subordinated Debt Securities of that series have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee or exercising any trust or power conferred on the Indenture Trustee with respect to such series. (Section 6.06) The Indenture Trustee or the holders of not less than 25% in aggregate outstanding principal amount of the Junior Subordinated Debt Securities of that series may declare the principal due and payable immediately upon an Indenture Event of Default with respect to such series, but the holders of a majority in aggregate outstanding principal amount of Junior Subordinated Debt Securities of such series may rescind and annul such declaration and waive the default if the default has been cured and a sum sufficient to pay all matured installments of interest and principal otherwise than by acceleration and any premium has been deposited with the Indenture Trustee. (Sections 6.01 and 6.06)

The holders of a majority in aggregate outstanding principal amount of the Junior Subordinated Debt Securities of that series may, on behalf of the holders of all the Junior Subordinated Debt Securities of that series, waive any past default, except a default in the payment of principal, premium, if any, or interest (unless such default has been cured and a sum sufficient to pay all matured installments of interest and principal otherwise than by acceleration and any premium has been deposited with the Indenture Trustee) or a call for redemption of the Junior Subordinated Debt Securities of that series. (Section 6.06) The Company is required to file annually with the Indenture Trustee a certificate as to whether or not the Company is in compliance with all the conditions and covenants under the Indenture. (Section 5.03)

If Junior Subordinated Debt Securities are issued to a Trust in connection with the issuance of Trust Securities of such Trust, then under the applicable Declaration an Indenture Event of Default with respect to such series of Junior Subordinated Debt Securities will constitute a Declaration Event of Default. If a Declaration Event of Default under the applicable Declaration has occurred and is continuing and such event is attributable to the failure of the Company to pay interest or principal, or premium, if any, on the applicable series of Junior Subordinated Debt Securities on the date such interest, principal or premium is otherwise payable (or in the case of redemption, on the redemption date), then a holder of Preferred Securities of such Trust may directly institute a Holder Direct Action on or after the respective due date specified in the applicable series of Junior Subordinated Debt Securities (see "The Trusts--The Property Trustee"). In connection with such Holder Direct Action, the Company will be subrogated to the rights of such holder of Preferred Securities under the applicable Declaration to the extent of any payment made by the Company to such holder of Preferred Securities in such Holder Direct Action. Except as expressly provided in the preceding sentences or in the applicable Prospectus Supplement, the holders of Preferred Securities of such Trust will not be able to exercise directly any other remedy available to the holders of the applicable series of Junior Subordinated Debt Securities.

#### MODIFICATION OF THE INDENTURE

From time to time the Company and the Indenture Trustee may, without the consent of the holders of Junior Subordinated Debt Securities, amend the Indenture or indentures supplemental thereto for one or more of the following purposes: (1) to evidence the succession of another corporation or other entity to the Company under the Indenture and the Junior Subordinated Debt Securities and the assumption by such successor corporation or other entity of the obligations of the Company thereunder; (2) to add further covenants, restrictions, conditions or provisions for the protection of the holders of Junior Subordinated Debt Securities; (3) to cure any ambiguity or to correct or supplement any provision which may be defective or inconsistent with any other provision; (4) to add to, change or eliminate any of the provisions of the Indenture, provided that any such addition, change or elimination shall become effective only after there are no such Junior Subordinated Debt Securities of any series entitled to the benefit of such provision outstanding; (5) to provide for the

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issuance of Junior Subordinated Debt Securities in coupon form; (6) to evidence and provide for the acceptance of a successor trustee; (7) to qualify or

maintain the qualification of the Indenture under the Trust Indenture Act; (8) to establish the form or terms of a series of Junior Subordinated Debt Securities; and (9) to make any addition, change or elimination of any provision of the Indenture that does not adversely affect the rights of any holder of Junior Subordinated Debt Securities in any material respect. (Section 9.01)

The Indenture contains provisions permitting the Company and the Indenture Trustee, with the consent of the holders of not less than a majority in principal amount of the outstanding Junior Subordinated Debt Securities of each series affected by such modification, to modify the Indenture or any supplemental indenture affecting the rights of the holders of such Junior Subordinated Debt Securities; provided that no such modification may, without the consent of the holder of each outstanding Subordinated Debt Security affected thereby, (1) extend the fixed maturity of the Junior Subordinated Debt Securities of any series, reduce the principal amount thereof, reduce the rate or extend the time of payment of interest thereon, reduce any premium payable upon the redemption thereof or (2) reduce the percentage of Junior Subordinated Debt Securities, the holders of which are required to consent to any such modification. (Section 9.02)

#### BOOK-ENTRY AND SETTLEMENT

If any Junior Subordinated Debt Securities of a series are represented by one or more global securities (each, a "Global Security"), the applicable Prospectus Supplement will describe the circumstances, if any, under which beneficial owners of interests in any such Global Security may exchange such interests for Junior Subordinated Debt Securities of such series and of like tenor and principal amount in any authorized form and denomination. Principal of and any premium and interest on a Global Security will be payable in the manner described in the applicable Prospectus Supplement.

The specific terms of the depositary arrangement with respect to any portion of a series of Junior Subordinated Debt Securities to be represented by a Global Security will be described in the applicable Prospectus Supplement.

#### CONSOLIDATION, MERGER AND SALE

The Indenture will provide that the Company may not consolidate with or merge into any other person or convey, transfer or lease its properties and assets substantially as an entirety to any person and may not permit any person to merge into or consolidate with the Company unless (1) either the Company will be the resulting or surviving entity or any successor or purchaser is a corporation, limited liability company, partnership or trust organized under the laws of the United States of America, any State or the District of Columbia, and any such successor or purchaser expressly assumes the Company's obligations under the Junior Subordinated Debt Securities and the Indenture and (2) immediately after giving effect to the transaction no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default shall have occurred and be continuing. (Section 10.01)

#### DEFEASANCE AND DISCHARGE

Under the terms of the Indenture, the Company will be discharged from any and all obligations in respect of a series of the Junior Subordinated Debt Securities (except in each case for certain obligations to register the transfer or exchange of such Junior Subordinated Debt Securities, replace stolen, lost or mutilated Junior Subordinated Debt Securities of such series, maintain paying agencies and hold moneys for payment in trust) if (1) the Company irrevocably deposits with the Indenture Trustee cash or U.S. Government Obligations or a combination thereof, as trust funds in an amount certified to be sufficient to pay at maturity (or upon redemption) the principal of, premium, if any, and

interest on all outstanding Junior Subordinated Debt Securities of such series; (2) such deposit will not result in a breach or violation of, or constitute a default under, any agreement or instrument to which the Company is a party or by which it is bound; (3) the Company delivers to the Indenture Trustee an opinion of counsel to the effect that the holders of the Junior Subordinated Debt Securities of such series will not recognize income, gain or loss for United States federal income tax purposes as a result of such defeasance and discharge and that such defeasance and discharge will not otherwise alter holders' United States federal income tax treatment of principal, premium and interest payments on such Junior Subordinated Debt Securities of such series (such opinion must be based on a ruling of the Internal Revenue Service or a change in United States federal income tax law occurring after the date of the Indenture, since such a result would not occur under current tax law); (4) the Company has delivered to the Indenture Trustee an officers' certificate and an opinion of counsel, each stating that all conditions precedent provided for relating to the defeasance and discharge contemplated by such provision have been complied with; and (5) no event or condition shall exist that pursuant to the applicable subordination provisions, would prevent the Company from making payments of principal of, premium, if any, and interest on the Junior Subordinated Debt Securities at the



date of the irrevocable deposit referred to above. (Section 11.01)

#### GOVERNING LAW

The Indenture and the Junior Subordinated Debt Securities will be governed by the laws of the State of New York. (Section 13.05)

#### INFORMATION CONCERNING THE INDENTURE TRUSTEE

The Indenture Trustee, prior to the occurrence of an Indenture Event of Default and after the curing of all Indenture Events of Default undertakes to perform only such duties as are specifically set forth in the Indenture and, after an Indenture Event of Default has occurred (which has not been cured or waived), shall exercise such of the rights and powers vested in it by the Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs. (Section 7.01) Subject to such provision, the Indenture Trustee is under no obligation to exercise any of the powers vested in it by the Indenture at the request of any holder of Junior Subordinated Debt Securities, unless offered security or indemnity satisfactory to it by such holder against the costs, expenses and liabilities that might be incurred thereby. (Section 7.02) The Indenture Trustee is not required to expend or risk its own funds or otherwise incur personal financial liability in the performance of its duties or in the exercise of any of its rights or powers if there is reasonable ground for believing that the repayment of such funds or liability is not reasonably assured to it under the terms of the Indenture or adequate indemnity against such risk is not reasonably assured to it. (Section 7.01)

The Company and its subsidiaries maintain commercial banking and trust relationships with the Indenture Trustee and its affiliates.

#### MISCELLANEOUS

The Company will have the right at all times to assign any of its rights or obligations under the Indenture to an affiliate; provided that, in the event of any such assignment, the Company will remain jointly and severally liable for all such obligations. Subject to the foregoing, the Indenture will be binding upon and inure to the benefit of the parties thereto and their respective successors and assigns. The Indenture provides that it may not otherwise be assigned by the parties thereto other than by the Company to a successor or purchaser pursuant to a consolidation, merger, sale or conveyance permitted by the Indenture. (Section 13.11)

#### PLAN OF DISTRIBUTION

The Company may sell any series of Junior Subordinated Debt Securities and each Trust may sell its Preferred Securities (the Junior Subordinated Debt Securities and the Preferred Securities are collectively referred to herein as the "Offered Securities") being offered hereby in any of three ways (or in any combination thereof): (1) through underwriters or dealers; (2) directly to a limited number of purchasers or to a single purchaser, or (3) through agents. The Prospectus Supplement with respect to any Offered Securities will set forth the terms of the offering of such Offered Securities, including the name or names of any underwriters, dealers or agents and the respective amounts of such Offered Securities underwritten or purchased by each of them, the initial public offering price of such Offered Securities and the proceeds to the Company or the applicable Trust, as the case may be, from such sale, any discounts, commissions or other items constituting compensation from the Company or the applicable Trust, as the case may be, and any discounts, commissions or concessions allowed or reallocated or paid to dealers and any securities exchanges on which such Offered Securities may be listed. Any public offering price and any discounts or concessions allowed or reallocated or paid to dealers may be changed from time to time.

If underwriters are used in the sale of any Offered Securities, such Offered Securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Such Offered Securities may be either offered to the public through underwriting syndicates represented by managing underwriters, or directly by underwriters. Unless otherwise set forth in the Prospectus Supplement, the obligations of the underwriters to purchase such Offered Securities will be subject to certain conditions precedent and the underwriters will be obligated to purchase all of such Offered Securities if any are purchased.

Offered Securities may be sold directly by the Company or a Trust, as the case may be, or through agents designated by the Company or such Trust, as the case may be, from time to time. Any agent involved in the offer or sale of Offered Securities in respect of which this Prospectus is delivered will be named, and any commissions payable by the Company or the applicable Trust, as

the case may be, to such agent will be set forth, in the Prospectus Supplement. Unless otherwise indicated in the Prospectus Supplement, any such agent will be acting on a best efforts basis for the period of its appointment.

If so indicated in the Prospectus Supplement, the Company or the applicable Trust, as the case may be, will authorize underwriters, dealers or agents to solicit offers by certain purchasers to purchase Offered Securities from the Company or the applicable Trust, as the case may be, at the public offering price set forth in the Prospectus Supplement pursuant to delayed delivery contracts providing for payment and delivery on a specified date in the future. Such contracts will be subject only to those conditions set forth in the Prospectus Supplement, and the Prospectus Supplement will set forth the commission payable for solicitation of such contracts.

Agents and underwriters may be entitled under agreements entered into with the Company and the applicable Trust to indemnification by the Company and the applicable Trust against certain civil liabilities, including liabilities under the Securities Act, or to contribution with respect to payments which the agents or underwriters may be required to make in respect thereof. Agents and underwriters may be customers of, engage in transactions with, or perform services for the Company, the applicable Trust and/or any of their affiliates in the ordinary course of business.

Certain persons participating in the offering may engage in transactions that stabilize, maintain or otherwise affect the price of the Offered Securities. In connection with the offering, the underwriters or agents, as the case may be, may purchase and sell the Offered Securities in the open market. These transactions may include overallotment and stabilizing transactions and purchases to cover syndicate short positions created in connection with the offering. Stabilizing transactions consist of certain bids or

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purchases for the purpose of preventing or retarding a decline in the market price of the Offered Securities; and syndicate short positions involve the sale by the underwriters or agents, as the case may be, of a greater number of Offered Securities than they are required to purchase from the Company or the applicable Trust, as the case may be, in the offering. The underwriters may also impose a penalty bid, whereby selling concessions allowed to syndicate members or other broker-dealers for the Offered Securities sold for their account may be reclaimed by the syndicate if such Offered Securities are repurchased by the syndicate in stabilizing or covering transactions. These activities may stabilize, maintain or otherwise affect the market price of the Offered Securities, which may be higher than the price that might otherwise prevail in the open market, and, if commenced, may be discontinued at any time. These transactions may be effected on the New York Stock Exchange, on the Pacific Stock Exchange, in the over-the-counter market or otherwise. For a description of these activities, see "Plan of Distribution" or "Underwriting" in the relevant Prospectus Supplement.

Unless otherwise indicated in the Prospectus Supplement, the Company does not intend to list any of the Offered Securities on a national securities exchange. No assurances can be given that there will be a market for the Offered Securities.

#### LEGAL MATTERS

Unless otherwise indicated in the applicable Prospectus Supplement, certain matters of Delaware law relating to the validity of the Preferred Securities, the enforceability of the applicable Declaration and the formation of the Trusts will be passed upon by Richards, Layton & Finger, P.A., Wilmington, Delaware, special Delaware counsel to the Trusts and the Company. The validity of the applicable Preferred Securities Guarantee and the Junior Subordinated Debt Securities offered hereby will be passed upon for the Company by Gerald A. Morton, Vice President--Law and Corporate Secretary of the Company. Mr. Morton owns approximately 3,961 shares of the Company's Common Stock directly and through the Company's tax advantaged savings plan and options to purchase an aggregate of 29,000 shares of the Company's Common Stock, which are or become exercisable in periodic installments through August 1, 2001.

#### EXPERTS

The financial statements incorporated by reference in this Prospectus and elsewhere in this Registration Statement have been audited by Arthur Andersen LLP, independent accountants, as indicated in their reports with respect thereto, and are included herein in reliance upon the authority of said firm as experts in accounting and auditing in giving said reports.

The estimates of oil and gas reserves and discounted present values of estimated future net revenues incorporated by reference in this Prospectus and elsewhere in this Registration Statement were prepared by Ryder Scott, and are included herein in reliance upon the authority of said firm as experts with respect to those matters.



PART II  
INFORMATION NOT REQUIRED IN PROSPECTUS

## ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION

The following table sets forth the estimated expenses payable by the Company in connection with the offering described in this Registration Statement.

<TABLE>	
<S>	<C>
Registration fee.....	\$ 69,500
Printing expenses.....	20,000
Accounting fees and expenses.....	20,500
Legal fees and expenses.....	140,000
Trustee fees and expenses.....	10,000
Rating agency fees.....	20,000
Miscellaneous.....	20,000
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Total.....	\$ 300,000
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</TABLE>	

## ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 145 of the Delaware General Corporation Law, INTER ALIA, empowers a Delaware corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director, officer, employee or agent of another corporation or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Similar indemnity is authorized for such persons against expenses (including attorneys' fees) actually and reasonably incurred in connection with the defense or settlement of any such threatened, pending or completed action or suit if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and provided further that (unless a court of competent jurisdiction otherwise provides) such person shall not have been adjudged liable to the corporation. Any such indemnification may be made only as authorized in each specific case upon a determination by the shareholders or disinterested directors or by independent legal counsel in a written opinion that indemnification is proper because the indemnitee has met the applicable standard of conduct.

Section 145 further authorizes a corporation 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 or enterprise, 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 otherwise have the power to indemnify him under Section 145. The Company maintains policies insuring its and its subsidiaries' officers and directors against certain liabilities for actions taken in such capacities, including liabilities under the Securities Act of 1933, as amended.

Article XI of the Restated Certificate of Incorporation of the Company eliminates the personal liability of each director of the Company to the Company and its stockholders for monetary damages for breach of fiduciary duty as a director involving any act or omission of any such director occurring on or after September 30, 1986; provided, however, that such provision does not eliminate or limit the liability of a director (i) for any breach of such director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a

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knowing violation of law, (iii) under Title 8, Section 174 of the General Corporation Law of the State of Delaware or (iv) for any transaction from which such director derived an improper personal benefit.

The Bylaws of the Company provide that the Company will indemnify and hold harmless, to the fullest extent permitted by applicable law as in effect as of the date of the adoption of the Bylaws or as it may thereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding") by reason of the fact that he,

or a person for whom he is the legal representative, is or was a director, officer, employee or agent of the Company or is or was serving at the request of the Company as a director, officer, employee, fiduciary or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person. The Bylaws further provide that the Company will indemnify a person in connection with a proceeding initiated by such person only if the proceeding was authorized by the Board of Directors of the Company.

The Bylaws further provide that the Company will pay the expenses incurred in defending any proceeding in advance of its final disposition, PROVIDED, HOWEVER, that the payment of expenses incurred by a director or officer in his capacity as a director or officer (except with regard to service to an employee benefit plan or non-profit organizations in advance of the final disposition of the proceeding) will be made only upon receipt of an undertaking by the director or officer to repay all amounts advanced if it should be ultimately determined that the director or officer is not entitled to be indemnified.

The Company has placed in effect insurance which purports (a) to insure it against certain costs of indemnification which may be incurred by it pursuant to the aforementioned Bylaw provision or otherwise and (b) to insure the officers and directors of the Company and of specified subsidiaries against certain liabilities incurred by them in the discharge of their functions as officers and directors except for liabilities arising from their own malfeasance.

#### ITEM 16. EXHIBITS

<TABLE> <CAPTION> EXHIBIT NO.		DESCRIPTION OF EXHIBIT
<S>		<C>
*1.1	Form of Underwriting Agreement (Debt Securities)	
*1.2	Form of Underwriting Agreement (Preferred Stock)	
*1.3	Form of Underwriting Agreement (Preferred Securities)	
4.1	Form of Senior Debt Indenture ("Senior Indenture") between the Company and State Street Bank and Trust Company, as Trustee	
4.2	Form of Subordinated Debt Indenture ("Subordinated Indenture") between the Company and State Street Bank and Trust Company, as Trustee	
4.3	Form of Junior Subordinated Debt Indenture ("Junior Subordinated Indenture") between the Company and Wilmington Trust Company, as Trustee	
4.4.1	Declaration of Trust of Pogo Trust I	
4.4.2	Declaration of Trust of Pogo Trust II	
4.5	Form of Amended and Restated Declaration of Trust	
4.6.1	Certificate of Trust of Pogo Trust I	
4.6.2	Certificate of Trust of Pogo Trust II	
4.7	Form of Preferred Security (included in Exhibit 4.3)	
*4.8.1	Form of Supplemental Indenture to Junior Subordinated Indenture	
*4.8.2	Form of Supplemental Indenture to Senior Indenture	
*4.8.3	Form of Supplemental Indenture to Subordinated Indenture	
*4.9	Form of Junior Subordinated Debt Security (included in Exhibit 4.8.1)	

</TABLE>

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<TABLE> <CAPTION> EXHIBIT NO.		DESCRIPTION OF EXHIBIT
<S>		<C>
4.10	Form of Preferred Securities Guarantee	
*4.11	Form of Senior Debt Security (included in Exhibit 4.8.2)	
*4.12	Form of Subordinated Debt Security (included in Exhibit 4.8.3)	
**4.13	Restated Certificate of Incorporation of the Company (filed as exhibit 3(a) to the Company's Annual Report on form 10-K for the year ended December 31, 1997 and incorporated herein by reference)	
**4.14	Amended and Restated Bylaws of the Company (filed as exhibit 3(b) to the Company's Quarterly Report on form 10-Q for the quarter ended March 31, 1997 and incorporated herein by reference)	
**4.15	Certificate of Designation, Preferences and Rights of Preferred Stock of the Company, dated March 25, 1997 (filed as Exhibit 3(a)(1) to the Company's Annual Report on Form 10-K for the year ended December 31, 1987 and incorporated herein by reference)	
**4.16	Rights Agreement dated as of April 26, 1994 between the Company and Harris Trust Company of New York, as Rights Agent (filed as Exhibit 4 to the Company's Current Report on Form 8-K filed April 26, 1994 and incorporated herein by reference)	
**4.17	Certificate of Designations of Series A Junior Participating Preferred Stock of the Company dated April 26, 1994 (filed as Exhibit 4(d) to the Company's Registration Statement on Form S-8 (File No. 33-54969) filed August 9, 1994 and incorporated herein by reference)	
5.1	Opinion of Gerald A. Morton	
5.2.1	Opinion of Richards, Layton & Finger, P.A. relating to Pogo Trust I	
5.2.2	Opinion of Richards, Layton & Finger, P.A. relating to Pogo Trust II	
*8	Opinion of counsel to the Company as to certain tax matters	
12.1	Statement re Computation of Ratios	
23.1	Consent of Arthur Andersen LLP	

- 23.2 Consent of Ryder Scott Company Petroleum Engineers
- 23.3 Consent of Gerald A. Morton (included in Exhibit 5.1)
- 23.4 Consent of Richards, Layton & Finger, P.A. (included in Exhibits 5.2.1 and 5.2.2)
- 24.1 Powers of Attorney for the Company
- 25.1 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of the Senior Trustee under the Senior Indenture
- 25.2 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of the Subordinated Trustee under the Subordinated Indenture
- 25.3 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of Wilmington Trust Company as Trustee under the Junior Subordinated Indenture
- 25.4.1 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of Wilmington Trust Company, as Property Trustee, relating to Pogo Trust I
- 25.4.2 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of Wilmington Trust Company, as Property Trustee, relating to Pogo Trust II.
- 25.5.1 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of Wilmington Trust Company, as Guarantee Trustee, relating to Pogo Trust I
- 25.5.2 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of Wilmington Trust Company, as Guarantee Trustee, relating to Pogo Trust II

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\* To be filed by amendment or by a report on Form 8-K pursuant to Regulation S-K, Item 601(b).

\*\* Incorporated herein by reference as indicated.

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#### ITEM 17. UNDERTAKINGS

(a) The undersigned registrants hereby undertake:

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

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

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

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

PROVIDED, HOWEVER, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Registration Statement.

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

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

(4) 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 registrants pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act of 1933 shall be deemed to be part of this Registration Statement as of the time it was declared effective.

(b) The undersigned registrants hereby undertake that, for purposes of determining any liability under the Securities Act of 1933, each filing

of the registrants' annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrants pursuant to the foregoing provisions, or otherwise, the registrants have been advised that in the opinion of the

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Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrants 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 Act and will be governed by the final adjudication of such issue.

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# SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Houston, State of Texas, on March 26, 1999.

<TABLE>

<S>	<C> <C>
	POGO PRODUCING COMPANY
By:	/s/ PAUL G. VAN WAGENEN
	-----
	Paul G. Van Wagenen
	CHAIRMAN OF THE BOARD, PRESIDENT AND
	CHIEF EXECUTIVE OFFICER

</TABLE>

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

<TABLE>

<CAPTION>	NAME	TITLE	DATE
-----	-----	-----	-----
<C>	<S>	<C>	
	/s/ PAUL G. VAN WAGENEN	Chairman of the Board, President and Chief Executive Officer	March 26, 1999
	----- Paul G. Van Wagenen	(Principal Executive Officer and Director)	
	/s/ JOHN W. ELSENHANS	Vice President and Chief Financial Officer	March 26, 1999
	----- John W. Elsenhans	(Principal Financial Officer)	
	/s/ THOMAS E. HART	Vice President and Controller	March 26, 1999
	----- Thomas E. Hart	(Principal Accounting Officer)	
	*		
	----- Jerry M. Armstrong	Director	March 26, 1999
	*		
	----- Tobin Armstrong	Director	March 26, 1999

* ----- Jack S. Blanton	Director	March 26, 1999
-------------------------------	----------	----------------

* ----- W. M. Brumley, Jr.	Director	March 26, 1999
----------------------------------	----------	----------------

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<TABLE> <CAPTION>		
NAME	TITLE	DATE
-----	-----	-----
<C>	<S>	<C>
* ----- John B. Carter, Jr.	Director	March 26, 1999
* ----- William L. Fisher	Director	March 26, 1999
* ----- Gerrit W. Gong	Director	March 26, 1999
* ----- J. Stuart Hunt	Director	March 26, 1999
* ----- Frederick A. Klingenstein	Director	March 26, 1999
* ----- Jack A. Vickers	Director	March 26, 1999

<TABLE> <S> <C>	<C>
--------------------	-----

\*By: /s/ THOMAS E. HART  
-----  
Thomas E. Hart  
ATTORNEY-IN-FACT

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# SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, Pogo Trust I 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 Houston, State of Texas, on March 26, 1999.

<TABLE> <S>	<C> <C> POGO TRUST I
----------------	-------------------------

By: Pogo Producing Company, as Sponsor

By: /s/ GERALD A. MORTON  
-----  
Name: Gerald A. Morton  
Title: Vice President--Law and  
Corporate Secretary

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# SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, Pogo Trust II 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 Houston, State of Texas, on March 26, 1999.

<TABLE>  
 <S> <C> <C>  
 POGO TRUST II

By: Pogo Producing Company, as Sponsor

By: /s/ GERALD A. MORTON  
 -----  
 Name: Gerald A. Morton  
 Title: Vice President--Law and  
 Corporate Secretary

</TABLE>

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# INDEX TO EXHIBITS

<TABLE> <CAPTION> EXHIBIT NO.	DESCRIPTION OF EXHIBIT
<C>	<S>
*1.1	Form of Underwriting Agreement (Debt Securities)
*1.2	Form of Underwriting Agreement (Preferred Stock)
*1.3	Form of Underwriting Agreement (Preferred Securities)
4.1	Form of Senior Debt Indenture ("Senior Indenture") between the Company and State Street Bank and Trust Company, as Trustee
4.2	Form of Subordinated Debt Indenture ("Subordinated Indenture") between the Company and State Street Bank and Trust Company, as Trustee
4.3	Form of Junior Subordinated Debt Indenture ("Junior Subordinated Indenture") between the Company and Wilmington Trust Company, as Trustee
4.4.1	Declaration of Trust of Pogo Trust I
4.4.2	Declaration of Trust of Pogo Trust II
4.5	Form of Amended and Restated Declaration of Trust
4.6.1	Certificate of Trust of Pogo Trust I
4.6.2	Certificate of Trust of Pogo Trust II
4.7	Form of Preferred Security (included in Exhibit 4.3)
*4.8.1	Form of Supplemental Indenture to Junior Subordinated Indenture
*4.8.2	Form of Supplemental Indenture to Senior Debt Indenture
*4.8.3	Form of Supplemental Indenture to Subordinated Indenture
*4.9	Form of Junior Subordinated Debt Security (included in Exhibit 4.8.1)
4.10	Form of Preferred Securities Guarantee
*4.11	Form of Senior Debt Security (included in Exhibit 4.8.2)
*4.12	Form of Subordinated Debt Security (included in Exhibit 4.8.3)
**4.13	Restated Certificate of Incorporation of the Company (filed as exhibit 3(a) to the Company's Annual Report on form 10-K for the year ended December 31, 1997 and incorporated herein by reference)
**4.14	Amended and Restated Bylaws of the Company (filed as exhibit 3(b) to the Company's Quarterly Report on form 10-Q for the quarter ended March 31, 1997 and incorporated herein by reference)
**4.15	Certificate of Designation, Preferences and Rights of Preferred Stock of the Company, dated March 25, 1997 (filed as Exhibit 3(a)(1) to the Company's Annual Report on Form 10-K for the year ended December 31, 1987 and incorporated herein by reference)
**4.16	Rights Agreement dated as of April 26, 1994 between the Company and Harris Trust Company of New York, as Rights Agent (filed as Exhibit 4 to the Company's Current Report on Form 8-K filed April 26, 1994 and incorporated herein by reference)
**4.17	Certificate of Designations of Series A Junior Participating Preferred Stock of the Company dated April 26, 1994 (filed as Exhibit 4(d) to the Company's Registration Statement on Form S-8 (File No. 33-54969) filed August 9, 1994 and incorporated herein by reference)
5.1	Opinion of Gerald A. Morton
5.2.1	Opinion of Richards, Layton & Finger, P.A. relating to Pogo Trust I
5.2.2	Opinion of Richards, Layton & Finger, P.A. relating to Pogo Trust II
*8	Opinion of counsel to the Company as to certain tax matters
12.1	Statement re Computation of Ratios
23.1	Consent of Arthur Andersen LLP
23.2	Consent of Ryder Scott Company Petroleum Engineers
23.3	Consent of Gerald A. Morton (included in Exhibit 5.1)
23.4	Consent of Richards, Layton & Finger, P.A. (included in Exhibits 5.2.1 and 5.2.2)
24.1	Powers of Attorney for the Company

</TABLE>

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<TABLE> <CAPTION> EXHIBIT NO.	DESCRIPTION OF EXHIBIT
<C>	<S>
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25.2	Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of the Subordinated Trustee under the Subordinated Indenture
25.3	Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of Wilmington Trust

Company as Trustee under the Junior Subordinated Indenture

- |        |  |
|--------|--|
| 25.4.1 | Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of Wilmington Trust Company, as Property Trustee, relating to Pogo Trust I   |
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| 25.5.2 | Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of Wilmington Trust Company, as Guarantee Trustee, relating to Pogo Trust II |

</TABLE>

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\* To be filed by amendment or by a report on Form 8-K pursuant to Regulation S-K, Item 601(b).

\*\* Incorporated herein by reference as indicated.

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[FORM OF SENIOR DEBT SECURITIES INDENTURE OF THE COMPANY]

=====

POGO PRODUCING COMPANY

AS ISSUER

and

STATE STREET BANK AND TRUST COMPANY

AS TRUSTEE

-----

Indenture

Dated as of \_\_\_\_\_ \_\_, \_\_\_\_

-----

Debt Securities

=====

POGO PRODUCING COMPANY

RECONCILIATION AND TIE BETWEEN TRUST INDENTURE ACT OF 1939  
AND INDENTURE, DATED AS OF \_\_\_\_\_ \_\_, \_\_\_\_

<TABLE>

<CAPTION>

Section of  
Trust Indenture  
Act of 1939  
-----

Section(s) of  
Indenture  
-----



<S>	<C>	<C>
Section 310	(a) (1) . . . . .	7.10
	(a) (2) . . . . .	7.10
	(a) (3) . . . . .	Not Applicable
	(a) (4) . . . . .	Not Applicable
	(a) (5) . . . . .	7.10
Section 311	(b) . . . . .	7.08, 7.10
	(a) . . . . .	7.11
	(b) . . . . .	7.11
Section 312	(c) . . . . .	Not Applicable
	(a) . . . . .	2.07
	(b) . . . . .	10.03
Section 313	(c) . . . . .	10.03
	(a) . . . . .	7.06
	(b) . . . . .	7.06
	(c) . . . . .	7.06
Section 314	(d) . . . . .	7.06
	(a) . . . . .	4.03, 4.04
	(b) . . . . .	Not Applicable
	(c) (1) . . . . .	10.04
	(c) (2) . . . . .	10.04
Section 315	(c) (3) . . . . .	Not Applicable
	(d) . . . . .	Not Applicable
	(e) . . . . .	10.05
	(a) . . . . .	7.01 (b)
	(b) . . . . .	7.05
	(c) . . . . .	7.01 (a)
	(d) . . . . .	7.01 (c)
	(d) (1) . . . . .	7.01 (c) (1)
	(d) (2) . . . . .	7.01 (c) (2)
Section 316	(d) (3) . . . . .	7.01 (c) (3)
	(e) . . . . .	6.11
	(a) (1) (A) . . . . .	6.05
	(a) (1) (B) . . . . .	6.04
	(a) (2) . . . . .	Not Applicable
Section 317	(a) (last sentence) . . . . .	2.11
	(b) . . . . .	6.07
	(a) (1) . . . . .	6.08
Section 318	(a) (2) . . . . .	6.09
	(b) . . . . .	2.06
	(a) . . . . .	10.01

-----  
Note: This reconciliation and tie shall not, for any purpose, be deemed to be a part of the Indenture.

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INDENTURE dated as of \_\_\_\_\_, \_\_\_\_\_ between Pogo Producing Company, a Delaware corporation (the "Company"), and State Street Bank and Trust Company, as trustee (the "Trustee").

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders of the Company's unsecured debentures, notes or other evidences of indebtedness (the "Securities") to be issued from time to time in one or more series as provided in this Indenture:

ARTICLE I  
DEFINITIONS AND INCORPORATION BY REFERENCE

"Additional Amounts" means any additional amounts required by the express terms of a Security or by or pursuant to a Board Resolution, under circumstances specified therein or pursuant thereto, to be paid by the Company with respect to certain taxes, assessments or other governmental charges imposed on certain Holders and that are owing to such Holders.

"Affiliate" means, with respect to any specified Person, 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 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. For purposes of this definition, beneficial ownership of 10% or more of the voting common equity (on a fully diluted basis) or options or warrants to purchase such equity (but only if exercisable at the date of determination or within 60 days thereof) of a Person shall be deemed to constitute control of such Person. No Person shall be deemed an Affiliate of an oil and gas royalty trust solely by virtue of ownership of units of beneficial interest in such trust.

"Agent" means any Registrar or Paying Agent.

"Bankruptcy Law" means Title 11 of the United States Code or any similar federal, state or foreign law for the relief of debtors.

"Board of Directors" means the Board of Directors of the Company, or any committee of such Board duly authorized, with respect to any particular matter, to act by or on behalf of the Board of Directors of the Company.

"Board Resolution" means a copy of one or more resolutions certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted or consented to by the Board of Directors and to be in full force and effect, and delivered to the Trustee.

"Business Day" means any day that is not a Legal Holiday.

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"Capital Stock" means, with respect to any Person, any and all shares, interests, participations, rights in or other equivalents in the equity interests (however designated) in such Person, and any rights (other than debt securities convertible into an equity interest), warrants or options exercisable for, exchangeable for or convertible into such an equity interest in such Person.

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

"Company" shall mean such successor corporation; PROVIDED, HOWEVER, that for purposes of any provision contained herein which is required by the TIA, "Company" shall also mean each other obligor (if any) on the Securities of a series.

"Company Order" and "Company Request" mean, respectively, a written order or request signed in the name of the Company by two Officers of the Company, and delivered to the Trustee.

"Corporate Trust Office" of the Trustee means the office of the Trustee located at Two International Place, 4th Floor, Boston, Massachusetts 02110, and as may be located at such other address as the Trustee may give notice to the Company.

"Default" means any event, act or condition that is, or after notice or the passage of time or both would be, an Event of Default.

"Depository" means, with respect to the Securities of any series issuable or issued in whole or in part in global form, the Person specified pursuant to Section 2.01 hereof as the initial Depository with respect to the Securities of such series, until a successor shall have been appointed and become such pursuant to the applicable provision of this Indenture, and thereafter "Depository" shall mean or include such successor.

"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 debt.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and any successor statute.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States, as in effect from time to time.

"Global Security" means a Security in the form prescribed by Section 2.03 that is issued in global form in the name of the Depository with respect thereto or its nominee.

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"Government Obligations" means, with respect to a series of Securities, direct obligations of the government that issues the currency in which the Securities of the series are payable for the payment of which the full faith and credit of such government is pledged, or obligations of a person controlled or supervised by and acting as an agency or instrumentality of such government, the payment of which is unconditionally guaranteed as a full faith and credit obligation by such government.

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

"Indenture" means this Indenture as amended or supplemented from time to time, and includes the terms of a particular series of Securities established as contemplated by Section 2.01.

"interest" means, with respect to an Original Issue Discount Security that by its terms bears interest only after Maturity, interest payable after Maturity.

"Interest Payment Date," when used with respect to any Security, shall have the meaning assigned to such term in the Security as contemplated by Section 2.01.

"Issue Date" means, with respect to Securities of a series, the date on which the Securities of such series are originally issued under this Indenture.

"Legal Holiday" means (i) a Saturday, (ii) a Sunday or (iii) a day on which banking institutions in any of The City of New York, New York, Boston, Massachusetts, Houston, Texas or a Place of Payment are authorized or obligated by law, regulation or executive order to remain closed.

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

"Officer" means the Chairman of the Board, the President, any Vice Chairman of the Board, any Vice President, the chief financial officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Assistant Secretary of a Person.

"Officers' Certificate" means a certificate signed by two Officers of a Person.

"Opinion of Counsel" means a written opinion from legal counsel who is reasonably acceptable to the Trustee. Such counsel may be an employee of or counsel to the Company or the Trustee.

"Original Issue Discount Security" means any Security that 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 6.02.

"Person" means any individual, corporation, estate, partnership, limited liability company, joint venture, incorporated or unincorporated association, joint stock company, trust, unincorporated organization or government or other agency or political subdivision thereof or other entity of

any kind.

"Place of Payment" means, with respect to the Securities of any series, the place or places where the principal of, premium (if any) on and interest on the Securities of that series are payable as specified in accordance with Section 2.01 subject to the provisions of Section 4.02.

"principal" of a Security means the principal of the Security plus, when appropriate, the premium, if any, on the Security.

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

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

"Rule 144A Securities" means Securities of a series designated pursuant to Section 2.01 as entitled to the benefits of Section 4.03(b).

"SEC" means the Securities and Exchange Commission.

"Securities" has the meaning stated in the preamble of this Indenture and more particularly means any Securities authenticated and delivered under this Indenture.

"Security Custodian" means, with respect to Securities of a series, the Trustee for Securities of such series, as custodian with respect to the Securities of such series issued in global form, or any successor entity thereto.

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

"Subsidiary" means, with respect to any Person, a corporation, partnership, limited liability company, association or other business entity a majority of whose Voting Stock is at the time, directly or indirectly, owned by such Person, by one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries thereof. For purposes of the foregoing definition, an arrangement by which a Person who owns an interest in an oil and gas property is subject to a joint operating agreement, processing agreement, net profits interest, overriding royalty interest, farmout agreement, development agreement, area of mutual interest agreement, joint bidding agreement, unitization agreement, pooling arrangement or other similar agreement or arrangement shall not, in and of itself, be considered a Subsidiary.

"TIA" means the Trust Indenture Act of 1939, as amended (15 U.S.C. Sections 77aaa-77bbbb), as in effect on the date hereof.



"Trust Officer" means any officer or assistant officer of the Trustee assigned by the Trustee to administer its corporate trust matters.

"Trustee" means the Person, not in its individual capacity but solely as Trustee, named as such above until a successor replaces it in accordance with the applicable provisions of this Indenture, and thereafter "Trustee" means each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, "Trustee" as used with respect to the Securities of any series means the Trustee with respect to Securities of that series.

"United States" means the United States of America (including the States and the District of Columbia) and its "possessions," which include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands.

"United States Alien" means any Person who, for United States federal income tax purposes, is a foreign corporation, a nonresident alien individual, a nonresident alien or foreign fiduciary of an estate or trust, or a foreign partnership.

"U.S. Government Obligations" means Government Obligations with respect to Securities payable in Dollars.

"Voting Stock" means any class or classes of Capital Stock pursuant to which the holders thereof have the general voting power under ordinary circumstances to vote in the election of the board of directors, managers or trustees of any Person (irrespective of whether or not, at the time, Capital Stock of any other class or classes shall have, or might have, voting power by reason of the happening of any contingency).

SECTION 1.02 OTHER DEFINITIONS.

<TABLE>  
<CAPTION>

TERM	DEFINED IN SECTION
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<S>	<C>
"Bankruptcy Custodian" . . . . .	6.01
"covenant defeasance". . . . .	8.01
"Conversion Event" . . . . .	6.01
"Event of Default" . . . . .	6.01
"Exchange Rate". . . . .	2.11
"Judgment Currency". . . . .	6.10
"legal defeasance" . . . . .	8.01
"mandatory sinking fund payment" . . . . .	3.09
"optional sinking fund payment". . . . .	3.09

"Paying Agent" . . . . .	2.05
"Registrar". . . . .	2.05
"Required Currency". . . . .	6.10
"Successor". . . . .	5.01

</TABLE>

### SECTION 1.03 INCORPORATION BY REFERENCE OF TRUST INDENTURE ACT.

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture. The following TIA terms used in this Indenture have the following meanings:

"Commission" means the SEC.

"indenture securities" means the Securities.

"indenture security holder" means a Holder.

"indenture to be qualified" means this Indenture.

"indenture trustee" or "institutional trustee" means the Trustee.

"obligor" on the indenture securities means the Company or any other obligor on the Securities.

All terms used in this Indenture that are defined by the TIA, defined by a TIA reference to another statute or defined by an SEC rule under the TIA have the meanings so assigned to them.

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### SECTION 1.04 RULES OF CONSTRUCTION.

Unless the context otherwise requires:

- (1) a term has the meaning assigned to it;
- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (3) "or" is not exclusive;
- (4) words in the singular include the plural, and in the plural include the singular;
- (5) provisions apply to successive events and transactions; and
- (6) all references in this Agreement to Articles and Sections are references to the corresponding Articles and Sections in and of this Indenture.

ARTICLE II  
THE SECURITIES

SECTION 2.01 AMOUNT UNLIMITED; ISSUABLE IN SERIES.

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

The Securities may be issued in one or more series. There shall be established in or pursuant to a Board Resolution, and set forth in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series:

(1) the title of the Securities of the series (which shall distinguish the Securities of the series from the Securities all other series);

(2) any limit upon the aggregate principal amount of the Securities of the series that may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Section 2.08, 2.09, 2.12, 3.07 or 9.05);

(3) whether any Securities of the series are to be issuable initially in temporary global form and whether any Securities of the series are to be issuable in permanent global form, as Global Securities or otherwise, and, if so, whether beneficial owners of interests in any such Global Security may exchange such interests for Securities of such series and of like tenor of any authorized form and denomination and the circumstances under which any such exchanges may occur, if other than in the manner provided in Section 2.17, and the initial Depositary for any Global Security or Securities of such series;

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(4) the manner in which any interest payable on a temporary Global Security on any Interest Payment Date will be paid if other than in the manner provided in Section 2.14;

(5) the date or dates on which the principal of (and premium, if any, on) the Securities of the series is payable or the method of determination thereof;

(6) the rate or rates, or the method of determination thereof, at which the Securities of the series shall bear interest, if any, whether and under what circumstances Additional Amounts with respect to such Securities shall be payable, the date or dates from which such interest shall accrue, the Interest Payment Dates on which such interest shall be payable and the record date for the interest payable on any Securities on any Interest Payment Date, or if other than provided herein, the Person to whom any interest on Securities of the series shall be payable;

(7) the place or places where, subject to the provisions of Section 4.02, the principal, premium (if any), interest and any Additional Amounts with respect to the Securities of the series shall be payable;

(8) the period or periods within which, the price or prices (whether denominated in cash, securities or otherwise) at which and the terms and conditions upon which Securities of the series may be redeemed, in whole or in part, at the option of the Company, if the Company is to have that option, and the manner in which the Company must exercise any such option, if different from those set forth herein;

(9) the obligation, if any, of the Company to redeem, purchase or repay Securities of the series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof and the period or periods within which, the price or prices (whether denominated in cash, securities or otherwise) at which and the terms and conditions upon which Securities of the series shall be redeemed, purchased or repaid in whole or in part pursuant to such obligation;

(10) if other than denominations of \$1,000 and any integral multiple thereof, the denomination in which any Securities of that series shall be issuable;

(11) if other than Dollars, the currency or currencies (including composite currencies) or the form, including equity securities, other debt securities (including Securities), warrants or any other securities or property of the Company or any other Person, in which payment of the principal, premium (if any), interest and any Additional Amounts with respect to the Securities of the series shall be payable;

(12) if the principal of, premium (if any) or interest on or any Additional Amounts with respect to the Securities of the series are to be payable, at the election of the Company or a Holder thereof, in a currency or currencies (including composite currencies) other than that in which the Securities are stated to be payable, the currency or currencies (including composite currencies) in which payment of the principal, premium (if any), interest and any

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Additional Amounts with respect to Securities of such series as to which such election is made shall be payable, and the periods within which and the terms and conditions upon which such election is to be made;

(13) if the amount of payments of principal, premium (if any), interest and any Additional Amounts with respect to the Securities of the series may be determined with reference to any commodities, currencies or indices, values, rates or prices or any other index or formula, the manner in which such amounts shall be determined;

(14) if other than the entire principal amount thereof, the portion of the principal amount of Securities of the series that shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 6.02;

(15) any additional means of satisfaction and discharge of this Indenture and any additional conditions or limitations to discharge with respect to Securities of the series pursuant to Article VIII or any modifications of or deletions from such conditions or limitations;

(16) any deletions or modifications of or additions to the Events of Default set forth in Section 6.01 or covenants of the Company set forth in Article IV pertaining to the Securities of the series;

(17) any restrictions or other provisions with respect to the transfer or exchange of Securities of the series, which may amend, supplement, modify or supersede those contained in this Article II;

(18) if the Securities of the series are to be convertible into or exchangeable for capital stock, other debt securities (including Securities), warrants, other equity securities or any other securities or property of the Company or any other Person, at the option of the Company or the Holder or upon the occurrence of any condition or event, the terms and conditions for such conversion or exchange;

(19) if the Securities of the series are to be entitled to the benefit of Section 4.03(b) (and accordingly constitute Rule 144A Securities); and

(20) any other terms of the series (which terms shall not be prohibited by the provisions of this Indenture).

All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to the Board Resolution referred to above and (subject to Section 2.03) set forth, or determined in the manner provided, in the Officers' Certificate referred to above or in any such indenture supplemental hereto.

If any of the terms of the series are established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action together with such Board Resolution shall

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be set forth in an Officers' Certificate or certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officers' Certificate setting forth the terms of the series.

## SECTION 2.02 DENOMINATIONS.

The Securities of each series shall be issuable in such denominations

as shall be specified as contemplated by Section 2.01. In the absence of any such provisions with respect to the Securities of any series, the Securities of such series denominated in Dollars shall be issuable in denominations of \$1,000 and any integral multiples thereof.

#### SECTION 2.03 FORMS GENERALLY.

The Securities of each series shall be in fully registered form and in substantially such form or forms (including temporary or permanent global form) established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto. The Securities may have notations, legends or endorsements required by law, securities exchange rule, automated quotation system rule, the Company's certificate of incorporation, bylaws or other similar governing documents, agreements to which the Company is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Company). A copy of the Board Resolution establishing the form or forms of Securities of any series shall be delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 2.04 for the authentication and delivery of such Securities.

The definitive Securities of each series shall be printed, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Securities, as evidenced by their execution thereof.

The Trustee's certificate of authentication shall be in substantially the following form:

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

STATE STREET BANK AND TRUST COMPANY,  
AS TRUSTEE

By:

-----  
AUTHORIZED OFFICER".

#### SECTION 2.04 EXECUTION, AUTHENTICATION, DELIVERY AND DATING.

Two Officers of the Company shall sign the Securities on behalf of the Company by manual or facsimile signature.

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If an Officer of the Company whose signature is on a Security no longer holds that office at the time the Security is authenticated, the Security shall be valid nevertheless.

A Security shall not be entitled to any benefit under this Indenture or be valid or obligatory for any purpose until authenticated by the manual

signature of an authorized signatory of the Trustee, which signature shall be conclusive evidence that the Security has been authenticated under this Indenture. Notwithstanding the foregoing, if any Security has been authenticated and delivered hereunder but never issued and sold by the Company, and the Company delivers such Security to the Trustee for cancellation as provided in Section 2.13 together with a written statement (which need not comply with Section 10.05 and need not be accompanied by an Opinion of Counsel) stating that such Security has never been issued and sold by the Company, 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 of this Indenture.

The Trustee shall authenticate and deliver Securities of a series for original issue upon a Company Order for the authentication and delivery of such Securities or pursuant to such procedures acceptable to the Trustee as may be specified from time to time by Company Order. Such order shall specify the amount of the Securities to be authenticated, the date on which the original issue of Securities is to be authenticated, the name or names of the initial Holder or Holders and any other terms of the Securities of such series not otherwise determined. If provided for in such procedures, such Company Order may authorize (1) authentication and delivery of Securities of such series for original issue from time to time, with certain terms (including, without limitation, the Maturity dates or dates, original issue date or dates and interest rate or rates) that differ from Security to Security and (2) may authorize authentication and delivery pursuant to oral or electronic instructions from the Company or its duly authorized agent, which instructions shall be promptly confirmed in writing.

If the form or terms of the Securities of the series have been established in or pursuant to one or more Board Resolutions as permitted by Section 2.01, in authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive (in addition to the Company Order referred to above and the other documents required by Section 10.04), and (subject to Section 7.01) shall be fully protected in relying upon,

(a) an Officers' Certificate setting forth the Board Resolution and, if applicable, an appropriate record of any action taken pursuant thereto, as contemplated by the last paragraph of Section 2.01; and

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

(i) if the form of such Securities has been established by or pursuant to Board Resolution, as is permitted by Section 2.01, that such form has been established in conformity with the provisions of this Indenture;

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(ii) if the terms of such Securities have been established by or pursuant to Board Resolution, as is permitted by Section 2.01, that



such terms have been established in conformity with the provisions of this Indenture; and

(iii) that such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws in effect from time to time affecting the rights of creditors generally, and the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

The Trustee shall not be required to authenticate such Securities if the issuance of such Securities pursuant to this Indenture would affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner not reasonably acceptable to the Trustee.

The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Securities. Unless limited by the terms of such appointment, an authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with the Company or an Affiliate of the Company.

Each Security shall be dated the date of its authentication.

#### SECTION 2.05 REGISTRAR AND PAYING AGENT.

The Company shall maintain an office or agency for each series of Securities where Securities of such series may be presented for registration of transfer or exchange ("Registrar") and an office or agency where Securities of such series may be presented for payment ("Paying Agent"). The Registrar shall keep a register of the Securities of such series and of their transfer and exchange. The Company may appoint one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrar and the term "Paying Agent" includes any additional paying agent.

The Company shall enter into an appropriate agency agreement with any Registrar or Paying Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such Agent. The Company shall notify the Trustee of the name and address of any Agent not a party to this Indenture. The Company may change any Paying Agent or Registrar without notice to any Holder. If the Company fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Company or any of its Subsidiaries may act as Paying Agent or Registrar.

The Company initially appoints the Trustee as Registrar and Paying Agent.

#### SECTION 2.06 PAYING AGENT TO HOLD MONEY IN TRUST.

The Company shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal of, premium, if any, or interest on or any Additional Amounts with respect to Securities and will notify the Trustee of any default by the Company in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed. Upon payment over to the Trustee and upon accounting for any funds disbursed, the Paying Agent (if other than the Company or a Subsidiary of the Company) shall have no further liability for the money. If the Company or a Subsidiary of the Company acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Each Paying Agent shall otherwise comply with TIA Section 317(b).

#### SECTION 2.07 HOLDER LISTS.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders and shall otherwise comply with TIA Section 312(a). If the Trustee is not the Registrar with respect to a series of Securities, the Company shall furnish to the Trustee at least five Business Days before each Interest Payment Date with respect to such series of Securities, and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders of such series, and the Company shall otherwise comply with TIA Section 312(a).

#### SECTION 2.08 TRANSFER AND EXCHANGE.

Except as set forth in Section 2.17 or as may be provided pursuant to Section 2.01:

When Securities of any series are presented to the Registrar with the request to register the transfer of such Securities or to exchange such Securities for an equal principal amount of Securities of the same series of like tenor and of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested if its requirements for such transactions are met; PROVIDED, HOWEVER, that the Securities presented or surrendered for registration of transfer or exchange shall be duly endorsed or accompanied by a written instruction of transfer in form reasonably satisfactory to the Registrar duly executed by the Holder thereof or by his attorney, duly authorized in writing, on which instruction the Registrar can rely.

To permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate Securities at the Registrar's written request and submission of the Securities or Global Securities. No service

charge shall be made to a Holder for any registration of transfer or exchange (except as otherwise expressly permitted herein), but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than such transfer tax or similar governmental charge payable upon exchanges pursuant to Section 2.12, 3.07 or 9.05). The Trustee shall authenticate Securities in

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accordance with the provisions of Section 2.04. Notwithstanding any other provisions of this Indenture to the contrary, the Company shall not be required to register the transfer or exchange of (a) any Security selected for redemption in whole or in part pursuant to Article III, except the unredeemed portion of any Security being redeemed in part or (b) any Security during the period beginning 15 Business Days before the mailing of notice of any offer to repurchase Securities of the series required pursuant to the terms thereof or of redemption of Securities of a series to be redeemed and ending at the close of business on the date of mailing.

#### SECTION 2.09 REPLACEMENT SECURITIES.

If any mutilated Security is surrendered to the Trustee, or if the Holder of a Security claims that the Security has been destroyed, lost or stolen and the Company and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of such Security, the Company shall issue and the Trustee shall authenticate a replacement Security of the same series if the Trustee's requirements are met. If any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security. If required by the Trustee or the Company, such Holder must furnish an indemnity bond that is sufficient in the judgment of the Trustee and the Company to protect the Company, the Trustee, any Agent or any authenticating agent from any loss that any of them may suffer if a Security is replaced. The Company and the Trustee may charge a Holder for their expenses in replacing a Security.

Every replacement Security is an additional obligation of the Company.

#### SECTION 2.10 OUTSTANDING SECURITIES.

The Securities outstanding at any time are all the Securities authenticated by the Trustee except for those cancelled by it, those delivered to it for cancellation, those reductions in the interest in a Global Security effected by the Trustee hereunder and those described in this Section 2.10 as not outstanding.

If a Security is replaced pursuant to Section 2.09, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Security is held by a bona fide purchaser.

If the principal amount of any Security is considered paid under Section 4.01, it ceases to be outstanding and interest on it ceases to accrue.

A Security does not cease to be outstanding because the Company or an Affiliate of the Company holds the Security.

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#### SECTION 2.11 ORIGINAL ISSUE DISCOUNT, FOREIGN-DENOMINATED AND TREASURY SECURITIES.

In determining whether the Holders of the required principal amount of Securities have concurred in any direction, amendment, supplement, waiver or consent, (a) the principal amount of an Original Issue Discount Security shall be the principal amount thereof that would be due and payable as of the date of such determination upon acceleration of the Maturity thereof pursuant to Section 6.02, (b) the principal amount of a Security denominated in a foreign currency shall be the Dollar equivalent, as determined by the Company by reference to the noon buying rate in The City of New York for cable transfers for such currency, as such rate is certified for customs purposes by the Federal Reserve Bank of New York (the "Exchange Rate") on the date of original issuance of such Security, of the principal amount (or, in the case of an Original Issue Discount Security, the Dollar equivalent, as determined by the Company by reference to the Exchange Rate on the date of original issuance of such Security, of the amount determined as provided in (a) above), of such Security and (c) Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor shall be disregarded, except that, for the purpose of determining whether the Trustee shall be protected in relying upon any such direction, amendment, supplement, waiver or consent, only Securities that the Trustee actually knows are so owned shall be so disregarded.

#### SECTION 2.12 TEMPORARY SECURITIES.

Until definitive Securities of any series are ready for delivery, the Company may prepare and the Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of definitive Securities, but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate definitive Securities in exchange for temporary Securities. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

#### SECTION 2.13 CANCELLATION.

The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange, payment or redemption or for credit against any sinking fund payment. The Trustee shall cancel all Securities surrendered for registration of transfer, exchange, payment, redemption, replacement or cancellation or for credit against any sinking fund. Unless the Company shall direct in writing that cancelled Securities be returned to it, after written notice to the Company all cancelled Securities held by the Trustee shall be disposed of in accordance with the usual

disposal procedures of the Trustee, and the Trustee shall maintain a record of their disposal. The Company may not issue new Securities to replace Securities that have been paid or that have been delivered to the Trustee for cancellation.

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#### SECTION 2.14 PAYMENTS; DEFAULTED INTEREST.

The Company will pay interest on the Securities (except defaulted interest) to the Persons who are registered Holders of Securities at the close of business on the record date next preceding the Interest Payment Date, even if such Securities are cancelled after such record date and on or before such Interest Payment Date. The Holder must surrender this Security to a Paying Agent to collect principal payments. Unless otherwise provided with respect to the Securities of any series, the Company will pay the principal of, premium (if any) and interest on and Additional Amounts with respect to the Securities in Dollars. Such amounts shall be payable at the offices of the Trustee, provided that at the option of the Company, the Company may, however, pay such amounts (1) by wire transfer with respect to Global Securities or (2) by check payable in such money mailed to a Holder's registered address with respect to any Securities.

If the Company defaults in a payment of interest on the Securities, it shall pay the defaulted interest in any lawful manner plus, to the extent lawful, interest on the defaulted interest, in each case at the rate provided in the Securities and in Section 4.01. The Company may pay the defaulted interest to the Persons who are Holders on a subsequent special record date. At least 10 days before any special record date selected by the Company, the Company (or the Trustee, in the name of and at the expense of the Company upon 15 days' prior written notice from the Company setting forth such record date and the interest amount to be paid) shall mail to Holders a notice that states the special record date, the related payment date and the amount of such interest to be paid.

#### SECTION 2.15 PERSONS DEEMED OWNERS.

The Company, the Trustee, any Agent and any authenticating agent may treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payments of principal of, premium (if any) or interest on, or any Additional Amounts with respect to such Security and for all other purposes. None of the Company, the Trustee, any Agent or any authenticating agent shall be affected by any notice to the contrary.

#### SECTION 2.16 COMPUTATION OF INTEREST.

Except as otherwise specified as contemplated by Section 2.01 for Securities of any series, interest on the Securities of each series shall be computed on the basis of a year comprising twelve 30-day months.

#### SECTION 2.17 GLOBAL SECURITIES; BOOK-ENTRY PROVISIONS.

If Securities of a series are issuable in global form as one or more Global Securities, as contemplated by Section 2.01, then, notwithstanding clause (10) of Section 2.01 and the provisions of Section 2.02, any such Global Security shall represent such of the outstanding Securities of such series as shall be specified therein and may provide that it shall represent the aggregate amount of outstanding Securities from time to time endorsed thereon and that the aggregate amount of outstanding Securities represented thereby may from time to time be reduced to reflect exchanges. Any endorsement of a Global Security to reflect the amount, or any increase

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or decrease in the amount, of outstanding Securities represented thereby shall be made by the Trustee in such manner and upon instructions given by such Person or Persons as shall be specified in such Security or in a Company Order to be delivered to the Trustee pursuant to Section 2.04. Subject to the provisions of Section 2.04 and, if applicable, Section 2.12, the Trustee shall deliver and redeliver any Security in permanent global form in the manner and upon instructions given by the Person or Persons specified in such Security or in the applicable Company Order. With respect to the Securities of any series that are represented by a Global Security, the Company authorizes the execution and delivery by the Trustee of a letter of representations or other similar agreement or instrument in the form customarily provided for by the Depositary appointed with respect to such Global Security. Any Global Security may be deposited with the Depositary or its nominee, or may remain in the custody of the Trustee pursuant to a FAST Balance Certificate Agreement or similar agreement between the Trustee and the Depositary. If a Company Order has been, or simultaneously is, delivered, any instructions by the Company with respect to endorsement or delivery or redelivery of a Security in global form shall be in writing but need not comply with Section 10.05 and need not be accompanied by an Opinion of Counsel.

Members of, or participants in, the Depositary ("Agent Members") shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depositary, or the Trustee as its custodian, or under such Global Security and the Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, (i) the registered holder of a Global Security may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action that a Holder is entitled to take under this Indenture or the Securities and (ii) nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee, from giving effect to any written certification, proxy or other authorization furnished by the Depositary or shall impair, as between the Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of a beneficial owner of any Security.

Notwithstanding Section 2.08, and except as otherwise provided pursuant to Section 2.01: Transfers of a Global Security shall be limited to



transfers of such Global Security in whole, but not in part, to the Depositary, its successors or their respective nominees. Interests of beneficial owners in a Global Security may be transferred in accordance with the rules and procedures of the Depositary. Securities shall be transferred to all beneficial owners in exchange for their beneficial interests in a Global Security if, and only if, either (1) the Depositary notifies the Company that it is unwilling or unable to continue as Depositary for the Global Security and a successor Depositary is not appointed by the Company within 90 days of such notice, (2) an Event of Default has occurred with respect to such series and is continuing and the Registrar has received a request from the Depositary to issue Securities in lieu of all or a portion of the Global Security (in which case the Company shall deliver Securities within 30 days of such request) or (3) the Company determines not to have the Securities represented by a Global Security.

In connection with any transfer of a portion of the beneficial interest in a Global Security to beneficial owners pursuant to this Section 2.17, the Registrar shall reflect on its books and records the date and a decrease in the principal amount of the Global Security in an amount

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equal to the principal amount of the beneficial interest in the Global Security to be transferred, and the Company shall execute, and the Trustee upon receipt of a Company Order for the authentication and delivery of Securities shall authenticate and deliver, one or more Securities of the same series of like tenor and amount.

In connection with the transfer of an entire Global Security to beneficial owners pursuant to this Section 2.17, the Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and the Trustee shall authenticate and deliver, to each beneficial owner identified by the Depositary in exchange for its beneficial interest in the Global Security, an equal aggregate principal amount of Securities of authorized denominations.

Neither the Company nor the Trustee will have any responsibility or liability for any aspect of the records relating to, or payments made on account of, Securities by the Depositary, or for maintaining, supervising or reviewing any records of the Depositary relating to such Securities. Neither the Company nor the Trustee shall be liable for any delay by the related Global Security Holder or the Depositary in identifying the beneficial owners, and each such Person may conclusively rely on, and shall be protected in relying on, instructions from such Global Security Holder or the Depositary for all purposes (including with respect to the registration and delivery, and the respective principal amounts, of the Securities to be issued).

The provisions of the last sentence of the third paragraph of Section 2.04 shall apply to any Global Security if such Global Security was never issued and sold by the Company and the Company delivers to the Trustee the Global Security together with written instructions (which need not comply with Section 10.05 and need not be accompanied by an Opinion of Counsel) with regard to the

cancellation or reduction in the principal amount of Securities represented thereby, together with the written statement contemplated by the last sentence of the third paragraph of Section 2.04.

Notwithstanding the provisions of Sections 2.03 and 2.14, unless otherwise specified as contemplated by Section 2.01, payment of principal of, premium (if any) and interest on and any Additional Amounts with respect to any Global Security shall be made to the Person or Persons specified therein.

### ARTICLE III REDEMPTION

#### SECTION 3.01 APPLICABILITY OF ARTICLE.

Securities of any series that are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 2.01 for Securities of any series) in accordance with this Article III.

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#### SECTION 3.02 NOTICE TO THE TRUSTEE.

If the Company elects to redeem Securities of any series pursuant to this Indenture, it shall notify the Trustee of the Redemption Date and principal amount of Securities of such series to be redeemed. The Company shall so notify the Trustee at least 45 days before the Redemption Date (unless a shorter notice shall be satisfactory to the Trustee) by delivering to the Trustee an Officers' Certificate stating that such redemption will comply with the provisions of this Indenture and of the Securities of such series. Any such notice may be cancelled at any time prior to the mailing of such notice of such redemption to any Holder and shall thereupon be void and of no effect.

#### SECTION 3.03 SELECTION OF SECURITIES TO BE REDEEMED.

If less than all the Securities of any series are to be redeemed, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the outstanding Securities of such series not previously called for redemption, pro rata, by lot or by such other method as the Trustee shall deem fair and appropriate and that may provide for the selection for redemption of portions (equal to the minimum authorized denomination for Securities of that series or any integral multiple thereof) of the principal amount of Securities of such series of a denomination larger than the minimum authorized denomination for Securities of that series or of the principal amount of global Securities of such series.

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



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

#### SECTION 3.04 NOTICE OF REDEMPTION.

Notice of redemption shall be given by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date, to each Holder of Securities to be redeemed, at the address of such Holder appearing in the register of Securities maintained by the Registrar.

All notices of redemption shall identify the Securities to be redeemed and shall state:

- (1) the Redemption Date;
- (2) the Redemption Price;

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(3) that, unless the Company defaults in making the redemption payment, interest on Securities called for redemption ceases to accrue on and after the Redemption Date, and the only remaining right of the Holders of such Securities is to receive payment of the Redemption Price upon surrender to the Paying Agent of the Securities redeemed;

(4) if any Security is to be redeemed in part, the portion of the principal amount thereof to be redeemed and that on and after the Redemption Date, upon surrender for cancellation of such Security to the Paying Agent, a new Security or Securities in the aggregate principal amount equal to the unredeemed portion thereof will be issued without charge to the Holder;

(5) that Securities called for redemption must be surrendered to the Paying Agent to collect the Redemption Price and the name and address of the Paying Agent;

(6) that the redemption is for a sinking or analogous fund, if such is the case; and

(7) the CUSIP number, if any, relating to such Securities.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's written request, by the Trustee in the name and at the expense of the Company.

#### SECTION 3.05 EFFECT OF NOTICE OF REDEMPTION.

Once notice of redemption is mailed, Securities called for redemption become due and payable on the Redemption Date and at the Redemption Price. Upon

surrender to the Paying Agent, such Securities called for redemption shall be paid at the Redemption Price, but interest installments whose maturity is on or prior to such Redemption Date will be payable on the relevant Interest Payment Dates to the Holders of record at the close of business on the relevant record dates specified pursuant to Section 2.01.

#### SECTION 3.06 DEPOSIT OF REDEMPTION PRICE.

On or prior to 11:00 A.M., New York City time, on any Redemption Date, the Company shall deposit with the Trustee or the Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 2.06) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on and any Additional Amounts with respect to, the Securities or portions thereof which are to be redeemed on that date, other than Securities or portions thereof called for redemption on that date which have been delivered by the Company to the Trustee for cancellation.

If the Company complies with the preceding paragraph, then, unless the Company defaults in the payment of such Redemption Price, interest on the Securities to be redeemed will cease to accrue on and after the applicable Redemption Date, whether or not such Securities are presented for payment, and the Holders of such Securities shall have no further rights with respect

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to such Securities except for the right to receive the Redemption Price upon surrender of such Securities. If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal, premium, if any, any Additional Amounts, and, to the extent lawful, accrued interest thereon shall, until paid, bear interest from the Redemption Date at the rate specified pursuant to Section 2.01 or provided in the Securities or, in the case of Original Issue Discount Securities, such Securities' yield to maturity.

#### SECTION 3.07 SECURITIES REDEEMED OR PURCHASED IN PART.

Upon surrender to the Paying Agent of a Security to be redeemed in part, 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 of any authorized denomination as requested by such Holder in aggregate principal amount equal to, and in exchange for, the unredeemed portion of the principal of the Security so surrendered that is not redeemed.

#### SECTION 3.08 PURCHASE OF SECURITIES.

Unless otherwise specified as contemplated by Section 2.01, the Company and any Affiliate of the Company may at any time purchase or otherwise acquire Securities in the open market or by private agreement. Such acquisition shall not operate as or be deemed for any purpose to be a redemption of the

indebtedness represented by such Securities. Any Securities purchased or acquired by the Company may be delivered to the Trustee and, upon such delivery, the indebtedness represented thereby shall be deemed to be satisfied. Section 2.13 shall apply to all Securities so delivered.

#### SECTION 3.09 MANDATORY AND OPTIONAL SINKING FUNDS.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a "mandatory sinking fund payment," and any payment in excess of such minimum amount provided for by the terms of Securities of any series is herein referred to as an "optional sinking fund payment." Unless otherwise provided by the terms of Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 3.10. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series and by this Article III.

#### SECTION 3.10 SATISFACTION OF SINKING FUND PAYMENTS WITH SECURITIES.

The Company may deliver outstanding Securities of a series (other than any previously called for redemption) and may apply as a credit Securities of a series that have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to the Securities of such series required to be made pursuant to the terms of such series of Securities; PROVIDED that such Securities have not been previously so credited. Such Securities shall be received

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and credited for such purpose by the Trustee at the Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

#### SECTION 3.11 REDEMPTION OF SECURITIES FOR SINKING FUND.

Not less than 45 days prior (unless a shorter period shall be satisfactory to the Trustee) to each sinking fund payment date for any series of Securities, the Company will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivery of or by crediting Securities of that series pursuant to Section 3.10 and will also deliver to the Trustee any Securities to be so delivered. Failure of the Company to timely deliver such Officers' Certificate and Securities specified in this paragraph, if any, shall not constitute a default but shall constitute the election of the Company (i) that the mandatory sinking fund payment for such series due on the next succeeding sinking fund payment date shall be paid entirely in cash without the option to deliver or credit Securities of such series in respect thereof and (ii) that the Company

will make no optional sinking fund payment with respect to such series as provided in this Section.

If the sinking fund payment or payments (mandatory or optional or both) to be made in cash on the next succeeding sinking fund payment date plus any unused balance of any preceding sinking fund payments made in cash shall exceed \$100,000 (or the Dollar equivalent thereof based on the applicable Exchange Rate on the date of original issue of the applicable Securities) or a lesser sum if the Company shall so request with respect to the Securities of any particular series, such cash shall be applied on the next succeeding sinking fund payment date to the redemption of Securities of such series at the sinking fund redemption price together with accrued interest to the date fixed for redemption. If such amount shall be \$100,000 (or the Dollar equivalent thereof as aforesaid) or less and the Issuer makes no such request then it shall be carried over until a sum in excess of \$100,000 (or the Dollar equivalent thereof as aforesaid) is available. Not less than 30 days before each such sinking fund payment date, the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 3.03 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 3.04. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 3.05, 3.06 and 3.07.

#### ARTICLE IV COVENANTS

##### SECTION 4.01 PAYMENT OF SECURITIES.

The Company shall pay the principal of, premium (if any) and interest on and any Additional Amounts with respect to the Securities of each series on the dates and in the manner provided in the Securities of such series and in this Indenture. Principal, premium, interest and any Additional Amounts shall be considered paid on the date due if the Paying Agent, other than the Company or a Subsidiary of the Company, holds on that date money deposited by the Company

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designated for and sufficient to pay all principal, premium, interest and any Additional Amounts then due.

The Company shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium (if any), at a rate equal to the then applicable interest rate on the Securities to the extent lawful; and it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest and any Additional Amount (without regard to any applicable grace period) at the same rate to the extent lawful.

##### SECTION 4.02 MAINTENANCE OF OFFICE OR AGENCY.

The Company will maintain in each Place of Payment for any series of Securities an office or agency (which may be an office of the Trustee, the Registrar or the Paying Agent) where Securities of that series may be presented for registration of transfer or exchange, where Securities of that series may be presented for payment and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served. Unless otherwise designated by the Company by written notice to the Trustee, such office or agency shall be the office of the Trustee in The City of New York, which on the date hereof, is located at \_\_\_\_\_. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Company may also from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; PROVIDED, HOWEVER, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in each Place of Payment for Securities of any series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

#### SECTION 4.03 SEC REPORTS; FINANCIAL STATEMENTS.

(a) The Company shall file with the Trustee, within 15 days after it files the same with the SEC, copies of the annual reports and the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) that the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act. The Company shall also comply with the provisions of TIA Section 314(a).

(b) If the Company is not subject to the requirements of Section 13 or 15(d) of the Exchange Act, the Company shall furnish to all Holders of Rule 144A Securities and prospective purchasers of Rule 144A Securities designated by the Holders of Rule 144A Securities, promptly

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upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) promulgated under the Securities Act of 1933, as amended.

#### SECTION 4.04 COMPLIANCE CERTIFICATE.

(a) The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, a statement signed by two Officers of the Company, which need not constitute an Officers' Certificate, complying with TIA Section 314(a)(4) and stating that a review of the activities of the Company during the preceding fiscal quarter or

fiscal year, as applicable, has been made under the supervision of the signing Officers with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to each such Officer signing such certificate, that to the best of his knowledge the Company is not in Default in the performance or observance of any of the terms, provisions and conditions hereof or, if a Default or Event of Default shall have occurred, describing all such Defaults or Events of Default of which he may have knowledge and that to the best of his knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of or interest, if any, on the Securities are prohibited or if such event has occurred, a description of the event.

(b) The Company shall, so long as Securities of any series are outstanding, deliver to the Trustee, forthwith upon any Officer of the Company becoming aware of any Default or Event of Default under this Indenture, an Officers' Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

#### SECTION 4.05 CORPORATE EXISTENCE.

Subject to Article V hereof or except as expressly permitted otherwise under this Indenture, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the corporate, partnership and other existence of each of its Subsidiaries and all rights (charter and statutory) and franchises of the Company and its Subsidiaries, provided that the Company shall not be required to preserve any such existence of its Subsidiaries, right or franchise, if the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries, taken as a whole, and that the loss thereof is not disadvantageous in any material respect to the Holders.

#### SECTION 4.06 WAIVER OF STAY, EXTENSION OR USURY LAWS.

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury law or other law that would prohibit or forgive the Company from paying all or any portion of the principal of (premium, if any, on) or interest on the Securities as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture; and (to the extent that it may lawfully do so) the Company hereby expressly waives all benefit or advantage of any such law, and covenants

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that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

#### SECTION 4.07 ADDITIONAL AMOUNTS.

If the Securities of a series expressly provide for the payment of Additional Amounts, the Company will pay to the Holder of any Security of such series Additional Amounts as expressly provided therein. Whenever in this Indenture there is mentioned, in any context, the payment of the principal of or any premium or interest on, or in respect of, any Security of any series or the net proceeds received from the sale or exchange of any Security of any series, such mention shall be deemed to include mention of the payment of Additional Amounts provided for in this Section 4.07 to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof pursuant to the provisions of this Section 4.07 and express mention of the payment of Additional Amounts (if applicable) in any provisions hereof shall not be construed as excluding Additional Amounts in those provisions hereof where such express mention is not made.

Unless otherwise provided pursuant to Section 2.01 with respect to Securities of any series: If the Securities of a series provide for the payment of Additional Amounts, at least 10 days prior to the first Interest Payment Date with respect to that series of Securities (or if the Securities of that series will not bear interest prior to Maturity, the first day on which a payment of principal and any premium is made), and at least 10 days prior to each date of payment of principal and any premium or interest if there has been any change with respect to the matters set forth in the below-mentioned Officers' Certificate, the Company shall furnish the Trustee and the Company's principal Paying Agent or Paying Agents, if other than the Trustee, with an Officers' Certificate instructing the Trustee and such Paying Agent or Paying Agents whether such payment of principal of and any premium or interest on the Securities of that series shall be made to Holders of Securities of that series who are United States Aliens without withholding for or on account of any tax, assessment or other governmental charge described in the Securities of that series. If any such withholding shall be required, then such Officers' Certificate shall specify by country the amount, if any, required to be withheld on such payments to such Holders of Securities and the Company will pay to such Paying Agent the Additional Amounts required by this Section. The Company covenants to indemnify the Trustee and any Paying Agent for and to hold them harmless against any loss, liability or expense reasonably incurred without negligence or bad faith on their part arising out of or in connection with actions taken or omitted by any of them in reliance on any Officers' Certificate furnished pursuant to this Section 4.07.

## ARTICLE V SUCCESSORS

### SECTION 5.01 LIMITATIONS ON MERGERS AND CONSOLIDATIONS.

The Company shall not, in any single transaction or series of transactions, consolidate with or merge into any Person, or sell, lease, convey, transfer or otherwise dispose of all or substantially all of its assets to any Person, unless:



(1) either (a) the Company shall be the continuing corporation or (b) the Person (if other than the Company) formed by such consolidation or into which the Company is merged, or to which such sale, lease, conveyance, transfer or other disposition shall be made (collectively, the "Successor"), is organized and validly existing under the laws of the United States, any political subdivision thereof or any State thereof or the District of Columbia, and expressly assumes by supplemental indenture the due and punctual payment of the principal of (and premium, if any) and interest on and Additional Amounts with respect to all the Securities and the performance of the Company's covenants and obligations under this Indenture and the Securities;

(2) immediately after giving effect to such transaction or series of transactions, no Default or Event of Default shall have occurred and be continuing or would result therefrom; and

(3) the Company delivers to the Trustee (a) an Officers' Certificate in form and substance reasonably acceptable to the Trustee, stating that such consolidation, merger, conveyance, transfer, lease or other disposition and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, complies with this Indenture and that all conditions precedent herein relating to such transaction or transactions have been satisfied and (b) an Opinion of Counsel stating that the requirements of Section 5.01(1) hereof have been complied with.

#### SECTION 5.02 SUCCESSOR PERSON SUBSTITUTED.

Upon any consolidation or merger of the Company or any sale, lease, conveyance, transfer or other disposition of all or substantially all of the assets of the Company in accordance with Section 5.01, the Successor formed by such consolidation or into or with which the Company is merged or to which such sale, lease, conveyance, transfer or other disposition is made shall succeed to, and be substituted for, and may exercise every right and power of the Company under this Indenture and the Securities with the same effect as if such Successor had been named as the Company herein and the predecessor Company, in the case of a sale, conveyance, transfer or other disposition, shall be released from all obligations under this Indenture and the Securities.

### ARTICLE VI DEFAULTS AND REMEDIES

#### SECTION 6.01 EVENTS OF DEFAULT.

Unless either inapplicable to a particular series or specifically deleted or modified in or pursuant to the supplemental indenture or Board Resolution establishing such series of Securities or in the form of Security for such series, an "Event of Default," wherever used herein with respect to Securities of any series, occurs if:

- (1) the Company defaults in the payment of interest on or any Additional Amounts with



respect to any Security of that series when the same becomes due and payable and such default continues for a period of 90 days;

- (2) the Company defaults in the payment of (A) the principal of any Security of that series at its Maturity or (B) premium (if any) on any Security of that series when the same becomes due and payable;
- (3) the Company defaults in the deposit of any sinking fund payment, when and as due by the terms of a Security of that series, and such default continues for a period of 90 days;
- (4) the Company fails to comply with any of its other covenants or agreements in, or provisions of, the Securities of such series or this Indenture (other than an agreement, covenant or provision that has expressly been included in this Indenture solely for the benefit of one or more series of Securities other than that series) which shall not have been remedied within the specified period after written notice, as specified in the last paragraph of this Section 6.01;
- (5) the Company pursuant to or within the meaning of any Bankruptcy Law:

- (A) commences a voluntary case,

- (B) consents to the entry of an order for relief against it in an involuntary case,

- (C) consents to the appointment of a Bankruptcy Custodian of it or for all or substantially all of its property, or

- (D) makes a general assignment for the benefit of its creditors;

- (6) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that remains unstayed and in effect for 90 days and that:

- (A) is for relief against the Company as debtor in an

involuntary case,

(B) appoints a Bankruptcy Custodian of the Company or a Bankruptcy Custodian for all or substantially all of the property of the Company, or

(C) orders the liquidation of the Company; or

(7) any other Event of Default provided with respect to Securities of that series occurs.

The term "Bankruptcy Custodian" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

The Trustee shall not be deemed to know or have notice of a Default unless a Trust Officer at the Corporate Trust Office of the Trustee receives written notice at the Corporate Trust Office of the Trustee of such Default with specific reference to such Default.

When a Default is cured, it ceases.

Notwithstanding the foregoing provisions of this Section 6.01, if the principal of, premium or interest on or Additional Amounts with respect to any Security is payable in a currency or currencies (including a composite currency) other than Dollars and such currency or currencies are not available to the Company for making payment thereof due to the imposition of exchange controls or other circumstances beyond the control of the Company (a "Conversion Event"), the Company will be entitled to satisfy its obligations to Holders of the Securities by making such payment in Dollars in an amount equal to the Dollar equivalent of the amount payable in such other currency, as determined by the Company by reference to the Exchange Rate on the date of such payment, or, if such rate is not then available, on the basis of the most recently available Exchange Rate. Notwithstanding the foregoing provisions of this Section 6.01, any payment made under such circumstances in Dollars where the required payment is in a currency other than Dollars will not constitute an Event of Default under this Indenture.

Promptly after the occurrence of a Conversion Event, the Company shall give written notice thereof to the Trustee; and the Trustee, promptly after receipt of such notice, shall give notice thereof in the manner provided in Section 10.02 to the Holders. Promptly after the making of any payment in Dollars as a result of a Conversion Event, the Company shall give notice in the manner provided in Section 10.02 to the Holders, setting forth the applicable Exchange Rate and describing the calculation of such payments.

A Default under clause (4) or (7) of this Section 6.01 is not an Event of Default until the Trustee notifies the Company, or the Holders of at least 25% in principal amount of the then outstanding Securities of the series affected by such Default (or, in the case of a Default under clause (4) of this Section 6.01, if outstanding Securities of other series are affected by such Default, then at least 25% in principal amount of the then outstanding Securities so affected) notify the Company and the Trustee, of the Default, and the Company fails to cure the Default within 90 days after

receipt of the notice. The notice must specify the Default, demand that it be remedied and state that the notice is a "Notice of Default."

#### SECTION 6.02 ACCELERATION.

If an Event of Default with respect to any Securities of any series at the time outstanding (other than an Event of Default specified in clause (5) or (6) of Section 6.01) occurs and is continuing, the Trustee by notice to the Company, or the Holders of at least 25% in principal amount of the then outstanding Securities of the series affected by such default (or, in the case of an Event of Default described in clause (4) of Section 6.01, if outstanding Securities of other series are affected by such Default, then at least 25% in principal amount of the then outstanding Securities so affected by notice to the Company and the Trustee, may declare the principal of (or, if any such Securities are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of that series) and accrued and unpaid interest on all then outstanding Securities of such series or of all series, as the case may be, to be due and payable. Upon any such declaration the amounts due and payable on the Securities shall be due and payable immediately. If an Event of Default specified in clause (5) or (6) of Section 6.01 hereof occurs, such amounts shall IPSO FACTO become and be immediately due and payable without any declaration, notice or other act on the part of the Trustee or any Holder. The Holders of a majority in principal amount of the then outstanding Securities of the series affected by such default or all series, as the case may be, by written notice to the Trustee may rescind an acceleration and its consequences (other than nonpayment of principal of or premium or interest on or any Additional Amounts with respect to the Securities) if the rescission would not conflict with any judgment or decree and if all existing Events of Default with respect to Securities of that series (or of all series, as the case may be) have been cured or waived, except nonpayment of principal, premium, interest or any Additional Amounts that has become due solely because of the acceleration.

#### SECTION 6.03 OTHER REMEDIES.

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal of, or premium, if any, or interest on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

#### SECTION 6.04 WAIVER OF EXISTING DEFAULTS.

Subject to Sections 6.07 and 9.02, the Holders of a majority in principal amount of the then outstanding Securities of any series or of all series (acting as one class) by notice to the Trustee may waive an existing or past Default or Event of Default with respect to such series or all series, as the case may be, and its consequences (including waivers obtained in connection with a

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tender offer or exchange offer for Securities of such series or all series or a solicitation of consents in respect of Securities of such series or all series, PROVIDED that in each case such offer or solicitation is made to all Holders of then outstanding Securities of such series or all series (but the terms of such offer or solicitation may vary from series to series)), except (1) a continuing Default or Event of Default in the payment of the principal of, or premium, if any, or interest on or any Additional Amounts with respect to any Security or (2) a continued Default in respect of a provision that under Section 9.02 cannot be amended or supplemented without the consent of each Holder affected. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

#### SECTION 6.05 CONTROL BY MAJORITY.

With respect to Securities of any series, the Holders of a majority in principal amount of the then outstanding Securities of such series may direct in writing the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it relating to or arising under an Event of Default described in clause (1), (2), (3) or (7) of Section 6.01, and with respect to all Securities, the Holders of a majority in principal amount of all the then outstanding Securities affected may direct in writing the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it not relating to or arising under such an Event of Default. However, the Trustee may refuse to follow any direction that conflicts with applicable law or this Indenture, that the Trustee determines may be unduly prejudicial to the rights of other Holders, or that may involve the Trustee in personal liability; PROVIDED, HOWEVER, that the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. Prior to taking any action hereunder, the Trustee shall be entitled to indemnification satisfactory to it in its sole discretion from Holders directing the Trustee against all losses and expenses caused by taking or not taking such action.

#### SECTION 6.06 LIMITATIONS ON SUITS.

Subject to Section 6.07 hereof, a Holder of a Security of any series may pursue a remedy with respect to this Indenture or the Securities of such series only if:

(1) the Holder gives to the Trustee written notice of a continuing Event of Default with respect to such series;

(2) the Holders of at least 25% in principal amount of the then outstanding Securities of such series make a written request to the Trustee to pursue the remedy;

(3) such Holder or Holders offer to the Trustee indemnity reasonably satisfactory to the Trustee against any loss, liability or expense;

(4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity; and

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(5) during such 60-day period the Holders of a majority in principal amount of the Securities of that series do not give the Trustee a direction inconsistent with the request.

A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder.

#### SECTION 6.07 RIGHTS OF HOLDERS TO RECEIVE PAYMENT.

Notwithstanding any other provision of this Indenture, the right of any Holder of a Security to receive payment of principal of and premium, if any, and interest on and any Additional Amounts with respect to the Security, on or after the respective due dates expressed in the Security, or to bring suit for the enforcement of any such payment on or after such respective dates, is absolute and unconditional and shall not be impaired or affected without the consent of the Holder.

#### SECTION 6.08 COLLECTION SUIT BY TRUSTEE.

If an Event of Default specified in clause (1) or (2) of Section 6.01 hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company for the amount of principal, premium (if any), interest and any Additional Amounts remaining unpaid on the Securities of the series affected by the Event of Default, and interest on overdue principal and premium, if any, and, to the extent lawful, interest on overdue interest, and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

#### SECTION 6.09 TRUSTEE MAY FILE PROOFS OF CLAIM.

The Trustee is authorized to file such proofs of claim and other papers or documents and to take such actions, including participating as a member, voting or otherwise, of any committee of creditors, as may be necessary or advisable to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the

Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Company or its creditors or properties and shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims and any Bankruptcy Custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties which the Holders of the Securities may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to

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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 6.10 PRIORITIES.

If the Trustee collects any money pursuant to this Article VI, it shall pay out the money in the following order:

First: to the Trustee for amounts due under Section 7.07;

Second: to Holders for amounts due and unpaid on the Securities in respect of which or for the benefit of which such money has been collected, for principal, premium (if any), interest and any Additional Amounts ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal, premium (if any), interest and any Additional Amounts, respectively; and

Third: to the Company.

The Trustee, upon prior written notice to the Company, may fix record dates and payment dates for any payment to Holders pursuant to this Article VI.

To the fullest extent allowed under applicable law, if for the purpose of obtaining a judgment against the Company in any court it is necessary to convert the sum due in respect of the principal of, premium (if any) or interest on or Additional Amounts with respect to the Securities of any series (the "Required Currency") into a currency in which a judgment will

be rendered (the "Judgment Currency"), the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the New York Business Day next preceding that on which final judgment is given. Neither the Company nor the Trustee shall be liable for any shortfall nor shall it benefit from any windfall in payments to Holders of Securities under this Section 6.10 caused by a change in exchange rates between the time the amount of a judgment against it is calculated as above and the time the Trustee converts the Judgment Currency into the Required Currency to make payments under this Section to Holders of Securities, but payment of such judgment shall discharge all amounts owed by the Company on the claim or claims underlying such judgment.

#### SECTION 6.11      UNDERTAKING FOR COSTS.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a

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Holder pursuant to Section 6.07, or a suit by a Holder or Holders of more than 10% in principal amount of the then outstanding Securities of any series.

### ARTICLE VII TRUSTEE

#### SECTION 7.01      DUTIES OF TRUSTEE.

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

(b) Except during the continuance of an Event of Default with respect to the Securities of any series:

(1) the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However,



the Trustee shall examine such certificates and opinions to determine whether, on their face, they appear to conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(1) this paragraph does not limit the effect of Section 7.01(b);

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

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to the provisions of this Section 7.01.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or incur any liability. The Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity reasonably satisfactory to it against any loss, liability or expense.

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(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law. All money received by the Trustee shall, until applied as herein provided, be held in trust for the payment of the principal of, premium (if any) and interest on and Additional Amounts with respect to the Securities.

#### SECTION 7.02 RIGHTS OF TRUSTEE.

(a) The Trustee may rely on any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require instruction, an Officers' Certificate or an Opinion of Counsel or both to be provided. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such instruction, Officers' Certificate or Opinion of Counsel. The Trustee may consult at the Company's expense 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.

(c) The Trustee may act through agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company shall be sufficient if signed by an Officer of the Company.

#### SECTION 7.03 MAY HOLD SECURITIES.

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or any of its Affiliates with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights and duties. However, the Trustee is subject to Sections 7.10 and 7.11.

#### SECTION 7.04 TRUSTEE'S DISCLAIMER.

The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities, it shall not be accountable for the Company's use of the proceeds from the Securities or any money paid to the Company or upon the Company's direction under any provision hereof, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee and it shall not be responsible for any statement or recital herein or any statement in the Securities other than its certificate of authentication.

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#### SECTION 7.05 NOTICE OF DEFAULTS.

If a Default or Event of Default with respect to the Securities of any series occurs and is continuing and it is known to the Trustee, the Trustee shall mail to Holders of Securities of such series a notice of the Default or Event of Default within 90 days after it occurs. Except in the case of a Default or Event of Default in payment of principal of, premium (if any) and interest on and Additional Amounts or any sinking fund installment with respect to the Securities of such series, the Trustee may withhold the notice if and so long as a committee of its Trust Officers in good faith determines that withholding the notice is in the interests of Holders of Securities of such series.

#### SECTION 7.06 REPORTS BY TRUSTEE TO HOLDERS.

Within 60 days after each May 15 of each year after the execution of this Indenture, the Trustee shall mail to Holders of a series and the

Company a brief report dated as of such reporting date that complies with TIA Section 313(a); PROVIDED, HOWEVER, that if no event described in TIA Section 313(a) has occurred within the twelve months preceding the reporting date with respect to a series, no report need be transmitted to Holders of such series. The Trustee also shall comply with TIA Section 313(b). The Trustee shall also transmit by mail all reports if and as required by TIA Sections 313(c) and 313(d).

A copy of each Trustee's report at the time of its mailing to Holders of a series of Securities shall be filed by the Company with the SEC and each securities exchange, if any, on which the Securities of such series are listed. The Company shall notify the Trustee if and when any series of Securities is listed on any stock exchange.

#### SECTION 7.07 COMPENSATION AND INDEMNITY.

The Company agrees to pay to the Trustee from time to time reasonable compensation for its acceptance of this Indenture and services hereunder. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company agrees to reimburse the Trustee upon request for all reasonable disbursements, advances and expenses incurred by it. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

The Company hereby indemnifies the Trustee against any loss, liability or expense incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, except as set forth in the next paragraph. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. The Company shall defend the claim and the Trustee shall cooperate in the defense. The Trustee may have separate counsel and the Company shall pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its consent.

The Company shall not be obligated to reimburse any expense or indemnify against any loss or liability incurred by the Trustee through negligence or bad faith.

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To secure the payment obligations of the Company in this Section 7.07, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, except that held in trust to pay principal of, premium (if any) and interest on and any Additional Amounts with respect to Securities of series. Such lien and the indemnity obligation under this Section 7.07 shall survive the satisfaction and discharge of this Indenture.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(5) or (6) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law.

## SECTION 7.08 REPLACEMENT OF TRUSTEE.

A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.08.

The Trustee may resign and be discharged at any time with respect to the Securities of one or more series by so notifying the Company in writing. The Holders of a majority in principal amount of the then outstanding Securities of any series may remove the Trustee with respect to the Securities of such series by so notifying the Trustee and the Company in writing. The Company may remove the Trustee if:

- (1) the Trustee fails to comply with Section 7.10;
- (2) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
- (3) a Bankruptcy Custodian or public officer takes charge of the Trustee or its property; or
- (4) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, with respect to the Securities of one or more series, the Company shall promptly 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). Within one year after the successor Trustee with respect to the Securities of any series takes office, the Holders of a majority in principal amount of the Securities of such series may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

If a successor Trustee with respect to the Securities of any series does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of at least 10% in principal amount of the then outstanding Securities of such series may

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petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

If the Trustee with respect to the Securities of a series fails to comply with Section 7.10, any Holder of Securities of such series may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee with respect to the Securities of such series.

In case of the appointment of a successor Trustee with respect to all Securities, each such successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the retiring Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.07.

In case of the appointment 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 one or more (but not all) series shall execute and deliver an indenture supplemental hereto in which each successor Trustee shall accept such appointment and that (1) shall confer to each successor Trustee all the rights, powers 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 confirm that all the rights, powers 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. Nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust, and 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. 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 shall have all the rights, powers 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. On request of the Company or any successor Trustee, such retiring Trustee shall transfer to such successor Trustee all property held by such retiring Trustee as Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

Notwithstanding replacement of the Trustee or Trustees pursuant to this Section 7.08, the obligations of the Company under Section 7.07 shall continue for the benefit of the retiring Trustee or Trustees.

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#### SECTION 7.09 SUCCESSOR TRUSTEE BY MERGER, ETC.

Subject to Section 7.10, if the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee; PROVIDED, HOWEVER, that in the case of a transfer of all or substantially all of its corporate trust

business to another corporation, the transferee corporation expressly assumes all of the Trustee's liabilities hereunder.

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; and in case at that time any of the Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Securities or in this Indenture provided that the certificate of the Trustee shall have.

#### SECTION 7.10 ELIGIBILITY; DISQUALIFICATION.

There shall at all times be a Trustee hereunder which shall be a corporation organized and doing business under the laws of the United States, any State thereof or the District of Columbia and authorized under such laws to exercise corporate trust power, shall be subject to supervision or examination by Federal or State (or the District of Columbia) authority and shall have, or be a Subsidiary of a bank or bank holding company having, a combined capital and surplus of at least \$50 million as set forth in its most recent published annual report of condition.

The Indenture shall always have a Trustee who satisfies the requirements of TIA Sections 310(a)(1), 310(a)(2) and 310(a)(5). The Trustee is subject to and shall comply with the provisions of TIA Section 310(b) during the period of time required by this Indenture. Nothing in this Indenture shall prevent the Trustee from filing with the SEC the application referred to in the penultimate paragraph of TIA Section 310(b).

#### SECTION 7.11 PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY.

The Trustee is subject to and shall comply with the provisions of TIA Section 311(a), excluding any creditor relationship listed in TIA Section 311(b). A Trustee who has resigned or been removed shall be subject to TIA Section 311(a) to the extent indicated therein.

### ARTICLE VIII DISCHARGE OF INDENTURE

#### SECTION 8.01 TERMINATION OF COMPANY'S OBLIGATIONS.

(a) This Indenture shall cease to be of further effect with respect to the Securities of a series (except that the Company's obligations under Section 7.07, the Trustee's and Paying Agent's obligations under Section 8.03 and the rights, powers, protections and privileges accorded

the Trustee under Article VII shall survive), and the Trustee, on demand of

the Company, shall execute proper instruments acknowledging the satisfaction and discharge of this Indenture with respect to the Securities of such series, when:

(1) either

(A) all outstanding Securities of such series theretofore authenticated and issued (other than destroyed, lost or stolen Securities that have been replaced or paid) have been delivered to the Trustee for cancellation; or

(B) all outstanding Securities of such series not theretofore delivered to the Trustee for cancellation:

(i) have become due and payable, or

(ii) will become due and payable at their Stated Maturity within one year, or

(iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

and, in the case of clause (i), (ii) or (iii) above, the Company has irrevocably deposited or caused to be deposited with the Trustee as funds (immediately available to the Holders in the case of clause (i)) in trust for such purpose (x) cash in an amount, or (y) U.S. Government Obligations, maturing as to principal and interest at such times and in such amounts as will insure the availability of cash in an amount or (z) a combination thereof, which will be sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge the entire indebtedness on the Securities of such series for principal and interest to the date of such deposit (in the case of Securities which have become due and payable) or for principal, premium, if any, and interest to the Stated Maturity or Redemption Date, as the case may be; or

(C) the Company has properly fulfilled such other means of satisfaction and discharge as is specified, as contemplated by Section 2.01, to be applicable to the Securities of such series;

(2) the Company has paid or caused to be paid all other sums payable by it hereunder with respect to the Securities of such series; and

(3) the Company has delivered to the Trustee an Officers' Certificate stating that all conditions precedent to satisfaction and discharge of this Indenture with respect to the

Securities of such series have been complied with, together with an Opinion of Counsel to the same effect.

(b) Unless this Section 8.01(b) is specified as not being applicable to Securities of a series as contemplated by Section 2.01, the Company may terminate certain of its obligations under this Indenture ("covenant defeasance") with respect to the Securities of a series if:

(1) the Company has irrevocably deposited or caused to be irrevocably deposited with the Trustee as trust funds in trust for the purpose of making the following payments, specifically pledged as security for and dedicated solely to the benefit of the Holders of Securities of such series, (i) money in the currency in which payment of the Securities of such series is to be made in an amount, or (ii) Government Obligations with respect to such series, maturing as to principal and interest at such times and in such amounts as will insure the availability of money in the currency in which payment of the Securities of such series is to be made in an amount or (iii) a combination thereof, that is sufficient, in the opinion (in the case of (ii) and (iii)) of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay, without consideration of the reinvestment of any such amounts and after payment of all taxes or other charges or assessments in respect thereof payable by the Trustee, the principal of and premium (if any) and interest on all Securities of such series on each date that such principal, premium (if any) or interest is due and payable and (at the Stated Maturity thereof or upon redemption as provided in Section 8.01(e)) to pay all other sums payable by it hereunder; PROVIDED that the Trustee shall have been irrevocably instructed to apply such money and/or the proceeds of such U.S. Government Obligations to the payment of said principal, premium (if any) and interest with respect to the Securities of such series as the same shall become due;

(2) the Company has delivered to the Trustee an Officers' Certificate stating that all conditions precedent to satisfaction and discharge of this Indenture with respect to the Securities of such series have been complied with and an Opinion of Counsel to the same effect;

(3) no Default or Event of Default with respect to the Securities of such series shall have occurred and be continuing on the date of such deposit;

(4) the Company shall have delivered to the Trustee an Opinion of Counsel from a nationally recognized counsel acceptable to the Trustee or a tax ruling to the effect that the Holders will not recognize income, gain or loss for Federal income tax purposes as a result of the Company's exercise of its option under this Section 8.01(b) and will be subject to Federal income tax on the same amount and in the same manner and at the same times as would have been the case if such option had not been exercised;

(5) the Company has complied with any additional conditions specified pursuant to Section 2.01 to be applicable to the discharge of Securities of



(6) such deposit and discharge shall not cause the Trustee to have a conflicting interest as defined in TIA Section 310(b).

In such event, this Indenture shall cease to be of further effect (except as set forth in this paragraph), and the Trustee, on demand of the Company, shall execute proper instruments acknowledging satisfaction and discharge under this Indenture. However, the Company's obligations in Sections 2.05, 2.06, 2.07, 2.08, 2.09, 4.01, 4.02, 5.01, 7.07, 7.08 and 8.04, the Trustee's and Paying Agent's obligations in Section 8.03 and the rights, powers, protections and privileges accorded the Trustee under Article VII shall survive until all Securities of such series are no longer outstanding. Thereafter, only the Company's obligations in Section 7.07 and the Trustee's and Paying Agent's obligations in Section 8.03 shall survive with respect to Securities of such series.

After such irrevocable deposit made pursuant to this Section 8.01(b) and satisfaction of the other conditions set forth herein, the Trustee upon request shall acknowledge in writing the discharge of the Company's obligations under this Indenture with respect to the Securities of such series except for those surviving obligations specified above.

In order to have money available on a payment date to pay principal of or premium (if any) or interest on the Securities, the Government Obligations shall be payable as to principal or interest on or before such payment date in such amounts as will provide the necessary money. Government Obligations shall not be callable at the issuer's option.

(c) If the Company has previously complied or is concurrently complying with Section 8.01(b) (other than any additional conditions specified pursuant to Section 2.01 that are expressly applicable only to covenant defeasance) with respect to Securities of a series, then, unless this Section 8.01(c) is specified as not being applicable to Securities of such series as contemplated by Section 2.01, the Company may elect to be discharged ("legal defeasance") from its obligations to make payments with respect to Securities of such series, if:

(1) no Default or Event of Default under clauses (5) and (6) of Section 6.01 hereof shall have occurred at any time during the period ending on the 91st day after the date of deposit contemplated by Section 8.01(b) (it being understood that this condition shall not be deemed satisfied until the expiration of such period);

(2) unless otherwise specified with respect to Securities of such series as contemplated by Section 2.01, the Company has delivered to the Trustee an Opinion of Counsel from a nationally recognized counsel acceptable to the Trustee to the effect referred to in Section 8.01(b) (4) with respect to such legal defeasance, which opinion is based on (i) a private ruling of the Internal Revenue Service addressed to the Company,



(ii) a published ruling of the Internal Revenue Service or (iii) a change in the applicable federal income tax law (including regulations) after the date of this Indenture;

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(3) the Company has complied with any other conditions specified pursuant to Section 2.01 to be applicable to the legal defeasance of Securities of such series pursuant to this Section 8.01(c); and

(4) the Company has delivered to the Trustee a Company Request requesting such legal defeasance of the Securities of such series and an Officers' Certificate stating that all conditions precedent to with respect to such legal defeasance of the Securities of such series have been complied with, together with an Opinion of Counsel to the same effect.

In such event, the Company will be discharged from its obligations under this Indenture and the Securities of such series to pay principal of, premium (if any) and interest on, and Additional Amounts with respect to, Securities of such series, the Company's obligations under Sections 4.01, 4.02 and 5.01 shall terminate with respect to such Securities, and the entire indebtedness of the Company evidenced by such Securities shall be deemed paid and discharged.

(d) If and to the extent additional or alternative means of satisfaction, discharge or defeasance of Securities of a series are specified to be applicable to such series as contemplated by Section 2.01, the Company may terminate any or all of its obligations under this Indenture with respect to Securities of a series and any or all of its obligations under the Securities of such series if it fulfills such other means of satisfaction and discharge as may be so specified, as contemplated by Section 2.01, to be applicable to the Securities of such series.

(e) If Securities of any series subject to subsections (a), (b), (c) or (d) of this Section 8.01 are to be redeemed prior to their Stated Maturity, whether pursuant to any optional redemption provisions or in accordance with any mandatory or optional sinking fund provisions, the terms of the applicable trust arrangement shall provide for such redemption, and the Company shall make such arrangements as are reasonably satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company.

## SECTION 8.02 APPLICATION OF TRUST MONEY.

The Trustee or a trustee satisfactory to the Trustee and the Company shall hold in trust money or U.S. Government Obligations deposited with it pursuant to Section 8.01 hereof. It shall apply the deposited money and the money from U.S. Government Obligations through the Paying Agent and in accordance with this Indenture to the payment of principal of, premium (if any) and interest on and any Additional Amounts with respect to the Securities of the series with respect to which the deposit was made.

SECTION 8.03      REPAYMENT TO COMPANY.

The Trustee and the Paying Agent shall promptly pay to the Company upon written request any excess money or U.S. Government Obligations (or proceeds therefrom) held by them at any time upon the written request of the Company.

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Subject to the requirements of any applicable abandoned property laws, the Trustee and the Paying Agent shall pay to the Company upon written request any money held by them for the payment of principal, premium (if any), interest or any Additional Amounts that remains unclaimed for two years after the date upon which such payment shall have become due. After payment to the Company, Holders entitled to the money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another Person, and all liability of the Trustee and the Paying Agent with respect to such money shall cease.

SECTION 8.04      REINSTATEMENT.

If the Trustee or the Paying Agent is unable to apply any money or U.S. Government Obligations deposited with respect to Securities of any series in accordance with Section 8.01 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Company under this Indenture with respect to the Securities of such series and under the Securities of such series shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.01 hereof until such time as the Trustee or the Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with Section 8.01; PROVIDED, HOWEVER, that if the Company has made any payment of principal of, premium (if any) or interest on or any Additional Amounts with respect to any Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or U.S. Government Obligations held by the Trustee or the Paying Agent.

ARTICLE IX  
SUPPLEMENTAL INDENTURES AND AMENDMENTS

SECTION 9.01      WITHOUT CONSENT OF HOLDERS.

The Company and the Trustee may amend or supplement this Indenture or the Securities or waive any provision hereof or thereof without the consent of any Holder:

- (1) to cure any ambiguity, omission, defect or inconsistency;
- (2) to comply with Section 5.01;
- (3) to provide for uncertificated Securities in addition to or in

place of certificated Securities, or to provide for the issuance of bearer Securities (with or without coupons);

(4) to provide any security for any series of Securities or to add guarantees of any series of Securities;

(5) to comply with any requirement in order to effect or maintain the qualification of this Indenture under the TIA;

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(6) to add to the covenants of the Company for the benefit of the Holders of all or any series of Securities (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included solely for the benefit of such series), or to surrender any right or power herein conferred upon the Company;

(7) to add any additional Events of Default with respect to all or any series of the Securities (and, if such Event of Default is applicable to less than all series of Securities, specifying the series to which such Event of Default is applicable);

(8) to change or eliminate any of the provisions of this Indenture; PROVIDED that any such change or elimination shall become effective only when there is no outstanding Security of any series created prior to the execution of such amendment or supplemental indenture that is adversely affected in any material respect by such change in or elimination of such provision;

(9) to establish the form or terms of Securities of any series as permitted by Section 2.01;

(10) to supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of any series of Securities pursuant to Section 8.01; PROVIDED, HOWEVER, that any such action shall not adversely affect the interest of the Holders of Securities of such series or any other series of Securities in any material respect; or

(11) 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 7.08.

Upon the request of the Company, accompanied by a Board Resolution, and upon receipt by the Trustee of the documents described in Section 9.06, the Trustee shall join with the Company in the execution of any supplemental indenture authorized or permitted by the terms of this Indenture and make any further appropriate agreements and stipulations that may be therein contained.

SECTION 9.02 WITH CONSENT OF HOLDERS.

Except as provided below in this Section 9.02, the Company and the Trustee may amend or supplement this Indenture with the written consent (including consents obtained in connection with a tender offer or exchange offer for Securities of any one or more series or all series or a solicitation of consents in respect of Securities of any one or more series or all series, PROVIDED that in each case such offer or solicitation is made to all Holders of then outstanding Securities of each such series (but the terms of such offer or solicitation may vary from series to series)) of the

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Holders of at least a majority in principal amount of the then outstanding Securities of all series affected by such amendment or supplement (acting as one class).

Upon the request of the Company, accompanied by a Board Resolution, and upon the filing with the Trustee of evidence of the consent of the Holders as aforesaid, and upon receipt by the Trustee of the documents described in Section 9.06, the Trustee shall join with the Company in the execution of such amendment or supplemental indenture.

It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.

The Holders of a majority in principal amount of the then outstanding Securities of one or more series or of all series may waive compliance in a particular instance by the Company with any provision of this Indenture with respect to Securities of such series (including waivers obtained in connection with a tender offer or exchange offer for Securities of such series or a solicitation of consents in respect of Securities of such series, PROVIDED that in each case such offer or solicitation is made to all Holders of then outstanding Securities of such series (but the terms of such offer or solicitation may vary from series to series)).

However, without the consent of each Holder affected, an amendment, supplement or waiver under this Section 9.02 may not:

- (1) reduce the amount of Securities whose Holders must consent to an amendment, supplement or waiver;
- (2) reduce the rate of or change the time for payment of interest, including default interest, on any Security;
- (3) reduce the principal of or premium on, or change the Stated Maturity of, any Security;
- (4) reduce the premium, if any, payable upon the redemption of any

Security or change the time at which any Security may or shall be redeemed;

(5) change any obligation of the Company to pay Additional Amounts with respect to any Security;

(6) change the coin or currency or currencies (including composite currencies) in which any Security or any premium, interest or Additional Amounts with respect thereto are payable;

(7) impair the right to institute suit for the enforcement of any payment of principal of, premium (if any) or interest on or any Additional Amounts with respect to any Security pursuant to Sections 6.07 and 6.08, except as limited by Section 6.06;

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(8) make any change in the percentage of principal amount of Securities necessary to waive compliance with certain provisions of this Indenture pursuant to Section 6.04 or 6.07 or make any change in this sentence of Section 9.02; or

(9) waive a continuing Default or Event of Default in the payment of principal of, premium (if any) or interest on or Additional Amounts with respect to the Securities.

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

The right of any Holder to participate in any consent required or sought pursuant to any provision of this Indenture (and the obligation of the Company to obtain any such consent otherwise required from such Holder) may be subject to the requirement that such Holder shall have been the Holder of record of any Securities with respect to which such consent is required or sought as of a date identified by the Company in a notice furnished to Holders in accordance with the terms of this Indenture.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Company shall mail to the Holders of each Security affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment, supplement or waiver.

#### SECTION 9.03 COMPLIANCE WITH TRUST INDENTURE ACT.

Every amendment or supplement to this Indenture or the Securities shall comply in form and substance with the TIA as then in effect.

#### SECTION 9.04 REVOCATION AND EFFECT OF CONSENTS.

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security. However, any such Holder or subsequent Holder may revoke the consent as to his or her Security or portion of a Security if the Trustee receives written notice of revocation before the date the amendment, supplement or waiver becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

The Company may, but shall not be obligated to, fix a record date (which need not comply with Section 316(c) of the TIA) for the purpose of determining the Holders entitled to

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consent to any amendment, supplement or waiver or to take any other action under this Indenture. If a record date is fixed, then notwithstanding the provisions of the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to consent to such amendment, supplement or waiver or to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date. No consent shall be valid or effective for more than 90 days after such record date unless consents from Holders of the principal amount of Securities required hereunder for such amendment or waiver to be effective shall have also been given and not revoked within such 90-day period.

After an amendment, supplement or waiver becomes effective, it shall bind every Holder, unless it is of the type described in any of clauses (1) through (9) of Section 9.02 hereof. In such case, the amendment, supplement or waiver shall bind each Holder who has consented to it and every subsequent Holder that evidences the same debt as the consenting Holder's Security.

#### SECTION 9.05 NOTATION ON OR EXCHANGE OF SECURITIES.

If an amendment or supplement changes the terms of an outstanding Security, the Company may require the Holder of the Security to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security at the request of the Company regarding the changed terms and return it to the Holder. Alternatively, if the Company so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms. Failure to make the appropriate notation or to issue a new Security shall not affect the validity of such amendment or supplement.

Securities of any series authenticated and delivered after the execution of any amendment or supplement 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 amendment or supplement.

#### SECTION 9.06 TRUSTEE TO SIGN AMENDMENTS, ETC.

The Trustee shall sign any amendment or supplement authorized pursuant to this Article if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, but need not, sign it. In signing or refusing to sign such amendment or supplement, the Trustee shall be entitled to receive, and, subject to Section 7.01 hereof, shall be fully protected in relying upon, an Opinion of Counsel provided at the expense of the Company as conclusive evidence that such amendment or supplement is authorized or permitted by this Indenture, that it is not inconsistent herewith, and that it will be valid and binding upon the Company in accordance with its terms.

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### ARTICLE X MISCELLANEOUS

#### SECTION 10.01 TRUST INDENTURE ACT CONTROLS.

If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by operation of TIA Section 318(c), the imposed duties shall control.

#### SECTION 10.02 NOTICES.

Any notice or communication by the Company or the Trustee to the other is duly given if in writing and delivered in person or mailed by first-class mail (registered or certified, return receipt requested), telex, facsimile or overnight air courier guaranteeing next day delivery, to the other's address:

If to the Company:

Pogo Producing Company  
5 Greenway Plaza, Suite 2700  
Houston, Texas 77046  
Attention: Gerald A. Morton, Vice President-Law and Corporate Secretary

If to the Trustee:

State Street Bank and Trust Company  
Two International Place, 4th Floor  
Boston, Massachusetts 02110

The Company or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.



All notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when answered back, if telexed; when receipt acknowledged, if by facsimile; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice or communication to a Holder shall be mailed by first-class mail, postage prepaid, to the Holder's address shown on the register kept by the Registrar. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it, except in the case of notice to the Trustee, it is duly given only when received.

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If the Company mails a notice or communication to Holders, it shall mail a copy to the Trustee and each Agent at the same time.

All notices or communications, including without limitation notices to the Trustee or the Company by Holders, shall be in writing, except as otherwise set forth herein.

In case by reason of the suspension of regular mail service, or by reason of any other cause, it shall be impossible to mail any notice required by this Indenture, then such method of notification as shall be made with the approval of the Trustee shall constitute a sufficient mailing of such notice.

#### SECTION 10.03 COMMUNICATION BY HOLDERS WITH OTHER HOLDERS.

Holders may communicate pursuant to TIA Section 312(b) with other Holders with respect to their rights under this Indenture or the Securities. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA Section 312(c).

#### SECTION 10.04 CERTIFICATE AND OPINION AS TO CONDITIONS PRECEDENT.

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall, if requested by the Trustee, furnish to the Trustee at the expense of the Company:

(1) an Officers' Certificate (which shall include the statements set forth in Section 10.05) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(2) an Opinion of Counsel (which shall include the statements set

forth in Section 10.05 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been complied with.

#### SECTION 10.05 STATEMENTS REQUIRED IN CERTIFICATE OR OPINION.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to TIA Section 314(a)(4)) shall comply with the provisions of TIA Section 314(e) and shall include:

(1) a statement that the Person making such certificate or opinion has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

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(3) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with.

#### SECTION 10.06 RULES BY TRUSTEE AND AGENTS.

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or the Paying Agent may make reasonable rules and set reasonable requirements for its functions.

#### SECTION 10.07 LEGAL HOLIDAYS.

If a payment date is a Legal Holiday at a Place of Payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period.

#### SECTION 10.08 NO RECOURSE AGAINST OTHERS.

A director, officer, employee, stockholder, partner or other owner of the Company or the Trustee, as such, shall not have any liability for any obligations of the Company under the Securities or for any obligations of the Company or the Trustee under this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. Each Holder by accepting a Security waives and releases all such liability. The waiver and release shall be part of the consideration for the issue of Securities.

#### SECTION 10.09 GOVERNING LAW.

THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS TO THE EXTENT THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

SECTION 10.10 NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS.

This Indenture may not be used to interpret another indenture, loan or debt agreement of the Company or any other Subsidiary. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

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SECTION 10.11 SUCCESSORS.

All agreements of the Company in this Indenture and the Securities shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors.

SECTION 10.12 SEVERABILITY.

In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall, to the fullest extent permitted by applicable law, not in any way be affected or impaired thereby.

SECTION 10.13 COUNTERPART ORIGINALS.

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

SECTION 10.14 TABLE OF CONTENTS, HEADINGS, ETC.

The table of contents, cross-reference table and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof and shall in no way modify or restrict any of the terms or provisions hereof.

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

POGO PRODUCING COMPANY

By:

-----  
Name:

-----  
Title:

STATE STREET BANK AND TRUST COMPANY,  
as Trustee

By:

-----  
Name:

-----  
Title:

[FORM OF SUBORDINATED DEBT SECURITIES INDENTURE OF THE COMPANY]

-----  
-----  
  
POGO PRODUCING COMPANY

AS ISSUER

and

STATE STREET BANK AND TRUST COMPANY

AS TRUSTEE

-----  
  
Indenture

Dated as of \_\_\_\_\_, \_\_\_\_

-----  
  
Subordinated Debt Securities

-----  
-----  
  
POGO PRODUCING COMPANY

RECONCILIATION AND TIE BETWEEN TRUST INDENTURE ACT OF 1939  
AND INDENTURE, DATED AS OF \_\_\_\_\_

<TABLE>

<CAPTION>

Section of  
Trust Indenture  
Act of 1939

Section(s) of  
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<S>	<C>	<C>
Section 310	(a) (1) . . . . .	7.10
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	(c) . . . . .	Not Applicable
Section 312	(a) . . . . .	2.07
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	(c) . . . . .	11.03
Section 313	(a) . . . . .	7.06
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	(d) . . . . .	7.06
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	(b) . . . . .	Not Applicable
	(c) (1) . . . . .	11.04
	(c) (2) . . . . .	11.04
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	(d) . . . . .	Not Applicable
	(e) . . . . .	11.05
Section 315	(a) . . . . .	7.01 (b)
	(b) . . . . .	7.05
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	(d) . . . . .	7.01 (c)
	(d) (1) . . . . .	7.01 (c) (1)
	(d) (2) . . . . .	7.01 (c) (2)
	(d) (3) . . . . .	7.01 (c) (3)
	(e) . . . . .	6.11
Section 316	(a) (1) (A) . . . . .	6.05
	(a) (1) (B) . . . . .	6.04
	(a) (2) . . . . .	Not Applicable
	(a) (last sentence) . . . . .	2.11
	(b) . . . . .	6.07
Section 317	(a) (1) . . . . .	6.08
	(a) (2) . . . . .	6.09
	(b) . . . . .	2.06
Section 318	(a) . . . . .	11.01

Note: This reconciliation and tie shall not, for any purpose, be deemed to be a part of the Indenture.

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INDENTURE dated as of \_\_\_\_\_ between Pogo Producing Company, a Delaware corporation (the "Company"), and State Street Bank and Trust Company, as trustee (the "Trustee").

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders of the Company's unsecured debentures, notes or other evidences of indebtedness (the "Securities") to be issued from time to time in one or more series as provided in this Indenture:

ARTICLE I  
DEFINITIONS AND INCORPORATION BY REFERENCE

SECTION 1.01 DEFINITIONS.

"Additional Amounts" means any additional amounts required by the express terms of a Security or by or pursuant to a Board Resolution, under circumstances specified therein or pursuant thereto, to be paid by the Company with respect to certain taxes, assessments or other governmental charges imposed on certain Holders and that are owing to such Holders.

"Affiliate" means, with respect to any specified Person, 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 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. For purposes of this definition, beneficial ownership of 10% or more of the voting common equity (on a fully diluted basis) or options or warrants to purchase such equity (but only if exercisable at the date of determination or within 60 days thereof) of a Person shall be deemed to constitute control of such Person. No Person shall be deemed an Affiliate of an oil and gas royalty trust solely by virtue of ownership of units of beneficial interest in such trust.

"Agent" means any Registrar or Paying Agent.

"Bankruptcy Law" means Title 11 of the United States Code or any similar federal, state or foreign law for the relief of debtors.

"Board of Directors" means the Board of Directors of the Company, or any committee of such Board duly authorized, with respect to any particular matter, to act by or on behalf of the Board of Directors of the Company.

"Board Resolution" means a copy of one or more resolutions, certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted or consented to by the Board of Directors and to be in full force and effect, and delivered to the Trustee.

"Business Day" means any day that is not a Legal Holiday.

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"Capital Stock" means, with respect to any Person, any and all shares, interests, participations, rights in or other equivalents in the equity interests (however designated) in such Person, and any rights (other than debt securities convertible into an equity interest), warrants or options exercisable for, exchangeable for or convertible into such an equity interest in such Person.

"Capitalized Lease Obligation" means any obligation to pay rent or other amounts under a lease of (or other agreement conveying the right to use) any property (whether real, personal or mixed) that is required to be classified and accounted for as a capital lease obligation under GAAP, and, for the purpose of this Indenture, the amount of such obligation at any date shall be the capitalized amount thereof at such date, determined in accordance with GAAP.

"Company" means the Person named as the "Company" in the first paragraph of this instrument until a successor corporation shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Company" shall mean such successor corporation; PROVIDED, HOWEVER, that for purposes of any provision contained herein which is required by the TIA, "Company" shall also mean each other obligor (if any) on the Securities of a series.

"Company Order" and "Company Request" mean, respectively, a written order or request signed in the name of the Company by two Officers of the Company, and delivered to the Trustee.

"Corporate Trust Office" of the Trustee means the office of the Trustee located at Two International Place, 4th Floor, Boston, Massachusetts 02110, and as may be located at such other address as the Trustee may give notice to the Company.

"Default" means any event, act or condition that is, or after notice or the passage of time or both would be, an Event of Default.

"Depository" means, with respect to the Securities of any series issuable or issued in whole or in part in global form, the Person specified pursuant to Section 2.01 hereof as the initial Depository with respect to the Securities of such series, until a successor shall have been appointed and become such pursuant to the applicable provision of this Indenture, and thereafter "Depository" shall mean or include such successor.

"Designated Senior Indebtedness," unless otherwise provided with respect to the Securities of a series as contemplated by Section 2.01, means any Senior Indebtedness that (i) in the instrument evidencing the same or the assumption or guarantee thereof (or related documents to which the Company is a party) is expressly designated as "Designated Senior Indebtedness" for purposes of this Indenture and (ii) satisfies such other conditions as may be provided with respect to the Securities of such series; PROVIDED that such instruments or documents may place limitations and conditions on the rights

of the holders of such Senior Indebtedness to exercise the rights of Designated Senior Indebtedness.

"Disqualified Capital Stock" means, when used with respect to the Securities of any series, (a) except as set forth in (b), with respect to any Person, Capital Stock of such Person that,

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by its terms or by the terms of any security into which it is convertible, exercisable or exchangeable, is, or upon the happening of an event or the passage of time would be, required to be redeemed or repurchased (including at the option of the holder thereof) by such Person or any Subsidiary of such Person, in whole or in part, on or prior to 91 days after the final Stated Maturity of the Securities of such series, and (b) with respect to any Subsidiary of such Person (including with respect to any Subsidiary of the Company), any Capital Stock other than any common stock with no preference, privileges, or redemption or repayment provisions.

"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 debt.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and any successor statute.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States, as in effect from time to time.

"Global Security" means a Security in the form prescribed by Section 2.03 that is issued in global form in the name of the Depositary with respect thereto or its nominee.

"Government Obligations" means, with respect to a series of Securities, direct obligations of the government that issues the currency in which the Securities of the series are payable for the payment of which the full faith and credit of such government is pledged, or obligations of a person controlled or supervised by and acting as an agency or instrumentality of such government, the payment of which is unconditionally guaranteed as a full faith and credit obligation by such government.

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

"Indebtedness" of any Person, unless otherwise provided with respect to the Securities of a series as contemplated by Section 2.01, means, without duplication, (i) all indebtedness of such Person for borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof), (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments,

(iii) all obligations of such Person in respect of letters of credit or other similar instruments (or reimbursement obligations with respect thereto), other than standby letters of credit, performance bonds and other obligations issued by or for the account of such Person in the ordinary course of business, to the extent not drawn or, to the extent drawn, if such drawing is reimbursed not later than the third Business Day following demand for reimbursement, (iv) all obligations of such Person to pay the deferred and unpaid purchase price of property or services, except trade payables and accrued expenses incurred in the ordinary course of business, (v) all Capitalized Lease Obligations of such Person, (vi) all

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Indebtedness of others secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person (PROVIDED that if the obligations so secured have not been assumed in full by such Person or are not otherwise such Person's legal liability in full, then such obligations shall be deemed to be in an amount equal to the greater of (a) the lesser of (1) the full amount of such obligations and (2) the fair market value of such assets, as determined in good faith by the Board of Directors of such Person, which determination shall be evidenced by a Board Resolution, and (b) the amount of obligations as have been assumed by such Person or which are otherwise such Person's legal liability), and (vii) all Indebtedness of others (other than endorsements in the ordinary course of business) guaranteed by such Person to the extent of such guarantee.

"Indenture" means this Indenture as amended or supplemented from time to time, and includes the terms of a particular series of Securities established as contemplated by Section 2.01.

"interest" means, with respect to an Original Issue Discount Security that by its terms bears interest only after Maturity, interest payable after Maturity.

"Interest Payment Date," when used with respect to any Security, shall have the meaning assigned to such term in the Security as contemplated by Section 2.01.

"Issue Date" means, with respect to Securities of a series, the date on which the Securities of such series are originally issued under this Indenture.

"Junior Security" of a Person means, when used with respect to the Securities of any series, any Qualified Capital Stock of such Person or any Indebtedness of such Person that is subordinated in right of payment to the Securities of such series and has no scheduled installment of principal due, by redemption, sinking fund payment or otherwise, on or prior to the Stated Maturity of the Securities of such series.

"Legal Holiday" means (i) a Saturday, (ii) a Sunday or (iii) a day on which banking institutions in any of The City of New York, New York, Boston, Massachusetts, Houston, Texas or a Place of Payment are authorized or obligated by law, regulation or executive order to remain closed.

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

"Officer" means the Chairman of the Board, the President, any Vice Chairman of the Board, any Vice President, the chief financial officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Assistant Secretary of a Person.

"Officers' Certificate" means a certificate signed by two Officers of a Person.

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"Opinion of Counsel" means a written opinion from legal counsel who is reasonably acceptable to the Trustee. Such counsel may be an employee of or counsel to the Company or the Trustee.

"Original Issue Discount Security" means any Security that 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 6.02.

"Person" means any individual, corporation, estate, partnership, limited liability company, joint venture, incorporated or unincorporated association, joint stock company, trust, unincorporated organization or government or other agency or political subdivision thereof or other entity of any kind.

"Place of Payment" means, with respect to the Securities of any series, the place or places where the principal of, premium (if any) on and interest on the Securities of that series are payable as specified in accordance with Section 2.01 subject to the provisions of Section 4.02.

"principal" of a Security means the principal of the Security plus, when appropriate, the premium, if any, on the Security.

"Qualified Capital Stock" means any Capital Stock of the Company that is not Disqualified Capital Stock.

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

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

"Rule 144A Securities" means Securities of a series designated pursuant to Section 2.01 as entitled to the benefits of Section 4.03(b).

"SEC" means the Securities and Exchange Commission.

"Securities" has the meaning stated in the preamble of this Indenture and more particularly means any Securities authenticated and



delivered under this Indenture.

"Security Custodian" means, with respect to Securities of a series, the Trustee for Securities of such series, as custodian with respect to the Securities of such series issued in global form, or any successor entity thereto.

"Senior Indebtedness" of the Company, unless otherwise provided with respect to the Securities of a series as contemplated by Section 2.01, means (i) all Indebtedness of the Company, whether currently outstanding or hereafter issued, unless, by the terms of the instrument creating or evidencing such Indebtedness, it is provided that such Indebtedness is not superior in right of

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payment to the Securities or to other Indebtedness which is PARI PASSU with or subordinated to the Securities, and (ii) any modifications, refunding, deferrals, renewals or extensions of any such Indebtedness or securities, notes or other evidences of Indebtedness issued in exchange for such Indebtedness; PROVIDED that in no event shall "Senior Indebtedness" include (a) Indebtedness of the Company owed or owing to any Subsidiary of the Company or any Officer, director or employee of the Company or any Subsidiary of the Company, (b) Indebtedness to trade creditors or (c) any liability for taxes owed or owing by the Company.

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

"Subsidiary" means, with respect to any Person, a corporation, partnership, limited liability company, association or other business entity a majority of whose Voting Stock is at the time, directly or indirectly, owned by such Person, by one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries thereof. For purposes of the foregoing definition, an arrangement by which a Person who owns an interest in an oil and gas property is subject to a joint operating agreement, processing agreement, net profits interest, overriding royalty interest, farmout agreement, development agreement, area of mutual interest agreement, joint bidding agreement, unitization agreement, pooling arrangement or other similar agreement or arrangement shall not, in and of itself, be considered a Subsidiary.

"TIA" means the Trust Indenture Act of 1939, as amended (15 U.S.C. Sections 77aaa-77bbbb), as in effect on the date hereof.

"Trust Officer" means any officer or assistant officer of the Trustee assigned by the Trustee to administer its corporate trust matters.

"Trustee" means the Person, not in its individual capacity but solely as Trustee, named as such above until a successor replaces it in accordance with the applicable provisions of this Indenture, and thereafter "Trustee" means each Person who is then a Trustee hereunder, and if at any

time there is more than one such Person, "Trustee" as used with respect to the Securities of any series means the Trustee with respect to Securities of that series.

"United States" means the United States of America (including the States and the District of Columbia) and its "possessions," which include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands.

"United States Alien" means any Person who, for United States federal income tax purposes, is a foreign corporation, a nonresident alien individual, a nonresident alien or foreign fiduciary of an estate or trust, or a foreign partnership.

"U.S. Government Obligations" means Government Obligations with respect to Securities payable in Dollars.

"Voting Stock" means any class or classes of Capital Stock pursuant to which the holders thereof have the general voting power under ordinary circumstances to vote in the election of the board of directors, managers or trustees of any Person (irrespective of whether or not, at the time, Capital Stock of any other class or classes shall have, or might have, voting power by reason of the happening of any contingency).

SECTION 1.02 OTHER DEFINITIONS.

<TABLE>  
<CAPTION>

TERM ----	DEFINED IN SECTION -----
<S>	<C>
"Bankruptcy Custodian" . . . . .	6.01
"covenant defeasance". . . . .	8.01
"Conversion Event" . . . . .	6.01
"Event of Default" . . . . .	6.01
"Exchange Rate". . . . .	2.11
"Judgment Currency". . . . .	6.10
"legal defeasance" . . . . .	8.01
"mandatory sinking fund payment" . . . . .	3.09
"optional sinking fund payment". . . . .	3.09
"Paying Agent" . . . . .	2.05
"Payment Default". . . . .	10.02
"Payment Notice" . . . . .	10.02
"Registrar". . . . .	2.05
"Required Currency". . . . .	6.10
"Successor". . . . .	5.01

</TABLE>

SECTION 1.03 INCORPORATION BY REFERENCE OF TRUST INDENTURE ACT.

Whenever this Indenture refers to a provision of the TIA, the

provision is incorporated by reference in and made a part of this Indenture. The following TIA terms used in this Indenture have the following meanings:

"Commission" means the SEC.

"indenture securities" means the Securities.

"indenture security holder" means a Holder.

"indenture to be qualified" means this Indenture.

"indenture trustee" or "institutional trustee" means the Trustee.

"obligor" on the indenture securities means the Company or any other obligor on the Securities.

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All terms used in this Indenture that are defined by the TIA, defined by a TIA reference to another statute or defined by an SEC rule under the TIA have the meanings so assigned to them.

#### SECTION 1.04 RULES OF CONSTRUCTION.

Unless the context otherwise requires:

- (1) a term has the meaning assigned to it;
- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (3) "or" is not exclusive;
- (4) words in the singular include the plural, and in the plural include the singular;
- (5) provisions apply to successive events and transactions; and
- (6) all references in this Agreement to Articles and Sections are references to the corresponding Articles and Sections in and of this Indenture.

#### ARTICLE II THE SECURITIES

#### SECTION 2.01 AMOUNT UNLIMITED; ISSUABLE IN SERIES.

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

The Securities may be issued in one or more series. There shall be established in or pursuant to a Board Resolution, and set forth in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series:

(1) the title of the Securities of the series (which shall distinguish the Securities of the series from the Securities all other series);

(2) any limit upon the aggregate principal amount of the Securities of the series that may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Section 2.08, 2.09, 2.12, 3.07 or 9.05);

(3) whether any Securities of the series are to be issuable initially in temporary global form and whether any Securities of the series are to be issuable in permanent global form, as Global Securities or otherwise, and, if so, whether beneficial owners of interests in

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any such Global Security may exchange such interests for Securities of such series and of like tenor of any authorized form and denomination and the circumstances under which any such exchanges may occur, if other than in the manner provided in Section 2.17, and the initial Depositary for any Global Security or Securities of such series;

(4) the manner in which any interest payable on a temporary Global Security on any Interest Payment Date will be paid if other than in the manner provided in Section 2.14;

(5) the date or dates on which the principal of (and premium, if any, on) the Securities of the series is payable or the method of determination thereof;

(6) the rate or rates, or the method of determination thereof, at which the Securities of the series shall bear interest, if any, whether and under what circumstances Additional Amounts with respect to such Securities shall be payable, the date or dates from which such interest shall accrue, the Interest Payment Dates on which such interest shall be payable and the record date for the interest payable on any Securities on any Interest Payment Date, or if other than provided herein, the Person to whom any interest on Securities of the series shall be payable;

(7) the place or places where, subject to the provisions of Section 4.02, the principal, premium (if any), interest and any Additional Amounts with respect to the Securities of the series shall be payable;

(8) the period or periods within which, the price or prices (whether denominated in cash, securities or otherwise) at which and the terms and conditions upon which Securities of the series may be redeemed, in whole or in part, at the option of the Company, if the Company is to have that option, and the manner in which the Company must exercise any such option, if different from those set forth herein;

(9) the obligation, if any, of the Company to redeem, purchase or repay Securities of the series pursuant to any sinking fund or analogous

provisions or at the option of a Holder thereof and the period or periods within which, the price or prices (whether denominated in cash, securities or otherwise) at which and the terms and conditions upon which Securities of the series shall be redeemed, purchased or repaid in whole or in part pursuant to such obligation;

(10) if other than denominations of \$1,000 and any integral multiple thereof, the denomination in which any Securities of that series shall be issuable;

(11) if other than Dollars, the currency or currencies (including composite currencies) or the form, including equity securities, other debt securities (including Securities), warrants or any other securities or property of the Company or any other Person, in which payment of the principal, premium (if any), interest and any Additional Amounts with respect to the Securities of the series shall be payable;

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(12) if the principal of, premium (if any) or interest on or any Additional Amounts with respect to the Securities of the series are to be payable, at the election of the Company or a Holder thereof, in a currency or currencies (including composite currencies) other than that in which the Securities are stated to be payable, the currency or currencies (including composite currencies) in which payment of the principal, premium (if any), interest and any Additional Amounts with respect to Securities of such series as to which such election is made shall be payable, and the periods within which and the terms and conditions upon which such election is to be made;

(13) if the amount of payments of principal, premium (if any), interest and any Additional Amounts with respect to the Securities of the series may be determined with reference to any commodities, currencies or indices, values, rates or prices or any other index or formula, the manner in which such amounts shall be determined;

(14) if other than the entire principal amount thereof, the portion of the principal amount of Securities of the series that shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 6.02;

(15) any additional means of satisfaction and discharge of this Indenture and any additional conditions or limitations to discharge with respect to Securities of the series pursuant to Article VIII or any modifications of or deletions from such conditions or limitations;

(16) any deletions or modifications of or additions to the Events of Default set forth in Section 6.01 or covenants of the Company set forth in Article IV pertaining to the Securities of the series;

(17) any restrictions or other provisions with respect to the transfer or exchange of Securities of the series, which may amend, supplement, modify or supersede those contained in this Article II;

(18) if the Securities of the series are to be convertible into or exchangeable for Capital Stock, other debt securities (including Securities), warrants, other equity securities or any other securities or property of the Company or any other Person, at the option of the Company or the Holder or upon the occurrence of any condition or event, the terms and conditions for such conversion or exchange;

(19) if the Securities of the series are to be entitled to the benefit of Section 4.03(b) (and accordingly constitute Rule 144A Securities); and

(20) any other terms of the series (which terms shall not be prohibited by the provisions of this Indenture).

All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to the Board Resolution

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referred to above and (subject to Section 2.03) set forth, or determined in the manner provided, in the Officers' Certificate referred to above or in any such indenture supplemental hereto.

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

The Securities shall be subordinated in right of payment to Senior Indebtedness as provided in Article X.

## SECTION 2.02 DENOMINATIONS.

The Securities of each series shall be issuable in such denominations as shall be specified as contemplated by Section 2.01. In the absence of any such provisions with respect to the Securities of any series, the Securities of such series denominated in Dollars shall be issuable in denominations of \$1,000 and any integral multiples thereof.

## SECTION 2.03 FORMS GENERALLY.

The Securities of each series shall be in fully registered form and in substantially such form or forms (including temporary or permanent global form) established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto. The Securities may have notations, legends or endorsements required by law, securities exchange rule, automated quotation system rule, the Company's certificate of incorporation, bylaws or other similar governing documents, agreements to which the Company is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Company). A copy of the Board Resolution establishing the form or forms of Securities of any series shall be delivered to the Trustee at or prior to the delivery of the Company Order

contemplated by Section 2.04 for the authentication and delivery of such Securities.

The definitive Securities of each series shall be printed, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Securities, as evidenced by their execution thereof.

The Trustee's certificate of authentication shall be in substantially the following form:

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

STATE STREET BANK AND TRUST COMPANY,  
AS TRUSTEE

By:

-----  
AUTHORIZED OFFICER".

#### SECTION 2.04 EXECUTION, AUTHENTICATION, DELIVERY AND DATING.

Two Officers of the Company shall sign the Securities on behalf of the Company by manual or facsimile signature.

If an Officer of the Company whose signature is on a Security no longer holds that office at the time the Security is authenticated, the Security shall be valid nevertheless.

A Security shall not be entitled to any benefit under this Indenture or be valid or obligatory for any purpose until authenticated by the manual signature of an authorized signatory of the Trustee, which signature shall be conclusive evidence that the Security has been authenticated under this Indenture. Notwithstanding the foregoing, if any Security has been authenticated and delivered hereunder but never issued and sold by the Company, and the Company delivers such Security to the Trustee for cancellation as provided in Section 2.13 together with a written statement (which need not comply with Section 11.05 and need not be accompanied by an Opinion of Counsel) stating that such Security has never been issued and sold by the Company, 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 of this Indenture.

The Trustee shall authenticate and deliver Securities of a series for original issue upon a Company Order for the authentication and delivery of such Securities or pursuant to such procedures acceptable to the Trustee as may be specified from time to time by Company Order. Such order shall specify the amount of the Securities to be authenticated, the date on which the original issue of Securities is to be authenticated, the name or names of the initial Holder or Holders and any other terms of the Securities of such series not otherwise determined. If provided for in such procedures, such

Company Order may authorize (1) authentication and delivery of Securities of such series for original issue from time to time, with certain terms (including, without limitation, the Maturity dates or dates, original issue date or dates and interest rate or rates) that differ from Security to Security and (2) may authorize authentication and delivery pursuant to oral or electronic instructions from the Company or its duly authorized agent, which instructions shall be promptly confirmed in writing.

If the form or terms of the Securities of the series have been established in or pursuant to one or more Board Resolutions as permitted by Section 2.01, in authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive (in addition to the Company Order referred to above and the other

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documents required by Section 11.04), and (subject to Section 7.01) shall be fully protected in relying upon,

(a) an Officers' Certificate setting forth the Board Resolution and, if applicable, an appropriate record of any action taken pursuant thereto, as contemplated by the last paragraph of Section 2.01; and

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

(i) if the form of such Securities has been established by or pursuant to Board Resolution, as is permitted by Section 2.01, that such form has been established in conformity with the provisions of this Indenture;

(ii) if the terms of such Securities have been established by or pursuant to Board Resolution, as is permitted by Section 2.01, that such terms have been established in conformity with the provisions of this Indenture; and

(iii) that such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws in effect from time to time affecting the rights of creditors generally, and the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

The Trustee shall not be required to authenticate such Securities if the issuance of such Securities pursuant to this Indenture would affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner not reasonably acceptable to the Trustee.

The Trustee may appoint an authenticating agent acceptable to the



Company to authenticate Securities. Unless limited by the terms of such appointment, an authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with the Company or an Affiliate of the Company.

Each Security shall be dated the date of its authentication.

#### SECTION 2.05 REGISTRAR AND PAYING AGENT.

The Company shall maintain an office or agency for each series of Securities where Securities of such series may be presented for registration of transfer or exchange ("Registrar") and an office or agency where Securities of such series may be presented for payment ("Paying Agent"). The Registrar shall keep a register of the Securities of such series and of their transfer and exchange.

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The Company may appoint one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrar and the term "Paying Agent" includes any additional paying agent.

The Company shall enter into an appropriate agency agreement with any Registrar or Paying Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such Agent. The Company shall notify the Trustee of the name and address of any Agent not a party to this Indenture. The Company may change any Paying Agent or Registrar without notice to any Holder. If the Company fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Company or any of its Subsidiaries may act as Paying Agent or Registrar.

The Company initially appoints the Trustee as Registrar and Paying Agent.

#### SECTION 2.06 PAYING AGENT TO HOLD MONEY IN TRUST.

The Company shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal of, premium, if any, or interest on or any Additional Amounts with respect to Securities and will notify the Trustee of any default by the Company in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed. Upon payment over to the Trustee and upon accounting for any funds disbursed, the Paying Agent (if other than the Company or a Subsidiary of the Company) shall have no further liability for the money. If the Company or a Subsidiary of the Company acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Each Paying Agent shall otherwise

comply with TIA Section 317(b) .

#### SECTION 2.07 HOLDER LISTS.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders and shall otherwise comply with TIA Section 312(a). If the Trustee is not the Registrar with respect to a series of Securities, the Company shall furnish to the Trustee at least five Business Days before each Interest Payment Date with respect to such series of Securities, and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders of such series, and the Company shall otherwise comply with TIA Section 312(a) .

#### SECTION 2.08 TRANSFER AND EXCHANGE.

Except as set forth in Section 2.17 or as may be provided pursuant to Section 2.01:

When Securities of any series are presented to the Registrar with the request to register the transfer of such Securities or to exchange such Securities for an equal principal amount

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of Securities of the same series of like tenor and of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested if its requirements for such transactions are met; PROVIDED, HOWEVER, that the Securities presented or surrendered for registration of transfer or exchange shall be duly endorsed or accompanied by a written instruction of transfer in form reasonably satisfactory to the Registrar duly executed by the Holder thereof or by his attorney, duly authorized in writing, on which instruction the Registrar can rely.

To permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate Securities at the Registrar's written request and submission of the Securities or Global Securities. No service charge shall be made to a Holder for any registration of transfer or exchange (except as otherwise expressly permitted herein), but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than such transfer tax or similar governmental charge payable upon exchanges pursuant to Section 2.12, 3.07 or 9.05). The Trustee shall authenticate Securities in accordance with the provisions of Section 2.04. Notwithstanding any other provisions of this Indenture to the contrary, the Company shall not be required to register the transfer or exchange of (a) any Security selected for redemption in whole or in part pursuant to Article III, except the unredeemed portion of any Security being redeemed in part or (b) any Security during the period beginning 15 Business Days before the mailing of notice of any offer to repurchase Securities of the series required pursuant to the terms thereof or of redemption of Securities of a series to be redeemed and ending at the close of business on the date of mailing.

## SECTION 2.09 REPLACEMENT SECURITIES.

If any mutilated Security is surrendered to the Trustee, or if the Holder of a Security claims that the Security has been destroyed, lost or stolen and the Company and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of such Security, the Company shall issue and the Trustee shall authenticate a replacement Security of the same series if the Trustee's requirements are met. If any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security. If required by the Trustee or the Company, such Holder must furnish an indemnity bond that is sufficient in the judgment of the Trustee and the Company to protect the Company, the Trustee, any Agent or any authenticating agent from any loss that any of them may suffer if a Security is replaced. The Company and the Trustee may charge a Holder for their expenses in replacing a Security.

Every replacement Security is an additional obligation of the Company.

## SECTION 2.10 OUTSTANDING SECURITIES.

The Securities outstanding at any time are all the Securities authenticated by the Trustee except for those cancelled by it, those delivered to it for cancellation, those reductions in the interest in a Global Security effected by the Trustee hereunder and those described in this Section 2.10 as not outstanding.

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If a Security is replaced pursuant to Section 2.09, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Security is held by a bona fide purchaser.

If the principal amount of any Security is considered paid under Section 4.01, it ceases to be outstanding and interest on it ceases to accrue.

A Security does not cease to be outstanding because the Company or an Affiliate of the Company holds the Security.

## SECTION 2.11 ORIGINAL ISSUE DISCOUNT, FOREIGN-DENOMINATED AND TREASURY SECURITIES.

In determining whether the Holders of the required principal amount of Securities have concurred in any direction, amendment, supplement, waiver or consent, (a) the principal amount of an Original Issue Discount Security shall be the principal amount thereof that would be due and payable as of the date of such determination upon acceleration of the Maturity thereof pursuant to Section 6.02, (b) the principal amount of a Security denominated in a foreign currency shall be the Dollar equivalent, as determined by the Company by reference to the noon buying rate in The City of New York for cable transfers for such currency, as such rate is certified for customs purposes by the Federal Reserve Bank of New York (the "Exchange Rate") on the date of original issuance of such Security, of the principal amount (or, in the case

of an Original Issue Discount Security, the Dollar equivalent, as determined by the Company by reference to the Exchange Rate on the date of original issuance of such Security, of the amount determined as provided in (a) above), of such Security and (c) Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor shall be disregarded, except that, for the purpose of determining whether the Trustee shall be protected in relying upon any such direction, amendment, supplement, waiver or consent, only Securities that the Trustee actually knows are so owned shall be so disregarded.

#### SECTION 2.12 TEMPORARY SECURITIES.

Until definitive Securities of any series are ready for delivery, the Company may prepare and the Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of definitive Securities, but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate definitive Securities in exchange for temporary Securities. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

#### SECTION 2.13 CANCELLATION.

The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange, payment or redemption or for credit against any sinking fund payment. The Trustee shall cancel all Securities surrendered for registration of transfer, exchange,

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payment, redemption, replacement or cancellation or for credit against any sinking fund. Unless the Company shall direct in writing that cancelled Securities be returned to it, after written notice to the Company all cancelled Securities held by the Trustee shall be disposed of in accordance with the usual disposal procedures of the Trustee, and the Trustee shall maintain a record of their disposal. The Company may not issue new Securities to replace Securities that have been paid or that have been delivered to the Trustee for cancellation.

#### SECTION 2.14 PAYMENTS; DEFAULTED INTEREST.

The Company will pay interest on the Securities (except defaulted interest) to the Persons who are registered Holders of Securities at the close of business on the record date next preceding the Interest Payment Date, even if such Securities are cancelled after such record date and on or before such Interest Payment Date. The Holder must surrender this Security to a Paying Agent to collect principal payments. Unless otherwise provided with respect to the Securities of any series, the Company will pay the principal of, premium (if any) on, and interest on and any Additional Amounts with respect to the Securities in Dollars. Such amounts shall be payable at the offices of the Trustee, provided that at the option of the Company, the

Company may, however, pay such amounts (1) by wire transfer with respect to Global Securities or (2) by check payable in such money mailed to a Holder's registered address with respect to any Securities.

If the Company defaults in a payment of interest on the Securities, it shall pay the defaulted interest in any lawful manner plus, to the extent lawful, interest on the defaulted interest, in each case at the rate provided in the Securities and in Section 4.01. The Company may pay the defaulted interest to the Persons who are Holders on a subsequent special record date. At least 10 days before any special record date selected by the Company, the Company (or the Trustee, in the name of and at the expense of the Company upon 15 days' prior written notice from the Company setting forth such record date and the interest amount to be paid) shall mail to Holders a notice that states the special record date, the related payment date and the amount of such interest to be paid.

#### SECTION 2.15 PERSONS DEEMED OWNERS.

The Company, the Trustee, any Agent and any authenticating agent may treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payments of principal of, premium (if any) or interest on, or any Additional Amounts with respect to such Security and for all other purposes. None of the Company, the Trustee, any Agent or any authenticating agent shall be affected by any notice to the contrary.

#### SECTION 2.16 COMPUTATION OF INTEREST.

Except as otherwise specified as contemplated by Section 2.01 for Securities of any series, interest on the Securities of each series shall be computed on the basis of a year comprising twelve 30-day months.

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#### SECTION 2.17 GLOBAL SECURITIES; BOOK-ENTRY PROVISIONS.

If Securities of a series are issuable in global form as one or more Global Securities, as contemplated by Section 2.01, then, notwithstanding clause (10) of Section 2.01 and the provisions of Section 2.02, any such Global Security shall represent such of the outstanding Securities of such series as shall be specified therein and may provide that it shall represent the aggregate amount of outstanding Securities from time to time endorsed thereon and that the aggregate amount of outstanding Securities represented thereby may from time to time be reduced to reflect exchanges. Any endorsement of a Global Security to reflect the amount, or any increase or decrease in the amount, of outstanding Securities represented thereby shall be made by the Trustee in such manner and upon instructions given by such Person or Persons as shall be specified in such Security or in a Company Order to be delivered to the Trustee pursuant to Section 2.04. Subject to the provisions of Section 2.04 and, if applicable, Section 2.12, the Trustee shall deliver and redeliver any Security in permanent global form in the manner and upon instructions given by the Person or Persons specified in such Security or in the applicable Company Order. With respect to the Securities of any series that are represented by a Global Security, the

Company authorizes the execution and delivery by the Trustee of a letter of representations or other similar agreement or instrument in the form customarily provided for by the Depositary appointed with respect to such Global Security. Any Global Security may be deposited with the Depositary or its nominee, or may remain in the custody of the Trustee pursuant to a FAST Balance Certificate Agreement or similar agreement between the Trustee and the Depositary. If a Company Order has been, or simultaneously is, delivered, any instructions by the Company with respect to endorsement or delivery or redelivery of a Security in global form shall be in writing but need not comply with Section 11.05 and need not be accompanied by an Opinion of Counsel.

Members of, or participants in, the Depositary ("Agent Members") shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depositary, or the Trustee as its custodian, or under such Global Security and the Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, (i) the registered holder of a Global Security may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action that a Holder is entitled to take under this Indenture or the Securities and (ii) nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee, from giving effect to any written certification, proxy or other authorization furnished by the Depositary or shall impair, as between the Depositary and its Agent Members, the operation of customary practices governing the exercise of the rights of a beneficial owner of any Security.

Notwithstanding Section 2.08, and except as otherwise provided pursuant to Section 2.01: Transfers of a Global Security shall be limited to transfers of such Global Security in whole, but not in part, to the Depositary, its successors or their respective nominees. Interests of beneficial owners in a Global Security may be transferred in accordance with the rules and procedures of the Depositary. Securities shall be transferred to all beneficial owners in exchange for their beneficial interests in a Global Security if, and only if, either (1) the Depositary notifies the Company that it is unwilling or unable to continue as Depositary for the Global Security and a successor Depositary

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is not appointed by the Company within 90 days of such notice, (2) an Event of Default has occurred with respect to such series and is continuing and the Registrar has received a request from the Depositary to issue Securities in lieu of all or a portion of the Global Security (in which case the Company shall deliver Securities within 30 days of such request) or (3) the Company determines not to have the Securities represented by a Global Security.

In connection with any transfer of a portion of the beneficial interest in a Global Security to beneficial owners pursuant to this Section 2.17, the Registrar shall reflect on its books and records the date and a decrease in the principal amount of the Global Security in an amount equal to the principal amount of the beneficial interest in the Global Security to be transferred, and the Company shall execute, and the Trustee upon receipt of a



Company Order for the authentication and delivery of Securities shall authenticate and deliver, one or more Securities of the same series of like tenor and amount.

In connection with the transfer of an entire Global Security to beneficial owners pursuant to this Section 2.17, the Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and the Trustee shall authenticate and deliver, to each beneficial owner identified by the Depositary in exchange for its beneficial interest in the Global Security, an equal aggregate principal amount of Securities of authorized denominations.

Neither the Company nor the Trustee will have any responsibility or liability for any aspect of the records relating to, or payments made on account of, Securities by the Depositary, or for maintaining, supervising or reviewing any records of the Depositary relating to such Securities. Neither the Company nor the Trustee shall be liable for any delay by the related Global Security Holder or the Depositary in identifying the beneficial owners, and each such Person may conclusively rely on, and shall be protected in relying on, instructions from such Global Security Holder or the Depositary for all purposes (including with respect to the registration and delivery, and the respective principal amounts, of the Securities to be issued).

The provisions of the last sentence of the third paragraph of Section 2.04 shall apply to any Global Security if such Global Security was never issued and sold by the Company and the Company delivers to the Trustee the Global Security together with written instructions (which need not comply with Section 11.05 and need not be accompanied by an Opinion of Counsel) with regard to the cancellation or reduction in the principal amount of Securities represented thereby, together with the written statement contemplated by the last sentence of the third paragraph of Section 2.04.

Notwithstanding the provisions of Sections 2.03 and 2.14, unless otherwise specified as contemplated by Section 2.01, payment of principal of, premium (if any) and interest on and any Additional Amounts with respect to any Global Security shall be made to the Person or Persons specified therein.

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### ARTICLE III REDEMPTION

#### SECTION 3.01 APPLICABILITY OF ARTICLE.

Securities of any series that are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 2.01 for Securities of any series) in accordance with this Article III.

#### SECTION 3.02 NOTICE TO THE TRUSTEE.

If the Company elects to redeem Securities of any series pursuant to this Indenture, it shall notify the Trustee of the Redemption Date and

principal amount of Securities of such series to be redeemed. The Company shall so notify the Trustee at least 45 days before the Redemption Date (unless a shorter notice shall be satisfactory to the Trustee) by delivering to the Trustee an Officers' Certificate stating that such redemption will comply with the provisions of this Indenture and of the Securities of such series. Any such notice may be cancelled at any time prior to the mailing of such notice of such redemption to any Holder and shall thereupon be void and of no effect.

#### SECTION 3.03 SELECTION OF SECURITIES TO BE REDEEMED.

If less than all the Securities of any series are to be redeemed, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the outstanding Securities of such series not previously called for redemption, pro rata, by lot or by such other method as the Trustee shall deem fair and appropriate and that may provide for the selection for redemption of portions (equal to the minimum authorized denomination for Securities of that series or any integral multiple thereof) of the principal amount of Securities of such series of a denomination larger than the minimum authorized denomination for Securities of that series or of the principal amount of global Securities of such series.

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

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

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#### SECTION 3.04 NOTICE OF REDEMPTION.

Notice of redemption shall be given by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date, to each Holder of Securities to be redeemed, at the address of such Holder appearing in the register of Securities maintained by the Registrar.

All notices of redemption shall identify the Securities to be redeemed and shall state:

- (1) the Redemption Date;
- (2) the Redemption Price;
- (3) that, unless the Company defaults in making the redemption payment, interest on Securities called for redemption ceases to accrue on



and after the Redemption Date, and the only remaining right of the Holders of such Securities is to receive payment of the Redemption Price upon surrender to the Paying Agent of the Securities redeemed;

(4) if any Security is to be redeemed in part, the portion of the principal amount thereof to be redeemed and that on and after the Redemption Date, upon surrender for cancellation of such Security to the Paying Agent, a new Security or Securities in the aggregate principal amount equal to the unredeemed portion thereof will be issued without charge to the Holder;

(5) that Securities called for redemption must be surrendered to the Paying Agent to collect the Redemption Price and the name and address of the Paying Agent;

(6) that the redemption is for a sinking or analogous fund, if such is the case; and

(7) the CUSIP number, if any, relating to such Securities.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's written request, by the Trustee in the name and at the expense of the Company.

#### SECTION 3.05 EFFECT OF NOTICE OF REDEMPTION.

Once notice of redemption is mailed, Securities called for redemption become due and payable on the Redemption Date and at the Redemption Price. Upon surrender to the Paying Agent, such Securities called for redemption shall be paid at the Redemption Price, but interest installments whose maturity is on or prior to such Redemption Date will be payable on the relevant Interest Payment Dates to the Holders of record at the close of business on the relevant record dates specified pursuant to Section 2.01.

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#### SECTION 3.06 DEPOSIT OF REDEMPTION PRICE.

On or prior to 11:00 A.M., New York City time, on any Redemption Date, the Company shall deposit with the Trustee or the Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 2.06) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on and any Additional Amounts with respect to, the Securities or portions thereof which are to be redeemed on that date, other than Securities or portions thereof called for redemption on that date which have been delivered by the Company to the Trustee for cancellation.

If the Company complies with the preceding paragraph, then, unless the Company defaults in the payment of such Redemption Price, interest on the Securities to be redeemed will cease to accrue on and after the applicable Redemption Date, whether or not such Securities are presented for payment, and the Holders of such Securities shall have no further rights with respect

to such Securities except for the right to receive the Redemption Price upon surrender of such Securities. If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal, premium, if any, any Additional Amounts, and, to the extent lawful, accrued interest thereon shall, until paid, bear interest from the Redemption Date at the rate specified pursuant to Section 2.01 or provided in the Securities or, in the case of Original Issue Discount Securities, such Securities' yield to maturity.

#### SECTION 3.07 SECURITIES REDEEMED OR PURCHASED IN PART.

Upon surrender to the Paying Agent of a Security to be redeemed in part, 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 of any authorized denomination as requested by such Holder in aggregate principal amount equal to, and in exchange for, the unredeemed portion of the principal of the Security so surrendered that is not redeemed.

#### SECTION 3.08 PURCHASE OF SECURITIES.

Unless otherwise specified as contemplated by Section 2.01, the Company and any Affiliate of the Company may at any time purchase or otherwise acquire Securities in the open market or by private agreement. Such acquisition shall not operate as or be deemed for any purpose to be a redemption of the indebtedness represented by such Securities. Any Securities purchased or acquired by the Company may be delivered to the Trustee and, upon such delivery, the indebtedness represented thereby shall be deemed to be satisfied. Section 2.13 shall apply to all Securities so delivered.

#### SECTION 3.09 MANDATORY AND OPTIONAL SINKING FUNDS.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a "mandatory sinking fund payment," and any payment in excess of such minimum amount provided for by the terms of Securities of any series is herein referred to as an "optional sinking fund payment." Unless otherwise provided by the terms

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of Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 3.10. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series and by this Article III.

#### SECTION 3.10 SATISFACTION OF SINKING FUND PAYMENTS WITH SECURITIES.

The Company may deliver outstanding Securities of a series (other than any previously called for redemption) and may apply as a credit Securities of a series that have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application

of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to the Securities of such series required to be made pursuant to the terms of such series of Securities; PROVIDED that such Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

#### SECTION 3.11 REDEMPTION OF SECURITIES FOR SINKING FUND.

Not less than 45 days prior (unless a shorter period shall be satisfactory to the Trustee) to each sinking fund payment date for any series of Securities, the Company will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivery of or by crediting Securities of that series pursuant to Section 3.10 and will also deliver to the Trustee any Securities to be so delivered. Failure of the Company to timely deliver such Officers' Certificate and Securities specified in this paragraph, if any, shall not constitute a default but shall constitute the election of the Company (i) that the mandatory sinking fund payment for such series due on the next succeeding sinking fund payment date shall be paid entirely in cash without the option to deliver or credit Securities of such series in respect thereof and (ii) that the Company will make no optional sinking fund payment with respect to such series as provided in this Section.

If the sinking fund payment or payments (mandatory or optional or both) to be made in cash on the next succeeding sinking fund payment date plus any unused balance of any preceding sinking fund payments made in cash shall exceed \$100,000 (or the Dollar equivalent thereof based on the applicable Exchange Rate on the date of original issue of the applicable Securities) or a lesser sum if the Company shall so request with respect to the Securities of any particular series, such cash shall be applied on the next succeeding sinking fund payment date to the redemption of Securities of such series at the sinking fund redemption price together with accrued interest to the date fixed for redemption. If such amount shall be \$100,000 (or the Dollar equivalent thereof as aforesaid) or less and the Issuer makes no such request then it shall be carried over until a sum in excess of \$100,000 (or the Dollar equivalent thereof as aforesaid) is available. Not less than 30 days before each such sinking fund payment date, the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 3.03 and cause notice of the

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redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 3.04. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 3.05, 3.06 and 3.07.

#### ARTICLE IV COVENANTS

#### SECTION 4.01 PAYMENT OF SECURITIES.

The Company shall pay the principal of, premium (if any) and interest on and any Additional Amounts with respect to the Securities of each series on the dates and in the manner provided in the Securities of such series and in this Indenture. Principal, premium, interest and any Additional Amounts shall be considered paid on the date due if the Paying Agent, other than the Company or a Subsidiary of the Company, holds on that date money deposited by the Company designated for and sufficient to pay all principal, premium, interest and any Additional Amounts then due.

The Company shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium (if any), at a rate equal to the then applicable interest rate on the Securities to the extent lawful; and it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest and any Additional Amount (without regard to any applicable grace period) at the same rate to the extent lawful.

#### SECTION 4.02 MAINTENANCE OF OFFICE OR AGENCY.

The Company will maintain in each Place of Payment for any series of Securities an office or agency (which may be an office of the Trustee, the Registrar or the Paying Agent) where Securities of that series may be presented for registration of transfer or exchange, where Securities of that series may be presented for payment and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served. Unless otherwise designated by the Company by written notice to the Trustee, such office or agency shall be the office of the Trustee in The City of New York, which on the date hereof, is located at \_\_\_\_\_ . The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Company may also from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; PROVIDED, HOWEVER, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in each Place of Payment for Securities of any series for such purposes. The

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Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

#### SECTION 4.03 SEC REPORTS; FINANCIAL STATEMENTS.

(a) The Company shall file with the Trustee, within 15 days after it files the same with the SEC, copies of the annual reports and the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) that the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act. The Company shall also comply with the provisions of TIA Section 314(a).

(b) If the Company is not subject to the requirements of Section 13 or 15(d) of the Exchange Act, the Company shall furnish to all Holders of Rule 144A Securities and prospective purchasers of Rule 144A Securities designated by the Holders of Rule 144A Securities, promptly upon their request, the information required to be delivered pursuant to Rule 144A(d) (4) promulgated under the Securities Act of 1933, as amended.

#### SECTION 4.04 COMPLIANCE CERTIFICATE.

(a) The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, a statement signed by two Officers of the Company, which need not constitute an Officers' Certificate, complying with TIA Section 314(a) (4) and stating that a review of the activities of the Company during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to each such Officer signing such certificate, that to the best of his knowledge the Company is not in Default in the performance or observance of any of the terms, provisions and conditions hereof or, if a Default or Event of Default shall have occurred, describing all such Defaults or Events of Default of which he may have knowledge and that to the best of his knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of or interest, if any, on any outstanding Securities are prohibited or if such event has occurred, a description of the event.

(b) The Company shall, so long as Securities of any series are outstanding, deliver to the Trustee, forthwith upon any Officer of the Company becoming aware of any Default or Event of Default under this Indenture, an Officers' Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

#### SECTION 4.05 CORPORATE EXISTENCE.

Subject to Article V hereof or except as expressly permitted otherwise under this Indenture, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the corporate, partnership and other existence of each of its Subsidiaries and all rights (charter and statutory) and franchises of the Company and its Subsidiaries, provided that the Company shall not be required to preserve any such existence of its

Subsidiaries, right or franchise, if the Company shall determine that the

preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries, taken as a whole, and that the loss thereof is not disadvantageous in any material respect to the Holders.

#### SECTION 4.06 WAIVER OF STAY, EXTENSION OR USURY LAWS.

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury law or other law that would prohibit or forgive the Company from paying all or any portion of the principal of (premium, if any, on) or interest on the Securities as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture; and (to the extent that it may lawfully do so) the Company hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

#### SECTION 4.07 ADDITIONAL AMOUNTS.

If the Securities of a series expressly provide for the payment of Additional Amounts, the Company will pay to the Holder of any Security of such series Additional Amounts as expressly provided therein. Whenever in this Indenture there is mentioned, in any context, the payment of the principal of or any premium or interest on, or in respect of, any Security of any series or the net proceeds received from the sale or exchange of any Security of any series, such mention shall be deemed to include mention of the payment of Additional Amounts provided for in this Section 4.07 to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof pursuant to the provisions of this Section 4.07 and express mention of the payment of Additional Amounts (if applicable) in any provisions hereof shall not be construed as excluding Additional Amounts in those provisions hereof where such express mention is not made.

Unless otherwise provided pursuant to Section 2.01 with respect to Securities of any series: If the Securities of a series provide for the payment of Additional Amounts, at least 10 days prior to the first Interest Payment Date with respect to that series of Securities (or if the Securities of that series will not bear interest prior to Maturity, the first day on which a payment of principal and any premium is made), and at least 10 days prior to each date of payment of principal and any premium or interest if there has been any change with respect to the matters set forth in the below-mentioned Officers' Certificate, the Company shall furnish the Trustee and the Company's principal Paying Agent or Paying Agents, if other than the Trustee, with an Officers' Certificate instructing the Trustee and such Paying Agent or Paying Agents whether such payment of principal of and any premium or interest on the Securities of that series shall be made to Holders of Securities of that series who are United States Aliens without withholding for or on account of any tax, assessment or other governmental charge described in the Securities of that series. If any such withholding shall be required, then such Officers' Certificate shall specify by country the amount, if any, required to be withheld on such payments to such Holders of Securities and the Company will pay to such Paying Agent the Additional Amounts required by this Section. The Company covenants to indemnify the



loss, liability or expense reasonably incurred without negligence or bad faith on their part arising out of or in connection with actions taken or omitted by any of them in reliance on any Officers' Certificate furnished pursuant to this Section 4.07.

ARTICLE V  
SUCCESSORS

SECTION 5.01 LIMITATIONS ON MERGERS AND CONSOLIDATIONS.

The Company shall not, in any single transaction or series of transactions, consolidate with or merge into any Person, or sell, lease, convey, transfer or otherwise dispose of all or substantially all of its assets to any Person, unless:

(1) either (a) the Company shall be the continuing corporation or (b) the Person (if other than the Company) formed by such consolidation or into which the Company is merged, or to which such sale, lease, conveyance, transfer or other disposition shall be made (collectively, the "Successor"), is organized and validly existing under the laws of the United States, any political subdivision thereof or any State thereof or the District of Columbia, and expressly assumes by supplemental indenture the due and punctual payment of the principal of (and premium, if any) and interest on and Additional Amounts with respect to all the Securities and the performance of the Company's covenants and obligations under this Indenture and the Securities;

(2) immediately after giving effect to such transaction or series of transactions, no Default or Event of Default shall have occurred and be continuing; and

(3) the Company delivers to the Trustee (a) an Officers' Certificate in form and substance reasonably acceptable to the Trustee, stating that such consolidation, merger, conveyance, transfer, lease or other disposition and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, complies with this Indenture and that all conditions precedent herein relating to such transaction or transactions have been satisfied and (b) an Opinion of Counsel stating that the requirements of Section 5.01(1) hereof have been complied with.

SECTION 5.02 SUCCESSOR PERSON SUBSTITUTED.

Upon any consolidation or merger of the Company or any sale, lease, conveyance, transfer or other disposition of all or substantially all of the assets of the Company in accordance with Section 5.01, the Successor formed by such consolidation or into or with which the Company is merged or to which such sale, lease, conveyance, transfer or other disposition is made shall succeed to, and be substituted for, and may exercise every right and power of the Company under this Indenture and the Securities with the same effect as if such Successor had been named as the Company herein and the predecessor

Company, in the case of a sale, conveyance, transfer or other disposition, shall be released from all obligations under this Indenture and the Securities.

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ARTICLE VI  
DEFAULTS AND REMEDIES

SECTION 6.01    EVENTS OF DEFAULT.

Unless either inapplicable to a particular series or specifically deleted or modified in or pursuant to the supplemental indenture or Board Resolution establishing such series of Securities or in the form of Security for such series, an "Event of Default," wherever used herein with respect to Securities of any series, occurs if:

- (1) the Company defaults in the payment of interest on or any Additional Amounts with respect to any Security of that series when the same becomes due and payable and such default continues for a period of 90 days;
- (2) the Company defaults in the payment of (A) the principal of any Security of that series at its Maturity or (B) premium (if any) on any Security of that series when the same becomes due and payable;
- (3) the Company defaults in the deposit of any sinking fund payment, when and as due by the terms of a Security of that series, and such default continues for a period of 90 days;
- (4) the Company fails to comply with any of its other covenants or agreements in, or provisions of, the Securities of such series or this Indenture (other than an agreement, covenant or provision that has expressly been included in this Indenture solely for the benefit of one or more series of Securities other than that series) which shall not have been remedied within the specified period after written notice, as specified in the last paragraph of this Section 6.01;
- (5) the Company pursuant to or within the meaning of any Bankruptcy Law:

- (A) commences a voluntary case,

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(B) consents to the entry of an order for relief against it in an involuntary case,

(C) consents to the appointment of a Bankruptcy Custodian of it or for all or substantially all of its property, or

(D) makes a general assignment for the benefit of its creditors;

(6) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that remains unstayed and in effect for 90 days and that:

(A) is for relief against the Company as debtor in an involuntary case,

(B) appoints a Bankruptcy Custodian of the Company or a Bankruptcy Custodian for all or substantially all of the property of the Company, or

(C) orders the liquidation of the Company; or

(7) any other Event of Default provided with respect to Securities of that series occurs.

The term "Bankruptcy Custodian" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

The Trustee shall not be deemed to know or have notice of a Default unless a Trust Officer at the Corporate Trust Office of the Trustee receives written notice at the Corporate Trust Office of the Trustee of such Default with specific reference to such Default.

When a Default is cured, it ceases.

Notwithstanding the foregoing provisions of this Section 6.01, if the principal of, premium or interest on or Additional Amounts with respect to any Security is payable in a currency or currencies (including a composite currency) other than Dollars and such currency or currencies are not available to the Company for making payment thereof due to the imposition of exchange controls or other circumstances beyond the control of the Company (a "Conversion Event"), the Company will be entitled to satisfy its obligations to Holders of the Securities by making such payment in Dollars in an amount equal to the Dollar equivalent of the amount payable in such other currency, as determined by the Company by reference to the Exchange Rate on the date of such payment, or, if such rate is not then available, on the basis of the most recently available Exchange Rate. Notwithstanding the foregoing provisions of this Section 6.01, any payment made under such circumstances in Dollars where the required payment is in a currency other than Dollars will not constitute an Event of Default under this Indenture.

Promptly after the occurrence of a Conversion Event, the Company shall give written notice thereof to the Trustee; and the Trustee, promptly after receipt of such notice, shall give notice thereof in the manner provided in Section 11.02 to the Holders. Promptly after the making of any payment in Dollars as a result of a Conversion Event, the Company shall give notice in the manner provided in Section 11.02 to the Holders, setting forth the applicable Exchange Rate and describing the calculation of such payments.

A Default under clause (4) or (7) of this Section 6.01 is not an Event of Default until the Trustee notifies the Company, or the Holders of at least 25% in principal amount of the then outstanding Securities of the series affected by such Default (or, in the case of a Default under clause (4) of this Section 6.01, if outstanding Securities of other series are affected by such Default, then at least 25% in principal amount of the then outstanding Securities so affected) notify the Company and the Trustee, of the Default, and the Company fails to cure the Default within 90 days after receipt of the notice. The notice must specify the Default, demand that it be remedied and state that the notice is a "Notice of Default."

#### SECTION 6.02 ACCELERATION.

If an Event of Default with respect to any Securities of any series at the time outstanding (other than an Event of Default specified in clause (5) or (6) of Section 6.01) occurs and is continuing, the Trustee by notice to the Company, or the Holders of at least 25% in principal amount of the then outstanding Securities of the series affected by such default (or, in the case of an Event of Default described in clause (4) of Section 6.01, if outstanding Securities of other series are affected by such Default, then at least 25% in principal amount of all of the then outstanding Securities so affected) by notice to the Company and the Trustee, may declare the principal of (or, if any such Securities are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of that series) and accrued and unpaid interest on all then outstanding Securities of such series or of all series, as the case may be, to be due and payable. Upon any such declaration the amounts due and payable on the Securities shall be due and payable immediately. If an Event of Default specified in clause (5) or (6) of Section 6.01 hereof occurs, such amounts shall IPSO FACTO become and be immediately due and payable without any declaration, notice or other act on the part of the Trustee or any Holder. The Holders of a majority in principal amount of the then outstanding Securities of the series affected by such default or all series, as the case may be, by written notice to the Trustee may rescind an acceleration and its consequences (other than nonpayment of principal of or premium or interest on or any Additional Amounts with respect to the Securities) if the rescission would not conflict with any judgment or decree and if all existing Events of Default with respect to Securities of that series (or of all series, as the case may be) have been cured or waived, except nonpayment of principal, premium, interest or any Additional Amounts that has become due solely because of the acceleration.

#### SECTION 6.03 OTHER REMEDIES.

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal of, or

premium, if any, or interest on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

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The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

#### SECTION 6.04 WAIVER OF EXISTING DEFAULTS.

Subject to Sections 6.07 and 9.02, the Holders of a majority in principal amount of the then outstanding Securities of any series or of all series (acting as one class) by notice to the Trustee may waive an existing or past Default or Event of Default with respect to such series or all series, as the case may be, and its consequences (including waivers obtained in connection with a tender offer or exchange offer for Securities of such series or all series or a solicitation of consents in respect of Securities of such series or all series, PROVIDED that in each case such offer or solicitation is made to all Holders of then outstanding Securities of such series or all series (but the terms of such offer or solicitation may vary from series to series)), except (1) a continuing Default or Event of Default in the payment of the principal of, or premium, if any, or interest on or any Additional Amounts with respect to any Security or (2) a continued Default in respect of a provision that under Section 9.02 cannot be amended or supplemented without the consent of each Holder affected. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

#### SECTION 6.05 CONTROL BY MAJORITY.

With respect to Securities of any series, the Holders of a majority in principal amount of the then outstanding Securities of such series may direct in writing the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it relating to or arising under an Event of Default described in clause (1), (2), (3) or (7) of Section 6.01, and with respect to all Securities, the Holders of a majority in principal amount of all the then outstanding Securities affected may direct in writing the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it not relating to or arising under such an Event of Default. However, the Trustee may refuse to follow any direction that conflicts with applicable law or this Indenture, that the Trustee determines may be unduly prejudicial to the rights of other Holders, or that may involve the Trustee in personal liability; PROVIDED, HOWEVER, that the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. Prior to taking any action hereunder, the Trustee shall be entitled to indemnification satisfactory to it in its sole discretion from Holders directing the Trustee against all

losses and expenses caused by taking or not taking such action.

#### SECTION 6.06 LIMITATIONS ON SUITS.

Subject to Section 6.07 hereof, a Holder of a Security of any series may pursue a remedy with respect to this Indenture or the Securities of such series only if:

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(1) the Holder gives to the Trustee written notice of a continuing Event of Default with respect to such series;

(2) the Holders of at least 25% in principal amount of the then outstanding Securities of such series make a written request to the Trustee to pursue the remedy;

(3) such Holder or Holders offer to the Trustee indemnity reasonably satisfactory to the Trustee against any loss, liability or expense;

(4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity; and

(5) during such 60-day period the Holders of a majority in principal amount of the Securities of that series do not give the Trustee a direction inconsistent with the request.

A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder.

#### SECTION 6.07 RIGHTS OF HOLDERS TO RECEIVE PAYMENT.

Notwithstanding any other provision of this Indenture, the right of any Holder of a Security to receive payment of principal of and premium, if any, and interest on and any Additional Amounts with respect to the Security, on or after the respective due dates expressed in the Security, or to bring suit for the enforcement of any such payment on or after such respective dates, is absolute and unconditional and shall not be impaired or affected without the consent of the Holder.

#### SECTION 6.08 COLLECTION SUIT BY TRUSTEE.

If an Event of Default specified in clause (1) or (2) of Section 6.01 hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company for the amount of principal, premium (if any), and interest on and any Additional Amounts remaining unpaid on the Securities of the series affected by the Event of Default, and interest on overdue principal and premium, if any, and, to the extent lawful, interest on overdue interest, and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

#### SECTION 6.09 TRUSTEE MAY FILE PROOFS OF CLAIM.

The Trustee is authorized to file such proofs of claim and other papers or documents and to take such actions, including participating as a member, voting or otherwise, of any committee of creditors, as may be necessary or advisable to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Company or its creditors or properties and shall be entitled and empowered to collect, receive and distribute any

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money or other property payable or deliverable on any such claims and any Bankruptcy Custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties which the Holders of the Securities may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. 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 6.10 PRIORITIES.

If the Trustee collects any money pursuant to this Article VI, subject to Article X, it shall pay out the money in the following order:

First: to the Trustee for amounts due under Section 7.07;

Second: to Holders for amounts due and unpaid on the Securities in respect of which or for the benefit of which such money has been collected, for principal, premium (if any), interest and any Additional Amounts ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal, premium (if any), interest and any Additional Amounts, respectively; and

Third: to the Company.

The Trustee, upon prior written notice to the Company, may fix record dates and payment dates for any payment to Holders pursuant to this Article VI.

To the fullest extent allowed under applicable law, if for the purpose of obtaining a judgment against the Company in any court it is

necessary to convert the sum due in respect of the principal of, premium (if any) or interest on or Additional Amounts with respect to the Securities of any series (the "Required Currency") into a currency in which a judgment will be rendered (the "Judgment Currency"), the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the New York Business Day next preceding that on which final judgment is given. Neither the Company nor the Trustee shall be liable for any shortfall nor shall it benefit from any windfall in payments to Holders of Securities under this Section 6.10 caused by a change in exchange rates between the time the amount of a judgment against it is calculated as above and the time the Trustee converts the Judgment Currency into the Required Currency to make

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payments under this Section to Holders of Securities, but payment of such judgment shall discharge all amounts owed by the Company on the claim or claims underlying such judgment.

#### SECTION 6.11 UNDERTAKING FOR COSTS.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07, or a suit by a Holder or Holders of more than 10% in principal amount of the then outstanding Securities of any series.

### ARTICLE VII TRUSTEE

#### SECTION 7.01 DUTIES OF TRUSTEE.

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

(b) Except during the continuance of an Event of Default with respect to the Securities of any series:

- (1) the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and
- (2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of

the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine such certificates and opinions to determine whether, on their face, they appear to conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(1) this paragraph does not limit the effect of Section 7.01(b);

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

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(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to the provisions of this Section 7.01.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or incur any liability. The Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity reasonably satisfactory to it against any loss, liability or expense.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law. All money received by the Trustee shall, until applied as herein provided, be held in trust for the payment of the principal of, premium (if any) and interest on and Additional Amounts with respect to the Securities.

#### SECTION 7.02 RIGHTS OF TRUSTEE.

(a) The Trustee may rely on any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require instruction, an Officers' Certificate or an Opinion of Counsel or both to be provided. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such instruction, Officers' Certificate or Opinion of Counsel. The Trustee may consult at the Company's expense 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.

(c) The Trustee may act through agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company shall be sufficient if signed by an Officer of the Company.

#### SECTION 7.03 MAY HOLD SECURITIES.

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or any of its Affiliates with the same rights

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it would have if it were not Trustee. Any Agent may do the same with like rights and duties. However, the Trustee is subject to Sections 7.10 and 7.11.

#### SECTION 7.04 TRUSTEE'S DISCLAIMER.

The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities, it shall not be accountable for the Company's use of the proceeds from the Securities or any money paid to the Company or upon the Company's direction under any provision hereof, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee and it shall not be responsible for any statement or recital herein or any statement in the Securities other than its certificate of authentication.

#### SECTION 7.05 NOTICE OF DEFAULTS.

If a Default or Event of Default with respect to the Securities of any series occurs and is continuing and it is known to the Trustee, the Trustee shall mail to Holders of Securities of such series a notice of the Default or Event of Default within 90 days after it occurs. Except in the case of a Default or Event of Default in payment of principal of, premium (if any) and interest on and Additional Amounts or any sinking fund installment with respect to the Securities of such series, the Trustee may withhold the notice if and so long as a committee of its Trust Officers in good faith determines that withholding the notice is in the interests of Holders of Securities of such series.

#### SECTION 7.06 REPORTS BY TRUSTEE TO HOLDERS.

Within 60 days after each May 15 of each year after the execution of this Indenture, the Trustee shall mail to Holders of a series and the Company a brief report dated as of such reporting date that complies with TIA

Section 313(a); PROVIDED, HOWEVER, that if no event described in TIA Section 313(a) has occurred within the twelve months preceding the reporting date with respect to a series, no report need be transmitted to Holders of such series. The Trustee also shall comply with TIA Section 313(b). The Trustee shall also transmit by mail all reports if and as required by TIA Sections 313(c) and 313(d).

A copy of each Trustee's report at the time of its mailing to Holders of a series of Securities shall be filed by the Company with the SEC and each securities exchange, if any, on which the Securities of such series are listed. The Company shall notify the Trustee if and when any series of Securities is listed on any stock exchange.

#### SECTION 7.07 COMPENSATION AND INDEMNITY.

The Company agrees to pay to the Trustee from time to time reasonable compensation for its acceptance of this Indenture and services hereunder. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company agrees to reimburse the Trustee upon request for all reasonable disbursements, advances and expenses incurred by it. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

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The Company hereby indemnifies the Trustee against any loss, liability or expense incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, except as set forth in the next paragraph. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. The Company shall defend the claim and the Trustee shall cooperate in the defense. The Trustee may have separate counsel and the Company shall pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its consent.

The Company shall not be obligated to reimburse any expense or indemnify against any loss or liability incurred by the Trustee through negligence or bad faith.

To secure the payment obligations of the Company in this Section 7.07, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, except that held in trust to pay principal of, premium (if any) and interest on and any Additional Amounts with respect to Securities of series. Such lien and the indemnity obligation under this Section 7.07 shall survive the satisfaction and discharge of this Indenture.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(5) or (6) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law.

#### SECTION 7.08 REPLACEMENT OF TRUSTEE.

A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.08.

The Trustee may resign and be discharged at any time with respect to the Securities of one or more series by so notifying the Company in writing. The Holders of a majority in principal amount of the then outstanding Securities of any series may remove the Trustee with respect to the Securities of such series by so notifying the Trustee and the Company in writing. The Company may remove the Trustee if:

- (1) the Trustee fails to comply with Section 7.10;
- (2) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
- (3) a Bankruptcy Custodian or public officer takes charge of the Trustee or its property; or
- (4) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, with respect to the Securities of one or more series, the Company shall promptly appoint

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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). Within one year after the successor Trustee with respect to the Securities of any series takes office, the Holders of a majority in principal amount of the Securities of such series may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

If a successor Trustee with respect to the Securities of any series does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of at least 10% in principal amount of the then outstanding Securities of such series may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

If the Trustee with respect to the Securities of a series fails to comply with Section 7.10, any Holder of Securities of such series may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee with respect to the Securities of such series.

In case of the appointment of a successor Trustee with respect to all Securities, each such successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become

effective, and the successor Trustee shall have all the rights, powers and duties of the retiring Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.07.

In case of the appointment 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 one or more (but not all) series shall execute and deliver an indenture supplemental hereto in which each successor Trustee shall accept such appointment and that (1) shall confer to each successor Trustee all the rights, powers 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 confirm that all the rights, powers 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. Nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust, and 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. 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 shall have all the rights, powers 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. On request of the Company or any successor Trustee,

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such retiring Trustee shall transfer to such successor Trustee all property held by such retiring Trustee as Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

Notwithstanding replacement of the Trustee or Trustees pursuant to this Section 7.08, the obligations of the Company under Section 7.07 shall continue for the benefit of the retiring Trustee or Trustees.

#### SECTION 7.09 SUCCESSOR TRUSTEE BY MERGER, ETC.

Subject to Section 7.10, if the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Trustee; PROVIDED, HOWEVER, that in the case of a transfer of all or substantially all of its corporate trust business to another corporation, the transferee corporation expressly assumes all of the Trustee's liabilities hereunder.

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; and in case at that time any of the Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Securities or in this Indenture provided that the certificate of the Trustee shall have.

#### SECTION 7.10 ELIGIBILITY; DISQUALIFICATION.

There shall at all times be a Trustee hereunder which shall be a corporation organized and doing business under the laws of the United States, any State thereof or the District of Columbia and authorized under such laws to exercise corporate trust power, shall be subject to supervision or examination by Federal or State (or the District of Columbia) authority and shall have, or be a Subsidiary of a bank or bank holding company having, a combined capital and surplus of at least \$50 million as set forth in its most recent published annual report of condition.

The Indenture shall always have a Trustee who satisfies the requirements of TIA Sections 310(a)(1), 310(a)(2) and 310(a)(5). The Trustee is subject to and shall comply with the provisions of TIA Section 310(b) during the period of time required by this Indenture. Nothing in this Indenture shall prevent the Trustee from filing with the SEC the application referred to in the penultimate paragraph of TIA Section 310(b).

#### SECTION 7.11 PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY.

The Trustee is subject to and shall comply with the provisions of TIA Section 311(a), excluding any creditor relationship listed in TIA Section 311(b). A Trustee who has resigned or been removed shall be subject to TIA Section 311(a) to the extent indicated therein.

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### ARTICLE VIII DISCHARGE OF INDENTURE

#### SECTION 8.01 TERMINATION OF COMPANY'S OBLIGATIONS.

(a) This Indenture shall cease to be of further effect with respect to the Securities of a series (except that the Company's obligations under Section 7.07, the Trustee's and Paying Agent's obligations under Section 8.03 and the rights, powers, protections and privileges accorded the Trustee under Article VII shall survive), and the Trustee, on demand of the Company, shall execute proper instruments acknowledging the satisfaction and discharge of this Indenture with respect to the Securities of such series, when:

(1) either

(A) all outstanding Securities of such series theretofore authenticated and issued (other than destroyed, lost or stolen

Securities that have been replaced or paid) have been delivered to the Trustee for cancellation; or

(B) all outstanding Securities of such series not theretofore delivered to the Trustee for cancellation:

- (i) have become due and payable, or
- (ii) will become due and payable at their Stated Maturity within one year, or
- (iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

and, in the case of clause (i), (ii) or (iii) above, the Company has irrevocably deposited or caused to be deposited with the Trustee as funds (immediately available to the Holders in the case of clause (i)) in trust for such purpose (x) cash in an amount, or (y) U.S. Government Obligations, maturing as to principal and interest at such times and in such amounts as will insure the availability of cash in an amount or (z) a combination thereof, which will be sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge the entire indebtedness on the Securities of such series for principal and interest to the date of such deposit (in the case of Securities which have become due and payable) or for principal, premium, if any, and interest to the Stated Maturity or Redemption Date, as the case may be; or

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(C) the Company has properly fulfilled such other means of satisfaction and discharge as is specified, as contemplated by Section 2.01, to be applicable to the Securities of such series;

(2) the Company has paid or caused to be paid all other sums payable by it hereunder with respect to the Securities of such series; and

(3) the Company has delivered to the Trustee an Officers' Certificate stating that all conditions precedent to satisfaction and discharge of this Indenture with respect to the Securities of such series have been complied with, together with an Opinion of Counsel to the same effect.

(b) Unless this Section 8.01(b) is specified as not being applicable to Securities of a series as contemplated by Section 2.01, the Company may terminate certain of its obligations under this Indenture ("covenant defeasance") with respect to the Securities of a series if:

(1) the Company has irrevocably deposited or caused to be irrevocably deposited with the Trustee as trust funds in trust for the purpose of making the following payments, specifically pledged as security for and

dedicated solely to the benefit of the Holders of Securities of such series, (i) money in the currency in which payment of the Securities of such series is to be made in an amount, or (ii) Government Obligations with respect to such series, maturing as to principal and interest at such times and in such amounts as will insure the availability of money in the currency in which payment of the Securities of such series is to be made in an amount or (iii) a combination thereof, that is sufficient, in the opinion (in the case of (ii) and (iii)) of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay, without consideration of the reinvestment of any such amounts and after payment of all taxes or other charges or assessments in respect thereof payable by the Trustee, the principal of and premium (if any) and interest on all Securities of such series on each date that such principal, premium (if any) or interest is due and payable and (at the Stated Maturity thereof or upon redemption as provided in Section 8.01(e)) to pay all other sums payable by it hereunder; PROVIDED that the Trustee shall have been irrevocably instructed to apply such money and/or the proceeds of such U.S. Government Obligations to the payment of said principal, premium (if any) and interest with respect to the Securities of such series as the same shall become due;

(2) the Company has delivered to the Trustee an Officers' Certificate stating that all conditions precedent to satisfaction and discharge of this Indenture with respect to the Securities of such series have been complied with and an Opinion of Counsel to the same effect;

(3) no Default or Event of Default with respect to the Securities of such series shall have occurred and be continuing on the date of such deposit;

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(4) the Company shall have delivered to the Trustee an Opinion of Counsel from a nationally recognized counsel acceptable to the Trustee or a tax ruling to the effect that the Holders will not recognize income, gain or loss for Federal income tax purposes as a result of the Company's exercise of its option under this Section 8.01(b) and will be subject to Federal income tax on the same amount and in the same manner and at the same times as would have been the case if such option had not been exercised;

(5) the Company has complied with any additional conditions specified pursuant to Section 2.01 to be applicable to the discharge of Securities of such series pursuant to this Section 8.01; and

(6) such deposit and discharge shall not cause the Trustee to have a conflicting interest as defined in TIA Section 310(b).

In such event, this Indenture shall cease to be of further effect (except as set forth in this paragraph), and the Trustee, on demand of the Company, shall execute proper instruments acknowledging satisfaction and discharge under this Indenture. However, the Company's obligations in Sections 2.05, 2.06, 2.07, 2.08, 2.09, 4.01, 4.02, 5.01, 7.07, 7.08 and 8.04, the



Trustee's and Paying Agent's obligations in Section 8.03 and the rights, powers, protections and privileges accorded the Trustee under Article VII shall survive until all Securities of such series are no longer outstanding. Thereafter, only the Company's obligations in Section 7.07 and the Trustee's and Paying Agent's obligations in Section 8.03 shall survive with respect to Securities of such series.

After such irrevocable deposit made pursuant to this Section 8.01(b) and satisfaction of the other conditions set forth herein, the Trustee upon request shall acknowledge in writing the discharge of the Company's obligations under this Indenture with respect to the Securities of such series except for those surviving obligations specified above.

In order to have money available on a payment date to pay principal of or premium (if any) or interest on the Securities, the Government Obligations shall be payable as to principal or interest on or before such payment date in such amounts as will provide the necessary money. Government Obligations shall not be callable at the issuer's option.

(c) If the Company has previously complied or is concurrently complying with Section 8.01(b) (other than any additional conditions specified pursuant to Section 2.01 that are expressly applicable only to covenant defeasance) with respect to Securities of a series, then, unless this Section 8.01(c) is specified as not being applicable to Securities of such series as contemplated by Section 2.01, the Company may elect to be discharged ("legal defeasance") from its obligations to make payments with respect to Securities of such series, if:

(1) no Default or Event of Default under clauses (5) and (6) of Section 6.01 hereof shall have occurred at any time during the period ending on the 91st day after the date of deposit contemplated by Section 8.01(b) (it being understood that this condition shall not be deemed satisfied until the expiration of such period);

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(2) unless otherwise specified with respect to Securities of such series as contemplated by Section 2.01, the Company has delivered to the Trustee an Opinion of Counsel from a nationally recognized counsel acceptable to the Trustee to the effect referred to in Section 8.01(b) (4) with respect to such legal defeasance, which opinion is based on (i) a private ruling of the Internal Revenue Service addressed to the Company, (ii) a published ruling of the Internal Revenue Service or (iii) a change in the applicable federal income tax law (including regulations) after the date of this Indenture;

(3) the Company has complied with any other conditions specified pursuant to Section 2.01 to be applicable to the legal defeasance of Securities of such series pursuant to this Section 8.01(c); and

(4) the Company has delivered to the Trustee a Company Request requesting such legal defeasance of the Securities of such series and an Officers' Certificate stating that all conditions precedent to with respect

to such legal defeasance of the Securities of such series have been complied with, together with an Opinion of Counsel to the same effect.

In such event, the Company will be discharged from its obligations under this Indenture and the Securities of such series to pay principal of, premium (if any) and interest on, and Additional Amounts with respect to, Securities of such series, the Company's obligations under Sections 4.01, 4.02 and 5.01 shall terminate with respect to such Securities, and the entire indebtedness of the Company evidenced by such Securities shall be deemed paid and discharged.

(d) If and to the extent additional or alternative means of satisfaction, discharge or defeasance of Securities of a series are specified to be applicable to such series as contemplated by Section 2.01, the Company may terminate any or all of its obligations under this Indenture with respect to Securities of a series and any or all of its obligations under the Securities of such series if it fulfills such other means of satisfaction and discharge as may be so specified, as contemplated by Section 2.01, to be applicable to the Securities of such series.

(e) If Securities of any series subject to subsections (a), (b), (c) or (d) of this Section 8.01 are to be redeemed prior to their Stated Maturity, whether pursuant to any optional redemption provisions or in accordance with any mandatory or optional sinking fund provisions, the terms of the applicable trust arrangement shall provide for such redemption, and the Company shall make such arrangements as are reasonably satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company.

#### SECTION 8.02 APPLICATION OF TRUST MONEY.

The Trustee or a trustee satisfactory to the Trustee and the Company shall hold in trust money or U.S. Government Obligations deposited with it pursuant to Section 8.01 hereof. It shall apply the deposited money and the money from U.S. Government Obligations through the Paying Agent and in accordance with this Indenture to the payment of principal of, premium (if any) and interest on and any Additional Amounts with respect to the Securities of the series with respect to which the deposit was made. Money and securities held in trust are not subject to Article X.

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#### SECTION 8.03 REPAYMENT TO COMPANY.

The Trustee and the Paying Agent shall promptly pay to the Company upon written request any excess money or U.S. Government Obligations (or proceeds therefrom) held by them at any time upon the written request of the Company.

Subject to the requirements of any applicable abandoned property laws, the Trustee and the Paying Agent shall pay to the Company upon written request any money held by them for the payment of principal, premium (if any), interest or any Additional Amounts that remains unclaimed for two years after the date

upon which such payment shall have become due. After payment to the Company, Holders entitled to the money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another Person, and all liability of the Trustee and the Paying Agent with respect to such money shall cease.

#### SECTION 8.04 REINSTATEMENT.

If the Trustee or the Paying Agent is unable to apply any money or U.S. Government Obligations deposited with respect to Securities of any series in accordance with Section 8.01 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Company under this Indenture with respect to the Securities of such series and under the Securities of such series shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.01 hereof until such time as the Trustee or the Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with Section 8.01; PROVIDED, HOWEVER, that if the Company has made any payment of principal of, premium (if any) or interest on or any Additional Amounts with respect to any Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or U.S. Government Obligations held by the Trustee or the Paying Agent.

### ARTICLE IX SUPPLEMENTAL INDENTURES AND AMENDMENTS

#### SECTION 9.01 WITHOUT CONSENT OF HOLDERS.

The Company and the Trustee may amend or supplement this Indenture or the Securities or waive any provision hereof or thereof without the consent of any Holder:

- (1) to cure any ambiguity, omission, defect or inconsistency;
- (2) to comply with Section 5.01;

(3) to provide for uncertificated Securities in addition to or in place of certificated Securities, or to provide for the issuance of bearer Securities (with or without coupons);

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(4) to provide any security for any series of Securities or to add guarantees of any series of Securities;

(5) to comply with any requirement in order to effect or maintain the qualification of this Indenture under the TIA;

(6) to add to the covenants of the Company for the benefit of the Holders of all or any series of Securities (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included solely for the benefit of such

series), or to surrender any right or power herein conferred upon the Company;

(7) to add any additional Events of Default with respect to all or any series of the Securities (and, if such Event of Default is applicable to less than all series of Securities, specifying the series to which such Event of Default is applicable);

(8) to change or eliminate any of the provisions of this Indenture; PROVIDED that any such change or elimination shall become effective only when there is no outstanding Security of any series created prior to the execution of such amendment or supplemental indenture that is adversely affected in any material respect by such change in or elimination of such provision;

(9) to establish the form or terms of Securities of any series as permitted by Section 2.01;

(10) to supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of any series of Securities pursuant to Section 8.01; PROVIDED, HOWEVER, that any such action shall not adversely affect the interest of the Holders of Securities of such series or any other series of Securities in any material respect; or

(11) 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 7.08.

Upon the request of the Company, accompanied by a Board Resolution, and upon receipt by the Trustee of the documents described in Section 9.06, the Trustee shall join with the Company in the execution of any supplemental indenture authorized or permitted by the terms of this Indenture and make any further appropriate agreements and stipulations that may be therein contained.

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## SECTION 9.02 WITH CONSENT OF HOLDERS.

Except as provided below in this Section 9.02, the Company and the Trustee may amend or supplement this Indenture with the written consent (including consents obtained in connection with a tender offer or exchange offer for Securities of any one or more series or all series or a solicitation of consents in respect of Securities of any one or more series or all series, PROVIDED that in each case such offer or solicitation is made to all Holders of then outstanding Securities of each such series (but the terms of such offer or solicitation may vary from series to series)) of the Holders of at least a majority in principal amount of the then outstanding Securities of all series affected by such amendment or supplement (acting as one class).

Upon the request of the Company, accompanied by a Board Resolution, and upon the filing with the Trustee of evidence of the consent of the Holders as aforesaid, and upon receipt by the Trustee of the documents described in Section 9.06, the Trustee shall join with the Company in the execution of such amendment or supplemental indenture.

It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.

The Holders of a majority in principal amount of the then outstanding Securities of one or more series or of all series may waive compliance in a particular instance by the Company with any provision of this Indenture with respect to Securities of such series (including waivers obtained in connection with a tender offer or exchange offer for Securities of such series or a solicitation of consents in respect of Securities of such series, PROVIDED that in each case such offer or solicitation is made to all Holders of then outstanding Securities of such series (but the terms of such offer or solicitation may vary from series to series)).

However, without the consent of each Holder affected, an amendment, supplement or waiver under this Section 9.02 may not:

- (1) reduce the amount of Securities whose Holders must consent to an amendment, supplement or waiver;
- (2) reduce the rate of or change the time for payment of interest, including default interest, on any Security;
- (3) reduce the principal of or premium on, or change the Stated Maturity of, any Security;
- (4) reduce the premium, if any, payable upon the redemption of any Security or change the time at which any Security may or shall be redeemed;
- (5) change any obligation of the Company to pay Additional Amounts with respect to any Security;

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- (6) change the coin or currency or currencies (including composite currencies) in which any Security or any premium, interest or Additional Amounts with respect thereto are payable;

- (7) impair the right to institute suit for the enforcement of any payment of principal of, premium (if any) or interest on or any Additional Amounts with respect to any Security pursuant to Sections 6.07 and 6.08, except as limited by Section 6.06;

- (8) make any change in the percentage of principal amount of Securities necessary to waive compliance with certain provisions of this Indenture pursuant to Section 6.04 or 6.07 or make any change in this

sentence of Section 9.02;

(9) modify the provisions of this Indenture with respect to the subordination of any Security in a manner adverse to the Holder thereof; or

(10) waive a continuing Default or Event of Default in the payment of principal of, premium (if any) or interest on or Additional Amounts with respect to the Securities.

An amendment under this Section may not make any change that adversely affects the rights under Article X of any holder of an issue of Senior Indebtedness unless the holders of the issue pursuant to its terms consent to the change.

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

The right of any Holder to participate in any consent required or sought pursuant to any provision of this Indenture (and the obligation of the Company to obtain any such consent otherwise required from such Holder) may be subject to the requirement that such Holder shall have been the Holder of record of any Securities with respect to which such consent is required or sought as of a date identified by the Company in a notice furnished to Holders in accordance with the terms of this Indenture.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Company shall mail to the Holders of each Security affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment, supplement or waiver.

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#### SECTION 9.03 COMPLIANCE WITH TRUST INDENTURE ACT.

Every amendment or supplement to this Indenture or the Securities shall comply in form and substance with the TIA as then in effect.

#### SECTION 9.04 REVOCATION AND EFFECT OF CONSENTS.

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security. However, any such Holder or subsequent Holder may revoke the consent as to his or her Security or portion of a Security if the Trustee receives written notice of revocation before the date the amendment, supplement or waiver becomes effective. An amendment, supplement or waiver becomes

effective in accordance with its terms and thereafter binds every Holder.

The Company may, but shall not be obligated to, fix a record date (which need not comply with Section 316(c) of the TIA) for the purpose of determining the Holders entitled to consent to any amendment, supplement or waiver or to take any other action under this Indenture. If a record date is fixed, then notwithstanding the provisions of the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to consent to such amendment, supplement or waiver or to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date. No consent shall be valid or effective for more than 90 days after such record date unless consents from Holders of the principal amount of Securities required hereunder for such amendment or waiver to be effective shall have also been given and not revoked within such 90-day period.

After an amendment, supplement or waiver becomes effective, it shall bind every Holder, unless it is of the type described in any of clauses (1) through (9) of Section 9.02 hereof. In such case, the amendment, supplement or waiver shall bind each Holder who has consented to it and every subsequent Holder that evidences the same debt as the consenting Holder's Security.

#### SECTION 9.05 NOTATION ON OR EXCHANGE OF SECURITIES.

If an amendment or supplement changes the terms of an outstanding Security, the Company may require the Holder of the Security to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security at the request of the Company regarding the changed terms and return it to the Holder. Alternatively, if the Company so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms. Failure to make the appropriate notation or to issue a new Security shall not affect the validity of such amendment or supplement.

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Securities of any series authenticated and delivered after the execution of any amendment or supplement 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 amendment or supplement.

#### SECTION 9.06 TRUSTEE TO SIGN AMENDMENTS, ETC.

The Trustee shall sign any amendment or supplement authorized pursuant to this Article if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, but need not, sign it. In signing or refusing to sign such amendment or supplement, the Trustee shall be entitled to receive, and, subject to Section 7.01 hereof, shall be fully protected in relying upon, an Opinion of Counsel provided at the expense of the Company as conclusive evidence that such amendment or supplement is authorized or permitted by this Indenture, that it is not inconsistent herewith, and that it will be valid and binding upon the Company in accordance with its terms.



ARTICLE X  
SUBORDINATION

SECTION 10.01 SECURITIES SUBORDINATED TO SENIOR INDEBTEDNESS.

The Company and each Holder of a Security, by his acceptance thereof, agree that (a) the payment of the principal of, premium (if any) and interest on and any Additional Amounts with respect to each and all the Securities and (b) any other payment in respect of the Securities, including on account of the acquisition or redemption of Securities by the Company, is subordinated, to the extent and in the manner provided in this Article X, to the prior payment in full of all Senior Indebtedness of the Company, whether outstanding at the date of this Indenture or thereafter created, incurred, assumed or guaranteed, and that these subordination provisions are for the benefit of the holders of Senior Indebtedness.

This Article X shall constitute a continuing offer to all Persons who, in reliance upon such provisions, become holders of, or continue to hold, Senior Indebtedness, and such provisions are made for the benefit of the holders of Senior Indebtedness, and such holders are made obligees hereunder and any one or more of them may enforce such provisions.

SECTION 10.02 NO PAYMENT ON SECURITIES IN CERTAIN CIRCUMSTANCES.

(a) No payment shall be made by or on behalf of the Company on account of the principal of, premium (if any) or interest on or any Additional Amounts with respect to the Securities of any series or to acquire any of such Securities (including any repurchases of such Securities pursuant to the provisions thereof at the option of the Holder of such Securities) for cash or property (other than Junior securities of the Company), or on account of any redemption provisions of such Securities, in the event of default in payment of any principal of, premium (if any) or interest on any Senior Indebtedness of the Company when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise (a "Payment Default"), unless and until such Payment Default has been cured or waived or otherwise has ceased to exist.

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(b) No payment shall be made by or on behalf of the Company on account of the principal of, premium (if any) or interest on or any Additional Amounts with respect to the Securities of any series or to acquire any of such Securities (including any repurchases of such Securities pursuant to the provisions thereof at the option of the Holder of such Securities) for cash or property (other than Junior securities of the Company), or on account of the redemption provisions of such Securities, in the event of any event of default (other than a Payment Default) with respect to any Designated Senior Indebtedness permitting the holders of such Designated Senior Indebtedness (or a trustee or other representative on behalf of the holders thereof) to declare such Designated Senior Indebtedness due and payable prior to the date on which it would otherwise have become due and payable, upon written notice thereof to

the Company and the Trustee by any holders of Designated Senior Indebtedness (or a trustee or other representative on behalf of the holders thereof) (the "Payment Notice"), unless and until such event of default shall have been cured or waived or otherwise has ceased to exist; PROVIDED, that such payments may not be prevented pursuant to this Section 10.02(b) for more than 179 days after an applicable Payment Notice has been received by the Trustee unless the Designated Senior Indebtedness in respect of which such event of default exists has been declared due and payable in its entirety, in which case no such payment may be made until such acceleration has been rescinded or annulled or such Designated Senior Indebtedness has been paid in full. No event of default that existed or was continuing on the date of any Payment Notice (whether or not such event of default is on the same issue of Designated Senior Indebtedness) may be made the basis for the giving of a second Payment Notice, and only one such Payment Notice may be given in any 365-day period.

(c) In furtherance of the provisions of Section 10.01, in the event that, notwithstanding the foregoing provisions of this Section 10.02, any payment or distribution of assets of the Company (other than Junior securities of the Company) shall be received by the Trustee or the Holders of Securities of any series at a time when such payment or distribution was prohibited by the provisions of this Section 10.02, then, unless such payment or distribution is no longer prohibited by this Section 10.02, such payment or distribution (subject to the provisions of Section 10.07) shall be received and held in trust by the Trustee or such Holder or Paying Agent for the benefit of the holders of Senior Indebtedness of the Company, and shall be paid or delivered by the Trustee or such Holders or such Paying Agent, as the case may be, to the holders of Senior Indebtedness of the Company remaining unpaid or unprovided for or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing 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, for application to the payment of all Senior Indebtedness in full after giving effect to all concurrent payments and distributions to or for the holders of such Senior Indebtedness.

#### SECTION 10.03 SECURITIES SUBORDINATED TO PRIOR PAYMENT OF ALL SENIOR INDEBTEDNESS ON DISSOLUTION, LIQUIDATION OR REORGANIZATION.

Upon any distribution of assets of the Company or upon any dissolution, winding up, total or partial liquidation or reorganization of the Company, whether voluntary or involuntary, in

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bankruptcy, insolvency, receivership or similar proceeding or upon assignment for the benefit of creditors:

(a) the holders of all Senior Indebtedness of the Company shall first be entitled to receive payments in full before the Holders of Securities of any series are entitled to receive any payment on account of the principal of, premium (if any) or interest on or any Additional Amounts with respect to such Securities (other than Junior securities of the Company);

(b) any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities (other than Junior securities of the Company), to which the Holders of Securities of any series or the Trustee on behalf of such Holders would be entitled, except for the provisions of this Article X, shall be paid by the liquidating trustee or agent or other Person making such a payment or distribution directly to the holders of such Senior Indebtedness or their representative, ratably according to the respective amounts of Senior Indebtedness held or represented by each, to the extent necessary to make payment in full of all such Senior Indebtedness remaining unpaid after giving effect to all concurrent payments and distributions to the holders of such Senior Indebtedness; and

(c) in the event that, notwithstanding the foregoing, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities (other than Junior securities of the Company), shall be received by the Trustee or the Holders of Securities of any series or any Paying Agent (or, if the Company or any Affiliate of the Company is acting as its own Paying Agent, money for any such payment or distribution shall be segregated or held in trust) on account of the principal of, premium (if any) or interest on or any Additional Amounts with respect to the Securities of such series before all Senior Indebtedness of the Company is paid in full, such payment or distribution (subject to the provisions of Section 10.07) shall be received and held in trust by the Trustee or such Holder or Paying Agent for the benefit of the holders of such Senior Indebtedness, or their respective representatives, ratably according to the respective amounts of such Senior Indebtedness held or represented by each, to the extent necessary to make payment as provided herein of all such Senior Indebtedness remaining unpaid after giving effect to all concurrent payments and distributions and all provisions therefor to or for the holders of such Senior Indebtedness, but only to the extent that as to any holder of such Senior Indebtedness, as promptly as practical following notice from the Trustee to the holders of such Senior Indebtedness that such prohibited payment has been received by the Trustee, Holder(s) or Paying Agent (or has been segregated as provided above), such holder (or a representative therefor) notifies the Trustee of the amounts then due and owing on such Senior Indebtedness, if any, held by such holder and only the amounts specified in such notices to the Trustee shall be paid to the holders of such Senior Indebtedness.

#### SECTION 10.04 SUBROGATION TO RIGHTS OF HOLDERS OF SENIOR INDEBTEDNESS.

Subject to the payment in full of all Senior Indebtedness of the Company as provided herein, the Holders of the Securities shall be subrogated (to the extent of the payments or distributions made to the holders of such Senior Indebtedness pursuant to the provisions of this

Article) to the rights of the holders of such Senior Indebtedness to receive payments or distributions of assets of the Company applicable to the Senior Indebtedness until all amounts owing on the Securities shall be paid in full. For the purpose of such subrogation, no such payments or distributions to

the holders of such Senior Indebtedness by the Company, or by or on behalf of the Holders of the Securities by virtue of this Article X, which otherwise would have been made to such Holders shall, as between the Company and such Holders, be deemed to be payment by the Company or on account of such Senior Indebtedness, it being understood that the provisions of this Article X are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities, on the one hand, and the holders of such Senior Indebtedness, on the other hand.

If any payment or distribution to which the Holders of the Securities would otherwise have been entitled but for the provisions of this Article X shall have been applied, pursuant to the provisions of this Article X, to the payment of amounts payable under Senior Indebtedness of the Company, then such Holders shall be entitled to receive from the holders of such Senior Indebtedness any payments or distributions received by such holders of Senior Indebtedness in excess of the amount sufficient to pay all amounts payable under or in respect of such Senior Indebtedness in full.

#### SECTION 10.05 OBLIGATIONS OF THE COMPANY UNCONDITIONAL.

Nothing contained in this Article X or elsewhere in this Indenture or in the Securities is intended to or shall impair, as between the Company and the Holders of the Securities of any series, the obligation of the Company, which is absolute and unconditional, to pay to such Holders the principal of, premium (if any) and interest on and any Additional Amounts with respect to the Securities of such series 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 such Holders and creditors of the Company other than the holders of the Senior Indebtedness, 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 X, of the holders of Senior Indebtedness in respect of cash, property or securities of the Company received upon the exercise of any such remedy. Notwithstanding anything to the contrary in this Article X or elsewhere in this Indenture or in the Securities, upon any distribution of assets of the Company referred to in this Article X, the Trustee, subject to the provisions of Sections 7.01 and 7.02, and the Holders of the Securities shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which such dissolution, winding up, liquidation or reorganization proceedings are pending, or a certificate of the liquidating trustee or agent or other Person making any distribution to the Trustee or to such Holders for the purpose of ascertaining the Persons entitled to participate in such distribution, the holders of the Senior Indebtedness 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 X so long as such court has been apprised of the provisions of, or the order, decree or certificate makes reference to, the provisions of this Article X.

#### SECTION 10.06 TRUSTEE ENTITLED TO ASSUME PAYMENTS NOT PROHIBITED IN ABSENCE OF NOTICE.

The Trustee shall not at any time be charged with knowledge of the existence of any facts that would prohibit the making of any payment to or by the Trustee unless and until a Responsible Officer of the Trustee or any Paying Agent shall have received, no later than two Business Days prior to such payment, written notice thereof from the Company or from one or more holders of Senior Indebtedness or from any representative therefor and, prior to the receipt of any such written notice, the Trustee, subject to the provisions of Sections 7.01 and 7.02, shall be entitled in all respects conclusively to assume that no such fact exists.

#### SECTION 10.07 APPLICATION BY TRUSTEE OF AMOUNTS DEPOSITED WITH IT.

Amounts deposited in trust with the Trustee pursuant to and in accordance with Article VIII shall be for the sole benefit of Holders of the Securities of series for the benefit of which such amounts were deposited, and, to the extent allocated for the payment of Securities of such series, shall not be subject to the subordination provisions of this Article X. Otherwise, any deposit of assets with the Trustee or the Paying Agent (whether or not in trust) for the payment of principal of, premium (if any) or interest on or any Additional Amounts with respect to any Securities shall be subject to the provisions of Sections 10.01, 10.02, 10.03 and 10.04; PROVIDED that if prior to two Business Days preceding the date on which by the terms of this Indenture any such assets may become distributable for any purpose (including without limitation, the payment of either principal of, premium (if any) or interest on or any Additional Amounts with respect to any Security), the Trustee or such Paying Agent shall not have received with respect to such assets the written notice provided for in Section 10.06, then the Trustee or such Paying Agent shall have full power and authority to receive such assets and to apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary that may be received by it on or after such date; and PROVIDED FURTHER that nothing contained in this Article X shall prevent the Company from making, or the Trustee from receiving or applying, any payment in connection with the redemption of Securities if the first publication of notice of such redemption (whether by mail or otherwise in accordance with this Indenture) has been made, and the Trustee has received such payment from the Company, prior to the occurrence of any of the contingencies specified in Section 10.02 or 10.03.

#### SECTION 10.08 SUBORDINATION RIGHTS NOT IMPAIRED BY ACTS OR OMISSIONS OF THE COMPANY OR HOLDERS OF SENIOR INDEBTEDNESS.

No right of any present or future holders of any Senior Indebtedness to enforce subordination provisions contained in this Article X shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms of this Indenture, regardless of any knowledge thereof that any such holder may have or be otherwise charged with. The holders of Senior Indebtedness may extend, renew, modify or amend the terms of the Senior Indebtedness or any security therefor and release, sell or exchange such security and otherwise deal freely with the Company, all without affecting the liabilities and obligations of the parties to this Indenture or the Holders of the Securities.

#### SECTION 10.09 TRUSTEE TO EFFECTUATE SUBORDINATION OF SECURITIES.

Each Holder of a Security by his acceptance thereof authorizes and expressly directs the Trustee on his behalf to take such action as may be necessary or appropriate to effectuate the subordination provisions contained in this Article X and to protect the rights of the Holders of the Securities pursuant to this Indenture, and appoints the Trustee his attorney-in-fact for such purpose, including, in the event of any dissolution, winding up, liquidation or reorganization of the Company (whether in bankruptcy, insolvency or receivership proceedings or upon an assignment for the benefit of creditors of the Company), the filing of a claim for the unpaid balance of his Securities in the form required in said proceedings and cause said claim to be approved. If the Trustee does not file a proper claim or proof of debt in the form required in such proceeding prior to 30 days before the expiration of the time to file such claim or claims, then the holders of the Senior Indebtedness or their representative is hereby authorized to have the right to file and is hereby authorized to file an appropriate claim for and on behalf of the Holders of said Securities. Nothing herein contained shall be deemed to authorize the Trustee or the holders of Senior Indebtedness or their representative to authorize or consent to or accept or adopt on behalf of any Holder of Securities any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee or the holders of Senior Indebtedness or their representative to vote in respect of the claim of any Holder of the Securities in any such proceeding.

#### SECTION 10.10 RIGHT OF TRUSTEE TO HOLD SENIOR INDEBTEDNESS.

The Trustee in its individual capacity shall be entitled to all of the rights set forth in this Article X in respect of any Senior Indebtedness at any time held by it to the same extent as any other holder of Senior Indebtedness, and nothing in this Indenture shall be construed to deprive the Trustee of any of its rights as such holder.

#### SECTION 10.11 ARTICLE X NOT TO PREVENT EVENTS OF DEFAULT.

The failure to make a payment on account of principal of or premium (if any) or interest on the Securities by reason of any provision of this Article X shall not be construed as preventing the occurrence of a Default or an Event of Default under Section 6.01 or in any way prevent the Holders of the Securities from exercising any right hereunder other than the right to receive payment on the Securities.

#### SECTION 10.12 NO FIDUCIARY DUTY OF TRUSTEE TO HOLDERS OF SENIOR INDEBTEDNESS.

The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness, and shall not be liable to any such holders (other than for its willful misconduct or negligence) if it shall in good faith mistakenly pay over or distribute to the Holders of the Securities or the Company or any other Person, cash, property or securities to which any holders of Senior Indebtedness shall be entitled by virtue of this Article X or otherwise. Nothing in this Section 10.12 shall affect the obligation of any other such Person to hold such payment for the benefit of, and to pay such



payment over to, the holders of Senior Indebtedness or their representative.

SECTION 10.13 ARTICLE APPLICABLE TO PAYING AGENT.

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In case at any time any Payment 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 X shall in such case (unless the context shall otherwise require) be construed as extending to and including such Payment 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 this Section 10.13 shall not apply to the Company or any Affiliate of the Company if it or such Affiliate acts as Paying Agent.

ARTICLE XI  
MISCELLANEOUS

SECTION 11.01 TRUST INDENTURE ACT CONTROLS.

If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by operation of TIA Section 318(c), the imposed duties shall control.

SECTION 11.02 NOTICES.

Any notice or communication by the Company or the Trustee to the other is duly given if in writing and delivered in person or mailed by first-class mail (registered or certified, return receipt requested), telex, facsimile or overnight air courier guaranteeing next day delivery, to the other's address:

If to the Company:

Pogo Producing Company  
5 Greenway Plaza, Suite 2700  
Houston, Texas 77046  
Attention: Gerald A. Morton, Vice President-Law and Corporate Secretary

If to the Trustee:

State Street Bank and Trust Company  
Two International Place, 4th Floor  
Boston, Massachusetts 02110  
Attention: Corporate Trust Department

The Company or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

All notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when answered back, if telexed; when receipt acknowledged, if by



facsimile; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice or communication to a Holder shall be mailed by first-class mail, postage prepaid, to the Holder's address shown on the register kept by the Registrar. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it, except in the case of notice to the Trustee, it is duly given only when received.

If the Company mails a notice or communication to Holders, it shall mail a copy to the Trustee and each Agent at the same time.

All notices or communications, including without limitation notices to the Trustee or the Company by Holders, shall be in writing, except as otherwise set forth herein.

In case by reason of the suspension of regular mail service, or by reason of any other cause, it shall be impossible to mail any notice required by this Indenture, then such method of notification as shall be made with the approval of the Trustee shall constitute a sufficient mailing of such notice.

#### SECTION 11.03 COMMUNICATION BY HOLDERS WITH OTHER HOLDERS.

Holders may communicate pursuant to TIA Section 312(b) with other Holders with respect to their rights under this Indenture or the Securities. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA Section 312(c).

#### SECTION 11.04 CERTIFICATE AND OPINION AS TO CONDITIONS PRECEDENT.

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall, if requested by the Trustee, furnish to the Trustee at the expense of the Company:

(1) an Officers' Certificate (which shall include the statements set forth in Section 11.05) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(2) an Opinion of Counsel (which shall include the statements set forth in Section 11.05 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been complied with.

#### SECTION 11.05 STATEMENTS REQUIRED IN CERTIFICATE OR OPINION.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to TIA Section 314(a)(4)) shall comply with the provisions of TIA Section 314(e) and shall include:

(1) a statement that the Person making such certificate or opinion has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with.

#### SECTION 11.06 RULES BY TRUSTEE AND AGENTS.

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or the Paying Agent may make reasonable rules and set reasonable requirements for its functions.

#### SECTION 11.07 LEGAL HOLIDAYS.

If a payment date is a Legal Holiday at a Place of Payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period.

#### SECTION 11.08 NO RECOURSE AGAINST OTHERS.

A director, officer, employee, stockholder, partner or other owner of the Company or the Trustee, as such, shall not have any liability for any obligations of the Company under the Securities or for any obligations of the Company or the Trustee under this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. Each Holder by accepting a Security waives and releases all such liability. The waiver and release shall be part of the consideration for the issue of Securities.

#### SECTION 11.09 GOVERNING LAW.

THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW

THE EXTENT THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

SECTION 11.10 NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS.

This Indenture may not be used to interpret another indenture, loan or debt agreement of the Company or any other Subsidiary. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

SECTION 11.11 SUCCESSORS.

All agreements of the Company in this Indenture and the Securities shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors.

SECTION 11.12 SEVERABILITY.

In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall, to the fullest extent permitted by applicable law, not in any way be affected or impaired thereby.

SECTION 11.13 COUNTERPART ORIGINALS.

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

SECTION 11.14 TABLE OF CONTENTS, HEADINGS, ETC.

The table of contents, cross-reference table and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof and shall in no way modify or restrict any of the terms or provisions hereof.

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

POGO PRODUCING COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE STREET BANK AND TRUST COMPANY,  
as Trustee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

-----  
-----  
  
POGO PRODUCING COMPANY

AND

WILMINGTON TRUST COMPANY

AS TRUSTEE

-----  
  
JUNIOR SUBORDINATED INDENTURE

DATED AS OF [\_\_\_\_\_, \_\_\_\_]

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JUNIOR SUBORDINATED DEBENTURES

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THIS SUBORDINATED INDENTURE is dated as of the [\_\_\_\_] day of [\_\_\_\_\_, \_\_\_\_\_], between Pogo Producing Company, a corporation duly organized and existing under the laws of the State of Delaware (hereinafter sometimes referred to as the "Company"), and Wilmington Trust Company, a Delaware banking corporation, as Trustee (hereinafter sometimes referred to as the "Trustee"):

WHEREAS, for its lawful corporate purposes, the Company has fully authorized the execution and delivery of this Indenture to provide for the issuance of unsecured junior subordinated debentures (hereinafter referred to as the "Debentures"), in an unlimited aggregate principal amount to be issued from time to time in one or more series in accordance with the terms of this Indenture, as registered Debentures without coupons, to be authenticated by the certificate of the Trustee;

WHEREAS, to provide the terms and conditions upon which the Debentures are to be authenticated, issued and delivered, the Company has duly authorized the execution of this Indenture;

WHEREAS, the Debentures and the certificate of authentication to be borne by the Debentures (the "Certificate of Authentication") are to be substantially in such forms as may be approved by the Board of Directors (as defined below) or set forth in any indenture supplemental to this Indenture;

AND WHEREAS, all acts and things necessary to make the Debentures issued pursuant hereto, when executed by the Company and authenticated and delivered by the Trustee in accordance with the terms of this Indenture, the valid, binding and legal obligations of the Company, and to constitute a valid indenture and agreement according to its terms, have been done and performed or will be done

and performed prior to the issuance of such Debentures, and the execution of this Indenture has been and the issuance hereunder of the Debentures has been or will be prior to issuance in all respects duly authorized, and the Company, in the exercise of the legal right and power in it vested, executes this Indenture and proposes to make, execute, issue and deliver the Debentures;

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That in order to declare the terms and conditions upon which the Debentures are and are to be authenticated, issued and delivered, and in consideration of the premises and of the acquisition and acceptance of the Debentures by the holders thereof, the Company covenants and agrees with the Trustee, for the equal and proportionate benefit (subject to the provisions of this Indenture) of the respective holders from time to time of the Debentures, without any discrimination, preference or priority of any one Debenture over any other by reason of priority in the time of issue, sale or negotiation thereof, or otherwise, except as provided herein, as follows:

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## ARTICLE 1

### DEFINITIONS

SECTION 1.01. DEFINITIONS. The terms defined in this Section (except as in this Indenture otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture, any resolution of the Board of Directors of the Company and of any indenture supplemental hereof shall have the respective meanings specified in this Section. All other terms used in this Indenture which are defined in the Trust Indenture Act of 1939, as amended, or which are by reference in such Act defined in the Securities Act of 1933, as amended (except as herein otherwise expressly provided or unless the context otherwise requires), shall have the meanings assigned to such terms in said Trust Indenture Act and in said Securities Act as in force at the date of this instrument.

"Affiliate" means, with respect to any specified Person, 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 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. For purposes of this definition, beneficial ownership of 10% or more of the voting common equity (on a fully diluted basis) or options or warrants to purchase such equity (but only if exercisable at the date of determination or within 60 days thereof) of a Person shall be deemed to constitute control of such Person. No Person shall be deemed an Affiliate of an oil and gas royalty trust solely by virtue of ownership of units of beneficial interest in such trust.

"Authenticating Agent" means an authenticating agent with respect to all or any of the series of Debentures, as the case may be, appointed with respect to all or any series of the Debentures, as the case may be, by the Trustee pursuant to Section 2.10.

"Board of Directors" means the Board of Directors of the Company, or any committee of such Board duly authorized to act hereunder.

"Board Resolution" means a copy of one or more resolutions, certified by the secretary or an assistant secretary of the Company to have been adopted or consented to by the Board of Directors and to be in full force and effect, and delivered to the Trustee.

"Business Day", with respect to any series of Debentures, means any day other than (i) a Saturday or a Sunday or (ii) a day on which banking institutions in the Borough of Manhattan, The City and State of New York, Wilmington, Delaware or Houston, Texas are authorized or obligated by law or executive order to close.

"Capital Stock" means, with respect to any Person, any and all shares, interests, participations, rights in or other equivalents in the equity interests (however designated)

in such Person, and any rights (other than debt securities convertible into an equity interest), warrants or options exercisable for, exchangeable for or convertible into such an equity interest in such Person.

"Certificate" means a certificate signed by the principal executive officer, the principal financial officer or the principal accounting officer of the Company. The Certificate need not comply with the provisions of Section 13.06.

"Common Securities" means the common undivided beneficial interests in the assets of the applicable Trust.

"Company" means Pogo Producing Company, a corporation duly organized and existing under the laws of the State of Delaware, and, subject to the provisions of Article 10, shall also include its successors and assigns.

"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 of this Indenture is located at 1100 North Market Street, Wilmington, Delaware 19810, Attention: Corporate Trust Administration.

"Debenture" or "Debentures" means any Debenture or Debentures, as the case may be, authenticated and delivered under this Indenture.

"Debenture Register" has the meaning assigned in Section 2.05(b).

"Debenture Registrar" has the meaning assigned in Section 2.05(b).

"Debentureholder", "holder of Debentures", "registered holder", or other similar term, means the person or persons in whose name or names a particular Debenture shall be registered in the Debenture Register.

"Debt" means, with respect to any Person at any date of determination (without duplication), (i) all indebtedness of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, including obligations incurred in connection with the acquisition of property, assets or businesses, (iii) all obligations of such Person in respect of letters of credit or bankers' acceptances or other similar instruments (or reimbursement obligations thereto) issued on the account of such person, (iv) all obligations of such person to pay the deferred purchase price of property or services, except Trade Payables, (v) all obligations of such Person as lessee under capitalized leases, (vi) all Debt of others secured by a Lien on any asset of such Person, whether or not such Debt is assumed by such Person; PROVIDED that, for purposes of determining the amount of any Debt of the type described in this clause (vi), if recourse with respect to such Debt is limited to such asset, the amount of such Debt shall be limited to the lesser of the fair market value of such asset or the amount of such Debt, (vii) all Debt of others Guaranteed by such Person to the extent such Debt is

Guaranteed by such Person, and (viii) to the extent not otherwise included in this definition, all obligations of such Person for claims in respect of derivative products, including interest rate, foreign exchange rate and commodity prices, forward contracts, options, swaps, collars and similar arrangements.

"Declaration of Trust" means the Amended and Restated Declaration of Trust of a Trust, if any, specified in the applicable Board Resolution or supplemental indenture establishing a particular series of Debentures pursuant to Section 2.01 hereof.

"Default" means any event, act or condition which with notice or lapse of time, or both, would constitute an Event of Default hereunder.

"Depository" means with respect to Debentures of any series, for which the Company shall determine that such Debentures will be issued as one or more Global Debentures, The Depository Trust Company, New York, New York, another clearing agency, or any successor registered as a clearing agency under the

Exchange Act, or other applicable statute or regulation, which, in each case, shall be designated by the Company pursuant to either Section 2.01 or 2.11.

"Event of Default", with respect to Debentures of a particular series means any event specified in Section 6.01(a), continued for the period of time, if any, and the giving of the notice, if any, therein designated.

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

"Global Debenture" means, with respect to any series of Debentures, a Debenture in the form prescribed by Section 2.11 executed by the Company and delivered by the Trustee to the Depositary or pursuant to the Depositary's instruction, all in accordance with the Indenture, which shall be registered in the name of the Depositary or its nominee.

"Governmental Obligations" means securities that are (i) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (ii) obligations of a person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a) (2) of the Securities Act) as custodian with respect to any such Governmental Obligation or a specific payment of principal of or interest on any such Governmental Obligation held by such custodian for the account of the holder of such depository receipt; provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Governmental Obligation or the specific payment of

principal of or interest on the Governmental Obligation evidenced by such depository receipt.

"Guarantee" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise) or (ii) entered into for purposes of assuring in any other manner the obligee of such Debt of other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); PROVIDED that the term "Guarantee" shall not include endorsements for



collection or deposit in the ordinary course of business. The term "Guarantee" used as a verb has a corresponding meaning.

"Indenture" means this instrument as originally executed, or, if amended or supplemented as herein provided, as so amended or supplemented.

"Interest Payment Date" when used with respect to any installment of interest on a Debenture of a particular series means the date specified in such Debenture or in a Board Resolution or in an indenture supplemental hereto with respect to such series as the fixed date on which an installment of interest with respect to Debentures of that series is due and payable.

"Lien" means, with respect to any property, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such property. For purposes of this Indenture, the Company shall be deemed to own subject to a Lien any property which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such property.

"Officers' Certificate" means a certificate signed by the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Controller or an Assistant Controller or the Secretary or an Assistant Secretary of the Company, and delivered to the Trustee. Each such certificate shall include the statements provided for in Section 13.06, if and to the extent required by the provisions thereof.

"Opinion of Counsel" means an opinion in writing signed by legal counsel, who may be counsel for the Company, a Trust or the Trustee, which may be an employee of the Company but not an employee of a Trust or the Trustee, and who shall be reasonably acceptable to the Trustee. Each such opinion shall include the statements provided for in Section 13.06, if and to the extent required by the provisions thereof.

"Outstanding", when used with reference to Debentures of any series, subject to the provisions of Section 8.01, means, as of any particular time, all Debentures of that

series theretofore authenticated and delivered by the Trustee under this Indenture, except (a) Debentures theretofore cancelled by the Trustee or any paying agent, or delivered to the Trustee or any paying agent for cancellation or which have previously been cancelled; (b) Debentures or portions thereof for the payment or redemption of which moneys or Governmental Obligations in the necessary amount shall have been deposited in trust with the Trustee or with any paying agent (other than the Company) or shall have been set aside and segregated in trust for the holders of such Debentures by the Company (if the Company shall act as its own paying agent); PROVIDED, HOWEVER, that if such

Debentures or portions of such Debentures are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in Article 3 provided, or provision satisfactory to the Trustee shall have been made for giving such notice; (c) Debentures paid pursuant to Section 2.07; and (d) Debentures in lieu of or in substitution for which other Debentures shall have been authenticated and delivered pursuant to the terms of Section 2.07; PROVIDED, HOWEVER, that in determining whether the holders of the requisite principal amount of Outstanding Debentures are present at a meeting of holders of Debentures for quorum purposes or have consented to or voted in favor of any request, demand, authorization, direction, notice, consent, waiver, amendment or modification hereunder, Debentures held for the account of the Company, any of its Subsidiaries or any of its Affiliates shall be disregarded and deemed not to be Outstanding, except that in determining whether the Trustee shall be protected in making such a determination or relying upon any such quorum, consent or vote, only Debentures which the Trustee actually knows to be so owned shall be so disregarded.

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

"Place of Payment", when used with respect to the Debentures of any series, means the place or places where the principal of and any premium and interest on the Debentures of that series are payable as specified as contemplated by Section 2.01.

"Predecessor Debenture" of any particular Debenture means every previous Debenture evidencing all or a portion of the same debt as that evidenced by such particular Debenture; and, for the purposes of this definition, any Debenture authenticated and delivered under Section 2.07 in lieu of a lost, destroyed or stolen Debenture shall be deemed to evidence the same debt as the lost, destroyed or stolen Debenture.

"Preferred Securities" means the preferred undivided beneficial interests in the assets of the applicable Trust.

"Property Trustee" means the entity performing the function of the Property Trustee under the applicable Declaration of Trust of a Trust.

"Responsible Officer" shall mean, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president,

assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions

similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such Person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

"Securities Act" means the Securities Act of 1933, as amended.

"Security Exchange" when used with respect to the Debentures of any series which are held as trust assets of a Trust pursuant to the Declaration of Trust of such Trust, means the distribution of the Debentures of such series by such Trust in exchange for the Preferred Securities and Common Securities of such Trust in dissolution of such Trust pursuant to the Declaration of Trust of such Trust.

"Senior Debt" means the principal of (and premium, if any) and interest on all Debt of the Company whether created, incurred or assumed before, on or after the date of this Indenture; PROVIDED that such Senior Debt shall not include (i) Debt of the Company that, when incurred and without respect to any election under Section 1111(b) of Title 11, U.S. Code, was without recourse, and (ii) any other Debt of the Company which by the terms of the instrument creating or evidencing the same is specifically designated as being subordinated to or PARI PASSU with the Debentures, and in particular the Debentures shall rank PARI PASSU with all other debt securities and guarantees issued to any trust, partnership or other entity affiliated with the Company which is a financing vehicle of the Company in connection with an issuance of securities by such financing entity, which securities are substantially similar to the Preferred Securities.

"Subsidiary" means, with respect to any Person, a corporation, partnership, limited liability company, association or other business entity a majority of whose Voting Stock is at the time, directly or indirectly, owned by such Person, by one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries thereof. For purposes of the foregoing definition, an arrangement by which a Person who owns an interest in an oil and gas property is subject to a joint operating agreement, processing agreement, net profits interest, overriding royalty interest, farmout agreement, development agreement, area of mutual interest agreement, joint bidding agreement, unitization agreement, pooling arrangement or other similar agreement or arrangement shall not, in and of itself, be considered a Subsidiary.

"Trade Payables" means, with respect to any Person, any accounts payable or any other indebtedness or monetary obligation to trade creditors created, assumed or Guaranteed by such Person or any of its Subsidiaries arising in the ordinary course of business in connection with the acquisition of goods or services.

"Trust" means any statutory business trust created under the laws of the State of Delaware by the Company, as sponsor, as specified in the applicable Board Resolution or

supplemental indenture establishing a particular series of Debentures pursuant to Section 2.01 hereof.

"Trustee" means Wilmington Trust Company, a Delaware banking corporation, and, subject to the provisions of Article 7, shall also include its successors and assigns, and, if at any time there is more than one person acting in such capacity hereunder, "Trustee" shall mean each such person. The term "Trustee" as used with respect to a particular series of the Debentures shall mean the trustee with respect to that series.

"Trust Indenture Act", subject to the provisions of Section 9.01 and 9.02, means the Trust Indenture Act of 1939, as amended and in effect at the date of execution of this Indenture.

"Voting Stock" means any class or classes of Capital Stock pursuant to which the holders thereof have the general voting power under ordinary circumstances to vote in the election of the board of directors, managers or trustees of any Person (irrespective of whether or not, at the time, Capital Stock of any other class or classes shall have, or might have, voting power by reason of the happening of any contingency).

## ARTICLE 2

### ISSUE, DESCRIPTION, TERMS, EXECUTION REGISTRATION AND EXCHANGE OF DEBENTURES

SECTION 2.01. DESIGNATION, TERMS, AMOUNT, AUTHENTICATION AND DELIVERY OF DEBENTURES. The aggregate principal amount of Debentures which may be authenticated and delivered under this Indenture is unlimited.

The Debentures may be issued in one or more series up to the aggregate principal amount of Debentures of that series from time to time authorized by or pursuant to a Board Resolution or pursuant to one or more indentures supplemental hereto, prior to the initial issuance of Debentures of a particular series. Prior to the initial issuance of Debentures of any series, there shall be established in or pursuant to a Board Resolution, and set forth in an Officers' Certificate, or established in one or more indentures supplemental hereto:

- (1) the title of the Debentures of the series (which shall distinguish the Debentures of the series from all other Debentures);
- (2) any limit upon the aggregate principal amount of the Debentures of that series which may be authenticated and delivered under this Indenture (except for Debentures authenticated and delivered upon registration of,

transfer of, or in exchange for, or in lieu of, other Debentures of that series);

(3) the date or dates on which the principal of the Debentures of the series is payable and the right to shorten, extend or defer such date or dates;

(4) the rate or rates at which the Debentures of the series shall bear interest or the manner of calculation of such rate or rates, if any;

(5) the date or dates from which such interest shall accrue, the Interest Payment Dates on which such interest will be payable or the manner of determination of such Interest Payment Dates and the record date for the determination of holders to whom interest is payable on any such Interest Payment Dates;

(6) the right, if any, to extend or defer the interest payment periods and the duration of such extension;

(7) the period or periods within which, the price or prices at which, and the terms and conditions upon which, Debentures of the series may be redeemed, in whole or in part, at the option of the Company;

(8) the obligation, if any, of the Company to redeem or purchase Debentures of the series pursuant to any sinking fund or analogous provisions (including payments made in cash in anticipation of future sinking fund obligations) or at the option of a holder thereof and the period or periods within which, the price or prices at which, the currency or currencies (including currency unit or units) in which and the terms and conditions upon which, Debentures of the series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

(9) any exchangeability, conversion or prepayment provisions of the Debentures;

(10) the form of the Debentures of the series including the form of the Certificate of Authentication for such series;

(11) if other than denominations of \$25 or any integral multiple thereof, the denominations in which the Debentures of the series shall be issuable;

(12) whether the Debentures are issuable as one or more Global

Debentures and, in such case, the identity of the Depositary for such series, the form of any legend or legends which shall be borne by any such Global Debentures in addition to or in lieu of that set forth in Section 2.11 and any

circumstances in addition to or in lieu of those set forth in Section 2.11 in which any such Global Debentures may be exchanged in whole or in part for Debentures registered, and any transfer of such Global Debentures in whole or in part may be registered, in the name or names of Persons other than the Depositary for such Global Debentures or a nominee thereof;

(13) if the Debentures of such series are to be deposited as trust assets in a Pogo Trust the name of the applicable Pogo Trust (which shall distinguish such statutory business trust from all other Pogo Trusts) into which the Debentures of such series are to be deposited as trust assets and the date of its Declaration of Trust;

(14) the place or places where the principal of (and premium, if any) and interest on the Debentures of such series shall be payable, the place or places where the Debentures of such series may be presented for registration of transfer or exchange, and the place or places where notices and demands to or upon the Company in respect of the Debentures of such series may be made;

(15) if other than U.S. dollars, the currency or currencies (including currency unit or units) in which the principal of (and premium, if any) and interest, if any, on the Debentures of the series shall be payable, or in which the Debentures of the series shall be denominated;

(16) the additions, modifications or deletions, if any, in the Events of Default or covenants of the Company set forth herein with respect to the Debentures of such series;

(17) if other than the principal amount thereof, the portion of the principal amount of Securities of such series that shall be payable upon declaration of acceleration of the maturity thereof;

(18) the additions or changes, if any, to this Indenture with respect to the Debentures of such series as shall be necessary to permit or facilitate the issuance of the Debentures of such series in bearer form, registrable or not registrable as to principal, and with or without interest coupons;

(19) any index or indices used to determine the amount of payments of principal of and premium, if any, on the Debentures of such series or the manner in which such amounts will be determined;

(20) the appointment of any paying agent or agents for the Debentures of such series;

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(21) the relative degree, if any, to which the Debentures of such series shall be senior to or be subordinated to other series of Debentures in right of payment, whether such other series of Debentures are Outstanding or not; and

(22) any and all other terms with respect to the Debentures of such series (and any terms which may be required by or advisable under applicable laws or regulations not inconsistent with the terms of this Indenture).

All Debentures of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to any such Board Resolution or in any indenture supplemental hereto.

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

SECTION 2.02. FORM OF DEBENTURE AND TRUSTEE'S CERTIFICATE. The Debentures of any series and the Trustee's certificate of authentication to be borne by such Debentures shall be substantially of the tenor and purport as set forth in one or more indentures supplemental hereto or as provided in a Board Resolution and as set forth in an Officers' Certificate, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements typewritten, printed, lithographed or engraved thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange or automated quotation system on which Debentures of that series may be listed or traded, or to conform to usage.

SECTION 2.03. DATE AND DENOMINATIONS OF DEBENTURES AND PROVISIONS FOR PAYMENT OF PRINCIPAL, PREMIUM AND INTEREST. The Debentures shall be issuable as registered Debentures and in the denominations of \$25 or any integral multiple thereof, subject to Section 2.01(11). The Debentures of a particular series shall bear interest payable on the dates and at the rate specified with respect to that series. The principal of and the interest on the Debentures of any series, as well as any premium thereon in case of redemption thereof prior to



maturity, shall, subject to Section 2.01(8) and (15), be payable in the coin or currency of the United States of America which at the time is legal tender for public and private debt, at Place of Payment. Each Debenture shall be dated the date of its authentication. Interest on the Debentures shall be computed on the basis of a 360-day year composed of twelve 30-day months, subject to Section 2.01(5).

The interest installment on any Debenture which is payable, and is punctually paid or duly provided for, on any Interest Payment Date for Debentures of that series shall be

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paid to the person in whose name said Debenture (or one or more Predecessor Debentures) is registered at the close of business on the regular record date for such interest installment. In the event that any Debenture of a particular series or portion thereof is called for redemption and the redemption date is subsequent to a regular record date with respect to any Interest Payment Date and prior to such Interest Payment Date, interest on such Debenture will be paid upon presentation and surrender of such Debenture as provided in Section 3.03.

Any interest on any Debenture which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date for Debentures of the same series (herein called "Defaulted Interest") shall forthwith cease to be payable to the registered holder on the relevant regular record date by virtue of having been such holder; and such Defaulted Interest shall be paid by the Company, at its election, as provided in clause (1) or clause (2) below:

(1) The Company may make payment of any Defaulted Interest on Debentures to the persons in whose names such Debentures (or their respective Predecessor Debentures) are registered at the close of business on a special record date for the payment of such Defaulted Interest, which shall be fixed in the following manner: the Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each such Debenture and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a special record date for the payment of such Defaulted Interest which shall not be more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such special record date and, in the name and at the expense of the Company, shall cause

notice of the proposed payment of such Defaulted Interest and the special record date therefor to be mailed, first class postage prepaid, to each Debentureholder at his or her address as it appears in the Debenture Register, not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Interest and the special record date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the persons in whose names such Debentures (or their Predecessor Debentures) are registered on such special record date and shall be no longer payable pursuant to the following clause (2).

(2) The Company may make payment of any Defaulted Interest on any Debentures in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which such Debentures may be listed or traded, and upon such notice as may be required by such exchange or quotation system, 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.

Unless otherwise set forth in a Board Resolution or one or more indentures supplemental hereto establishing the terms of any series of Debentures pursuant to Section 2.01 hereof, the term "regular record date" as used in this Section with respect to a series of Debentures with respect to any Interest Payment Date for such series shall mean either the fifteenth day of the month immediately preceding the month in which an Interest Payment Date established for such series pursuant to Section 2.01 hereof shall occur, if such Interest Payment Date is the first day of a month, or the last day of the month immediately preceding the month in which an Interest Payment Date established for such series pursuant to Section 2.01 hereof shall occur, if such Interest Payment Date is the fifteenth day of a month, whether or not such date is a Business Day.

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

SECTION 2.04. EXECUTION OF DEBENTURES. The Debentures shall, subject to the provisions of Section 2.06, be printed on steel engraved borders or fully or partially engraved, or legibly typed, as the proper officers of the Company may determine, and shall be signed on behalf of the Company by the Chairman or Vice Chairman of its Board of Directors or its Chief Executive Officer, President or one of its Vice Presidents, under its corporate seal attested by its Secretary or one of its Assistant Secretaries. The signature of the Chairman, Vice Chairman, Chief Executive Officer, President or a Vice President and/or the

signature of the Secretary or an Assistant Secretary in attestation of the corporate seal, upon the Debentures, may be in the form of a manual or facsimile signature and may be imprinted or otherwise reproduced on the Debentures and for that purpose the Company may use the manual or facsimile signature of any person who shall have been a Chairman, Vice Chairman, Chief Executive Officer, President or Vice President, or of any person who shall have been a Secretary or Assistant Secretary, notwithstanding the fact that at the time the Debentures shall be authenticated and delivered or disposed of such person shall have ceased to be the Chairman, Vice Chairman, President or a Vice President, or the Secretary or an Assistant Secretary, of the Company, as the case may be. The seal of the Company may be in the form of a facsimile of the seal of the Company and may be impressed, affixed, imprinted or otherwise reproduced on the Debentures.

Only such Debentures as shall bear thereon a Certificate of Authentication substantially in the form established for such Debentures, executed manually by an authorized signatory of the Trustee, or by any Authenticating Agent with respect to such Debentures, shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate executed by the Trustee, or by any Authenticating Agent appointed by the Trustee with respect to such Debentures, upon any Debenture executed by the Company shall be conclusive evidence that the Debenture so authenticated has been duly authenticated and made available for delivery hereunder and that the holder is entitled to the benefits of this Indenture. Notwithstanding the foregoing, if any Debenture shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Debenture to the Trustee for cancellation as provided in Section 2.08, for all purposes of this Indenture such Debenture shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Debentures of any series executed by the Company to the Trustee for authentication, together with a written order of the Company for the authentication and delivery of such Debentures, signed by its President or any Vice President and its Treasurer or any Assistant Treasurer, and the Trustee in accordance with such written order shall authenticate and make available for delivery such Debentures. Each Debenture shall be dated the date of its authentication by the Trustee.

In authenticating such Debentures and accepting the additional responsibilities under this Indenture in relation to such Debentures, the Trustee shall be entitled to receive, and (subject to Section 7.01) shall be fully protected in relying upon, an Opinion of Counsel stating that the form and terms thereof have been established in conformity with the provisions of this Indenture.

The Trustee shall not be required to authenticate such Debentures if the issue of such Debentures pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Debentures and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

SECTION 2.05. EXCHANGE OF DEBENTURES. (a) Debentures of any series may be exchanged upon presentation thereof at a Place of Payment, for other Debentures of such series of authorized denominations, and for a like aggregate principal amount, upon payment of a sum sufficient to cover any tax or other governmental charge in relation thereto, all as provided in this Section. In respect of any Debentures so surrendered for exchange, the Company shall execute, the Trustee shall authenticate and such office or agency shall make available for delivery in exchange therefor the Debenture or Debentures of the same series which the Debentureholder making the exchange shall be entitled to receive, bearing numbers not contemporaneously outstanding.

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(b) The Company shall keep, or cause to be kept, at the Corporate Trust Office of the Trustee (the register maintained in such office and in any other office or agency of the Company in a Place of Payment is herein sometimes collectively referred to as the "Debenture Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall register the Debentures and the transfers of Debentures as in this Article provided and which at all reasonable times shall be open for inspection by the Trustee. The registrar for the purpose of registering Debentures and transfer of Debentures as herein provided shall be appointed by the Company (the "Debenture Registrar"). The initial Debenture Registrar shall be the Trustee.

Upon surrender for transfer of any Debenture at the office or agency of the Company in a Place of Payment, the Company shall execute and the Trustee shall authenticate and deliver, in the name of the transferee or transferees, one or more new Debentures of the same series as the Debenture presented, of any authorized denominations and of like tenor and aggregate principal amount.

All Debentures presented or surrendered for exchange or registration of transfer, as provided in this Section, shall be accompanied (if so required by the Company or the Debenture Registrar) by a written instrument or instruments of transfer, in form satisfactory to the Company or the Debenture Registrar, duly executed by the registered holder or by his duly authorized attorney in writing.

(c) No service charge shall be made for any exchange or registration of transfer of Debentures, or issue of new Debentures in case of partial redemption of any series, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge in relation thereto, other than exchanges pursuant to Section 2.06, Section 3.03(b) and Section 9.04 not involving any transfer.

(d) The Company shall not be required (i) to issue, exchange or register the transfer of any Debentures during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of less than all the outstanding Debentures of the same series and ending at the close of business on the day of such mailing, nor (ii) to register the transfer of or exchange any Debentures of any series or portions thereof called for redemption. The provisions of this Section 2.05 are, with respect to any Global Debenture, subject to Section 2.11 hereof.

SECTION 2.06. TEMPORARY DEBENTURES. Pending the preparation of definitive Debentures of any series, the Company may execute, and the Trustee shall authenticate and make available for delivery, temporary Debentures (printed, lithographed or typewritten) of any authorized denomination, and substantially in the form of the definitive Debentures in lieu of which they are issued, but with such omissions, insertions and variations as may be appropriate for temporary Debentures, all as may be determined by the Company. Every temporary Debenture of any series shall be executed by the Company and be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Debentures of such series. Without unnecessary delay the Company will execute and will furnish definitive Debentures of such series and thereupon any or all temporary Debentures of such

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series may be surrendered in exchange therefor (without charge to the holders), at a Place of Payment, and upon receipt of a written order of the Company signed by its President or any Vice President and its Treasurer or any Assistant Treasurer, the Trustee shall authenticate and deliver in exchange for such temporary Debentures an equal aggregate principal amount of definitive Debentures of such series, unless the Company advises the Trustee to the effect that definitive Debentures need not be executed and furnished until further notice from the Company. Until so exchanged, the temporary Debentures of such series shall be entitled to the same benefits under this Indenture as definitive Debentures of such series authenticated and delivered hereunder.

SECTION 2.07. MUTILATED, DESTROYED, LOST OR STOLEN DEBENTURES. In case any temporary or definitive Debenture shall become mutilated or be destroyed, lost or stolen, the Company (subject to the next succeeding sentence) shall execute, and upon its written request the Trustee (subject as aforesaid) shall authenticate and make available for delivery, a new Debenture of the same series bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated Debenture, or in lieu of and in substitution for the Debenture so destroyed, lost or stolen. In every case the applicant for a substituted Debenture shall furnish to the Company and to the Trustee such security or indemnity as may be required by them to save each of them harmless, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company and to the Trustee evidence to their satisfaction of the

destruction, loss or theft of the applicant's Debenture and of the ownership thereof. The Trustee may authenticate any such substituted Debenture and make available for delivery the same upon the written request or authorization of any officer of the Company. Upon the issuance of any substituted Debenture, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith. In case any Debenture which has matured or is about to mature shall become mutilated or be destroyed, lost or stolen, the Company may, instead of issuing a substitute Debenture, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Debenture) if the applicant for such payment shall furnish to the Company and to the Trustee such security or indemnity as they may require to save them harmless, and, in case of destruction, loss or theft, evidence to the satisfaction of the Company and the Trustee of the destruction, loss or theft of such Debenture and of the ownership thereof.

Every Debenture issued pursuant to the provisions of this Section in substitution for any Debenture which is mutilated, destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Debenture shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Debentures of the same series duly issued hereunder. All Debentures shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of

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mutilated, destroyed, lost or stolen Debentures, and shall preclude (to the extent lawful) any and all other rights or remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

SECTION 2.08. CANCELLATION OF SURRENDERED DEBENTURES. All Debentures surrendered for the purpose of payment, redemption, exchange or registration of transfer shall, if surrendered to the Company or any paying agent, be delivered to the Trustee for cancellation, or, if surrendered to the Trustee, shall be cancelled by it, and no Debentures shall be issued in lieu thereof except as expressly required or permitted by any of the provisions of this Indenture. On written request of the Company, the Trustee shall deliver to the Company cancelled Debentures held by the Trustee. If the Company shall otherwise acquire any of the Debentures, however, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Debentures unless and until the same are delivered to the Trustee for cancellation.

SECTION 2.09. PROVISIONS OF INDENTURE AND DEBENTURES FOR SOLE BENEFIT OF



PARTIES AND DEBENTUREHOLDERS. Nothing in this Indenture or in the Debentures, express or implied, shall give or be construed to give to any Person, other than the parties hereto and the holders of the Debentures, any legal or equitable right, remedy or claim under or in respect of this Indenture, or under any covenant, condition or provision herein contained; all such covenants, conditions and provisions being for the sole benefit of the parties hereto and of the holders of the Debentures.

SECTION 2.10. APPOINTMENT OF AUTHENTICATING AGENT. So long as any of the Debentures of any series remain outstanding there may be an Authenticating Agent for any or all such series of Debentures which the Trustee shall have the right to appoint. Said Authenticating Agent shall be authorized to act on behalf of the Trustee to authenticate Debentures of such series issued upon exchange, transfer or partial redemption thereof, and Debentures 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. All references in this Indenture to the authentication of Debentures by the Trustee shall be deemed to include authentication by an Authenticating Agent for such series except for authentication upon original issuance or pursuant to Section 2.07 hereof. Each Authenticating Agent shall be acceptable to the Company and shall be a corporation which has a combined capital and surplus, as most recently reported or determined by it, sufficient under the laws of any jurisdiction under which it is organized or in which it is doing business to conduct a trust business, and which is otherwise authorized under such laws to conduct such business and is subject to supervision or examination by Federal or State authorities. If at any time any Authenticating Agent shall cease to be eligible in accordance with these provisions, it shall resign immediately.

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time (and upon request by the Company shall) terminate the agency of any Authenticating Agent by

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giving written notice of termination to such Authenticating Agent and to the Company. Upon resignation, termination or cessation of eligibility of any Authenticating Agent, the Trustee may appoint an eligible successor Authenticating Agent 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 as if originally named as an Authenticating Agent pursuant hereto.

SECTION 2.11. GLOBAL DEBENTURES. (a) If the Company shall establish pursuant to Section 2.01 that the Debentures of a particular series are to be issued as one or more Global Debentures, then the Company shall execute and the Trustee shall, in accordance with Section 2.04, authenticate and deliver, one or more Global Debentures which (i) shall represent, and shall be denominated in an



aggregate amount equal to the aggregate principal amount of, all of the Outstanding Debentures of such series, (ii) shall be registered in the name of the Depositary or its nominee, (iii) shall be delivered by the Trustee to the Depositary or pursuant to the Depositary's instruction and (iv) shall bear, subject to Section 2.01(12), a legend substantially to the following effect: "Except as otherwise provided in Section 2.11 of the Indenture, this Debenture may be transferred, in whole but not in part, only to another nominee of the Depositary or to a successor Depositary or to a nominee of such successor Depositary."

(b) Notwithstanding the provisions of Section 2.05, the Global Debenture of a series may be transferred, in whole but not in part and in the manner provided in Section 2.05, only to another nominee of the Depositary for such series, or to a successor Depositary for such series selected or approved by the Company or to a nominee of such successor Depositary.

(c) If at any time the Depositary for a series of Debentures notifies the Company that it is unwilling or unable to continue as Depositary for such series or if at any time the Depositary for such series shall no longer be registered or in good standing under the Exchange Act, or other applicable statute or regulation and a successor Depositary for such series is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such condition, as the case may be, this Section 2.11 shall no longer be applicable to the Debentures of such series and the Company will execute, and subject to Section 2.05, the Trustee will authenticate and make available for delivery Debentures of such series in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Debentures of such series in exchange for such Global Debentures. In addition, the Company may at any time determine that the Debentures of any series shall no longer be represented by one or more Global Debentures and that the provisions of this Section 2.11 shall no longer apply to the Debentures of such series. In such event the Company will execute and subject to Section 2.05, the Trustee, upon receipt of an Officers' Certificate evidencing such determination by the Company, will authenticate and deliver Debentures of such series in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Debentures of such series in exchange for such Global Debentures.

Upon the exchange of the Global Debentures for such Debentures in definitive registered form without coupons, in authorized denominations, the Global Debentures shall be cancelled by the Trustee. Such Debentures in definitive registered form issued in exchange for the Global Debentures pursuant to this Section 2.11(c) shall be registered in such names and in such authorized denominations as the Depositary, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee

shall deliver such Debentures to the Depositary for delivery to the persons in whose name such Debentures are so registered.

(d) Debentures distributed to holders of Global Certificates (as defined in the applicable Declaration of Trust) upon the dissolution of the applicable Trust shall be distributed in the form of one or more Global Debentures registered in the name of the Depositary or its nominee, and deposited with the Debenture Registrar, as custodian for the Depositary, or with such Depositary, for credit by the Depositary to the respective accounts of the beneficial owners of the Debentures represented thereby (or such other accounts as they may direct). Prior to the distribution of Debentures to holders of Global Certificates upon the dissolution of the applicable Trust, the Company shall designate the Depositary in writing to the Trustee. Debentures distributed to holders of Certificates (as defined in the applicable Declaration of Trust), other than Global Certificates, upon the dissolution of the applicable Trust shall not be issued in the form of a Global Debenture or any other form intended to facilitate book-entry trading in beneficial interests in such Debentures.

(e) The Depositary or its nominee, as the registered owner of a Global Debenture, shall be the holder of such Global Debenture for all purposes under this Indenture and the Debentures, and owners of beneficial interests in a Global Debenture shall hold such interests pursuant to the applicable procedures of the Depositary. Accordingly, any such owner's beneficial interest in a Global Debenture shall be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depositary or its nominee or its participants. None of the Company, the Trustee or the Debenture Registrar shall have any liability in respect of any transfer effected by the Depositary.

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

SECTION 2.12. CUSIP NUMBERS. The Company in issuing the Debentures may use "CUSIP" numbers, and the Trustee shall use such CUSIP numbers in notices of redemption or exchange as a convenience to Debentureholders and no representation shall be made as to the correctness of such numbers either as printed on the Debentures or as contained in any notice of redemption or exchange.

### ARTICLE 3 REDEMPTION OF DEBENTURES AND SINKING FUND PROVISIONS

SECTION 3.01. REDEMPTION. The Company may redeem the Debentures of any series issued hereunder on and after the dates and in accordance with the terms established for such series pursuant to Section 2.01 hereof.

SECTION 3.02. NOTICE OF REDEMPTION. (a) In case the Company shall desire to exercise such right to redeem all or, as the case may be, a portion of the Debentures of any series in accordance with the right reserved so to do, it shall give notice of such redemption to the Trustee at least 45 days in advance of the date fixed for redemption. The Trustee shall then notify holders of the Debentures of such series who are to be redeemed by mailing, first class postage prepaid, by a notice of such redemption not less than 30 days and not more than 60 days before the date fixed for redemption of that series to such holders at their last addresses as they shall appear upon the Debenture Register. Any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the registered holder receives the notice. In any case, failure duly to give such notice to the holder of any Debenture of any series designated for redemption in whole or in part, or any defect in the notice, shall not affect the validity of the proceedings for the redemption of any other Debentures of such series or any other series. In the case of any redemption of Debentures prior to the expiration of any restriction on such redemption provided in the terms of such Debentures or elsewhere in this Indenture, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with any such restriction.

Each such notice of redemption shall identify the Debentures to be redeemed (including CUSIP number) and shall specify: (i) the date fixed for redemption, (ii) the redemption price at which Debentures of that series are to be redeemed, (iii) the place or places where Debentures are to be surrendered for payment of the redemption price, (iv) that payment of the redemption price will be made upon presentation and surrender of such Debentures at such place or places, (v) that interest accrued to the date fixed for redemption will be paid as specified in said notice, (vi) that from and after said date interest will cease to accrue and (vii) that the redemption is for a sinking fund, if such is the case. If less than all the Debentures of a series are to be redeemed, the notice to the holders of Debentures of that series to be redeemed in whole or in part shall specify the particular Debentures to be so redeemed. In case any Debenture is to be redeemed in part only, the notice which relates to such Debenture shall state the portion of the principal amount thereof to be redeemed, and shall state that on and after the redemption date, upon surrender of such Debenture, a new Debenture or Debentures of such series in principal amount equal to the unredeemed portion thereof will be issued.

(b) In the event of a partial redemption of a series of Debentures, the Company shall give the Trustee at least 45 days' notice in advance of the date fixed for redemption as to the aggregate principal amount of Debentures of the series to be redeemed and the

other information set forth in the immediately preceding paragraph, and thereupon the Trustee shall select, by lot or in such other manner as it shall

deem appropriate and fair in its discretion and which may provide for the selection of a portion or portions (equal to \$25 or any integral multiple thereof) of the principal amount of such Debentures of a denomination larger than \$25, the Debentures to be redeemed and shall thereafter promptly notify the Company in writing of the numbers of the Debentures to be redeemed, in whole or in part. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Debentures shall relate, in the case of any Debenture redeemed or to be redeemed only in part, to the portion of the principal amount of such Debenture which has been or is to be redeemed. If the Company shall so direct, Debentures registered in the name of the Company, any Affiliate or any Subsidiary thereof shall not be included in the Debentures selected for redemption.

The Company may, if and whenever it shall so elect, by delivery of instructions signed on its behalf by its President or any Vice President, instruct the Trustee or any paying agent to call all or any part of the Debentures of a particular series for redemption and to give notice of redemption in the manner set forth in this Section, such notice to be in the name of the Company or its own name as the Trustee or such paying agent may deem advisable. In any case in which notice of redemption is to be given by the Trustee or any such paying agent, the Company shall deliver or cause to be delivered to, or permit to remain with, the Trustee or such paying agent, as the case may be, such Debenture Register, transfer books or other records, or suitable copies or extracts therefrom, sufficient to enable the Trustee or such paying agent to give any notice by mail that may be required under the provisions of this Section.

SECTION 3.03. PAYMENT UPON REDEMPTION. (a) If the giving of notice of redemption shall have been completed as above provided and funds deposited as required, the Debentures or portions of Debentures of the series to be redeemed specified in such notice shall become due and payable on the date and at the place stated in such notice at the applicable redemption price, together with interest accrued to, but excluding, the date fixed for redemption, and interest on such Debentures or portions of Debentures shall cease to accrue on and after the date fixed for redemption, unless the Company shall default in the payment of such redemption price and accrued interest with respect to any such Debenture or portion thereof. On presentation and surrender of such Debentures on or after the date fixed for redemption at the place of payment specified in the notice, said Debentures shall be paid and redeemed at the applicable redemption price for such series, together with interest accrued thereon to, but excluding, the date fixed for redemption (but if the date fixed for redemption is an interest payment date, the interest installment payable on such date shall be payable to the registered holder at the close of business on the applicable record date pursuant to Section 2.03).

(b) Upon presentation of any Debenture of such series which is to be redeemed in part only, the Company shall execute and the Trustee shall authenticate and the office or agency where the Debenture is presented shall make available for delivery to the holder thereof, at the expense of the Company, a new Debenture or Debentures of the same

series, of authorized denominations in principal amount equal to the unredeemed portion of the Debenture so presented.

SECTION 3.04. SINKING FUNDS FOR DEBENTURES. The provisions of Sections 3.04, 3.05 and 3.06 shall be applicable to any sinking fund for the retirement of Debentures of a series, except as otherwise specified as contemplated by Section 2.01 for Debentures of such series.

The minimum amount of any sinking fund payment provided for by the terms of Debentures of any series is herein referred to as a "mandatory sinking fund payment", and any payment in excess of such minimum amount provided for by the terms of Debentures of any series is herein referred to as an "optional sinking fund payment". If provided for by the terms of Debentures for any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 3.05. Each sinking fund payment shall be applied to the redemption of Debentures of any series as provided for by the terms of Debentures of such series.

SECTION 3.05. SATISFACTION OF SINKING FUND PAYMENTS WITH DEBENTURES. The Company (i) may deliver outstanding Debentures of a series (other than any previously called for redemption) and (ii) may apply as a credit Debentures of a series which have been redeemed either at the election of the Company pursuant to the terms of such Debentures or through the application of permitted optional sinking fund payments pursuant to the terms of such Debentures, in each case in satisfaction of all or any part of any sinking fund payment with respect to the Debentures of such series required to be made pursuant to the terms of such Debentures as provided for by the terms of such series; provided that such Debentures have not been previously so credited. Such Debentures shall be received and credited for such purpose by the Trustee at the redemption price specified in such Debentures for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

SECTION 3.06. REDEMPTION OF DEBENTURES FOR SINKING FUND. Not less than 45 days prior to each sinking fund payment date for any series of Debentures, the Company will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing sinking fund payment for that series pursuant to the terms for that series, the portion thereof, if any, which is to be satisfied by delivering and crediting Debentures of that series pursuant to Section 3.05 and the basis for such credit and will, together with such Officers' Certificate, deliver to the Trustee any Debentures to be so delivered. Not less than 30 days before each such sinking fund payment date the Trustee shall select the Debentures to be redeemed upon such sinking fund payment date in the manner specified in Section 3.02 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 3.02. Such notice having been duly given, the redemption of such Debentures shall be made upon the terms and in the manner stated in Section

## ARTICLE 4

## PARTICULAR COVENANTS OF THE COMPANY

The Company covenants and agrees for each series of the Debentures as follows:

SECTION 4.01. PAYMENT OF PRINCIPAL OF (AND PREMIUM, IF ANY) AND INTEREST ON DEBENTURES. The Company will duly and punctually pay or cause to be paid the principal of (and premium, if any) and interest on the Debentures of that series at the time and place and in the manner provided herein and established with respect to such Debentures.

SECTION 4.02. MAINTENANCE OF OFFICE OR AGENT FOR PAYMENT OF DEBENTURES, DESIGNATION OF OFFICE OR AGENCY FOR PAYMENT, REGISTRATION, TRANSFER AND EXCHANGE OF DEBENTURES. So long as any series of the Debentures remain outstanding, the Company agrees to maintain an office or agency in each Place of Payment, with respect to each such series and at such other location or locations as may be designated as provided in this Section 4.02, where (i) Debentures of that series may be presented for payment, (ii) Debentures of that series may be presented as hereinabove authorized for registration of transfer and exchange, and (iii) notices and demands to or upon the Company in respect of the Debentures of that series and this Indenture may be given or served, such designation to continue with respect to such office or agency until the Company shall, by written notice signed by its President or a Vice President and delivered to the Trustee, designate some other office or agency for such purposes or any of them. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, notices and demands.

SECTION 4.03. DUTIES OF PAYING AGENT; COMPANY AS PAYMENT AGENT; AND HOLDING SUMS IN TRUST. (a) If the Company shall appoint one or more paying agents for all or any series of the Debentures, other than the Trustee, the Company will cause each such paying agency to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section:

(1) that it will hold all sums held by it as such agent for the payment of the principal of (and premium, if any) or interest on the Debentures of that series (whether such sums have been paid to it by the Company or by any other obligor of such Debentures) in trust for the benefit of the persons entitled thereto:



(2) that it will give the Trustee written notice of any failure by the Company (or by any other obligor of such Debentures) to make any payment of the principal of (and premium, if any) or interest on the Debentures of that series when the same shall be due and payable;

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(3) that it will, at any time during the continuance of any failure referred to in the preceding paragraph (a)(2) above, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such paying agent; and

(4) that it will perform all other duties of paying agent as set forth in this Indenture.

(b) If the Company shall act as its own paying agent with respect to any series of the Debentures, it will on or before each due date of the principal of (and premium, if any) or interest on Debentures of that series, set aside, segregate and hold in trust for the benefit of the persons entitled thereto a sum sufficient to pay such principal (and premium, if any) or interest so becoming due on Debentures of that series until such sums shall be paid to such persons or otherwise disposed of as herein provided and will promptly notify in writing the Trustee of such action, or any failure (by it or any other obligor on such Debentures) to take such action. Whenever the Company shall have one or more paying agents for any series of Debentures, it will, prior to 11:00 a.m., New York City time on each due date of the principal of (and premium, if any) or interest on any Debentures of that series, deposit with the paying agent a sum sufficient to pay the principal (and premium, if any) or interest so becoming due, such sum 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 will promptly notify the Trustee of its action or failure so to act.

(c) Anything in this Section to the contrary notwithstanding, (i) the agreement to hold sums in trust as provided in this Section is subject to the provisions of Section 11.05, and (ii) the Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or direct any paying agent to pay, to the Trustee all sums held in trust by the Company or such paying agent, such sums to be held by the Trustee upon the same terms and conditions as those upon which such sums were held by the Company or such paying agent; and, upon such payment by any paying agent to the Trustee, such paying agent shall be released from all further liability with respect to such money.

SECTION 4.04. APPOINTMENT TO FILL VACANCY IN OFFICE OF TRUSTEE. The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 7.10, a Trustee, so that there shall at all times be a Trustee hereunder.



ARTICLE 5  
DEBENTUREHOLDERS LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE

SECTION 5.01. COMPANY TO FURNISH TRUSTEE INFORMATION AS TO NAMES AND ADDRESSES OF DEBENTUREHOLDERS. The Company will furnish or cause to be furnished to the Trustee (a) on each regular record date (as defined in Section 2.03) a list, in such form as the Trustee may reasonably require, of the names and addresses of the holders of each series of Debentures as of such regular record date, provided, that the Company shall not be obligated to furnish or cause to be furnished such list at any time that the list shall not differ in any respect from the most recent list furnished to the Trustee by the Company and (b) at such other times as the Trustee may request in writing within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished; provided, however, no such list need be furnished for any series for which the Trustee shall be the Debenture Registrar.

SECTION 5.02. TRUSTEE TO PRESERVE INFORMATION AS TO NAMES AND ADDRESSES OF DEBENTUREHOLDERS. (a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the holders of Debentures contained in the most recent list furnished to it as provided in Section 5.01 and as to the names and addresses of holders of Debentures received by the Trustee in its capacity as Debenture Registrar (if acting in such capacity).

(b) The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

(c) In case three or more holders of Debentures of a series (hereinafter referred to as "applicants") apply in writing to the Trustee, and furnish to the Trustee reasonable proof that each such applicant has owned a Debenture for a period of at least six months preceding the date of such application, and such application states that the applicants desire to communicate with other holders of Debentures of such series or holders of all Debentures with respect to their rights under this Indenture or under such Debentures, and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Trustee shall within five Business Days after the receipt of such application, at its election, either:

(1) afford to such applicants access to the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this Section 5.02; or

(2) inform such applicants as to the approximate number of holders of Debentures of such series or of all Debentures, as the case may be, whose names and addresses appear in the information preserved at the

time by the Trustee, in accordance with the provisions of subsection (a) of this Section

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5.02, and as to the approximate cost of mailing to such Debentureholders the form of proxy or other communication, if any, specified in such application.

(d) If the Trustee shall elect not to afford such applicants access to such information, the Trustee shall, upon the written request of such applicants, mail to each holder of such series or of all Debentures, as the case may be, whose name and address appears in the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this Section 5.02, a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless within five days after such tender, the Trustee shall mail to such applicants and file with the Securities and Exchange Commission (the "Commission"), together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee, such mailing would be contrary to the best interests of the holders of Debentures of such series or of all Debentures, as the case may be, or would be in violation of applicable law. Such written statement shall specify the basis of such opinion. If the Commission, after opportunity for a hearing upon the objections specified in the written statement so filed, shall enter an order refusing to sustain any of such objections or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all the objections so sustained have been met and shall enter an order so declaring, the Trustee shall mail copies of such material to all such Debentureholders with reasonable promptness after the entry of such order and the renewal of such tender; otherwise, the Trustee shall be relieved of any obligation or duty to such applicants respecting their application.

(e) Each and every holder of the Debentures, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any paying agent nor any Debenture Registrar shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the holders of Debentures in accordance with the provisions of subsection (c) of this Section 5.02, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under said subsection (c).

SECTION 5.03. ANNUAL AND OTHER REPORTS TO BE FILED BY COMPANY WITH THE TRUSTEE. (a) The Company covenants and agrees to file with the Trustee, within 15 days after the Company is required to file the same with the Commission,

copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; or, if the Company is not required to file information, documents or reports pursuant to either of such sections, then to file with the Trustee and the Commission in accordance with the rules and regulations prescribed

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from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Exchange Act, in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

(b) The Company covenants and agrees to file with the Trustee and the Commission, in accordance with the rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants provided for in this Indenture as may be required from time to time by such rules and regulations.

(c) The Company covenants and agrees to transmit by mail, first class postage prepaid, or reputable over-night delivery service which provides for evidence of receipt, to the Debentureholders, as their names and addresses appear upon the Debenture Register, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by the Company pursuant to subsections (a) and (b) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

(d) The Company covenants and agrees to furnish to the Trustee, on or before May 15 in each calendar year in which any of the Debentures are outstanding, or on or before such other day in each calendar year as the Company and the Trustee may from time to time agree upon, a Certificate as to his or her knowledge of the Company's compliance with all conditions and covenants under this Indenture. For purposes of this subsection (d), such compliance shall be determined without regard to any period of grace or requirement of notice provided under this Indenture.

SECTION 5.04. TRUSTEE TO TRANSMIT ANNUAL REPORT TO DEBENTUREHOLDERS. (a) The Trustee shall transmit to Debentureholders such reports concerning the Trustee

and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. If required by Section 313(a) of the Trust Indenture Act, the Trustee shall, within 60 days after each May 15 following the date of this Indenture, commencing May 15, [\_\_\_\_], deliver to Debentureholders a brief report, dated as of such May 15, which complies with the provisions of such Section 313(a).

(b) The Trustee shall comply with Section 313(b) and 313(c) of the Trust Indenture Act.

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(c) A copy of each such report shall, at the time of such transmission to Debentureholders, be filed by the Trustee with the Company, with each stock exchange upon which any Debentures are listed (if so listed) and also with the Commission. The Company agrees to notify the Trustee when any Debentures become listed on any stock exchange.

#### ARTICLE 6

##### REMEDIES OF THE TRUSTEE AND DEBENTUREHOLDERS ON EVENT OF DEFAULT

SECTION 6.01. EVENTS OF DEFAULT DEFINED. (a) Whenever used herein with respect to Debentures of a particular series, "Event of Default" means any one or more of the following events which has occurred and is continuing:

(1) default in the payment of any installment of interest upon any of the Debentures of that series, as and when the same shall become due and payable, and continuance of such default for a period of 90 days; provided, however, that a valid extension of an interest payment period by the Company, in accordance with the terms of Debentures of that series established pursuant to Section 2.01 hereof, shall not constitute a default in the payment of interest for this purpose;

(2) default (i) in the payment of the principal of (and premium, if any, on) any of the Debentures of that series as and when the same shall become due and payable whether at maturity, upon redemption, by declaring or otherwise, or (ii) in any payment required by any sinking or analogous fund established with respect to that series, and in the case of this clause (ii) only, continuance of such default for a period of 30 days;

(3) failure on the part of the Company duly to observe or perform, in any material respect, any other of the covenants or agreements on the part of the Company with respect to that series contained in such Debentures or otherwise established with respect to that series of Debentures pursuant to Section 2.01 hereof or contained in this Indenture (other than a covenant or agreement which has been expressly included in this Indenture solely for the benefit of one or more

series of Debentures other than such series) for a period of 90 days after the date on which written notice of such failure, requiring the same to be remedied and stating that such notice is a "Notice of Default" hereunder, shall have been given to the Company by the Trustee, by registered or certified mail, or to the Company and the Trustee by the holders of at least 25% in principal amount of the Debentures of that series at the time Outstanding;

(4) a decree or order by a court having jurisdiction in the premises shall have been entered adjudging the Company as bankrupt or insolvent, or

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approving as properly filed a petition seeking liquidation or reorganization of the Company under the Federal Bankruptcy Code or any other similar applicable Federal or State law, and such decree or order shall have continued unvacated and unstayed for a period of 90 days; or an involuntary case shall be commenced under such Code in respect of the Company and shall continue undismissed for a period of 90 days or an order for relief in such case shall have been entered; or a decree or order of a court having jurisdiction in the premises shall have been entered for the appointment on the ground of insolvency or bankruptcy of a receiver or custodian or liquidator or trustee or assignee in bankruptcy or insolvency of the Company or of its property, or for the winding up or liquidation of its affairs, and such decree or order shall have remained in force unvacated and unstayed for a period of 90 days;

(5) the Company shall institute proceedings to be adjudicated a voluntary bankrupt, or shall consent to the filing of a bankruptcy proceeding against it, or shall file a petition or answer or consent seeking liquidation or reorganization under the Federal Bankruptcy Code or any other similar applicable Federal or State law, or shall consent to the filing of any such petition, or shall consent to the appointment on the ground of insolvency or bankruptcy of a receiver or custodian or liquidator or trustee or assignee in bankruptcy or insolvency of it or of its property, or shall make an assignment for the benefit of creditors; or

(6) any other Event of Default provided with respect to Debentures of that series.

(b) In each and every such case, unless the principal of all the Debentures of that series shall have already become due and payable, either the Trustee or the holders of not less than 25% in aggregate principal amount of the Debentures of that series then Outstanding hereunder, by notice in writing to the Company (and to the Trustee if given by such Debentureholders), may declare

the principal of all the Debentures of that series to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything contained in this Indenture or in the Debentures of that series or established with respect to that series pursuant to Section 2.01 to the contrary notwithstanding. Payment of principal and interest on such Debentures shall remain subordinated to the extent provided in Article 14 notwithstanding that such amount shall become immediately due and payable as herein provided.

(c) Section 6.01(b), however, is subject to the condition that if, at any time after the principal of the Debentures of that series shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all matured installments of interest upon all the

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Debentures of that series and the principal of (and premium, if any, on) any and all Debentures of that series which shall have become due otherwise than by acceleration (with interest upon such principal and premium, if any, and, to the extent that such payment is enforceable under applicable law, upon overdue installments of interest, at the rate per annum expressed in the Debentures of that series to the date of such payment or deposit) and the amount payable to the Trustee under Section 7.06, and any and all defaults under the Indenture, other than the nonpayment of principal on Debentures of that series which shall not have become due by their terms, shall have been remedied or waived as provided in Section 6.06 then and in every such case the holders of a majority in aggregate principal amount of the Debentures of that series then outstanding (subject to, in the case of any series of Debentures held as trust assets of a Trust and with respect to which a Security Exchange has not theretofore occurred, such consent of the holders of the Preferred Securities and the Common Securities of such Trust as may be required under the Declaration of Trust of such Trust), by written notice to the Company and to the Trustee, may rescind and annul such declaration and its consequences with respect to that series of Debentures; but no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair any right consequent thereon.

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

(e) If, prior to a Security Exchange with respect to the Debentures of any series, a Default with respect to the Debentures of such series shall have occurred, the Company expressly acknowledges that under the circumstances set forth in the applicable Declaration of Trust, any holder of Preferred Securities of the applicable Trust may, to the fullest extent permitted by law, enforce directly against the Company the applicable Property Trustee's rights hereunder. In furtherance of the foregoing and for the avoidance of any doubt, the Company acknowledges that, under the circumstances described in the applicable Declaration of Trust, any such holder of Preferred Securities, in its own name, in the name of the applicable Trust or in the name of the holders of the Preferred Securities issued by such Trust, may institute or cause to be instituted a proceeding, including, without limitation, any suit in equity, an action at law or other judicial or administrative proceeding, to enforce the applicable Property Trustee's rights hereunder directly against the Company as issuer of the applicable series of Debentures, and may prosecute such proceeding to judgment or final decree, and enforce the same against the Company.

SECTION 6.02. COVENANT OF COMPANY TO PAY TO TRUSTEE WHOLE AMOUNT DUE ON DEBENTURES ON DEFAULT IN PAYMENT OF INTEREST OR PRINCIPAL (AND PREMIUMS, IF ANY). (a) The Company covenants that (1) in case default shall be made in the payment of any

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installment of interest on any of the Debentures of a series, or any payment required by any sinking or analogous fund established with respect to that series as and when the same shall have become due and payable, and such default shall have continued for a period of 30 days, or (2) in case default shall be made in the payment of the principal of (or premium, if any, on) any of the Debentures of a series when the same shall have become due and payable, whether upon maturity of the Debentures of a series or upon redemption or upon declaration or otherwise, then, upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of the holders of the Debentures of that series, the whole amount that then shall have become due and payable on all such Debentures for principal (and premium, if any) or interest, or both, as the case may be, with interest upon the overdue principal (and premium, if any) and (to the extent that payment of such interest is enforceable under applicable law and without duplication of any other amounts paid by the Company or the applicable Trust in respect thereof) upon overdue installments of interest at the rate per annum expressed in the Debentures of that series; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, and the amount payable to the Trustee under Section 7.06.

(b) In case the Company shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such



judgment or final decree against the Company or other obligor upon the Debentures of that series and collect in the manner provided by law out of the property of the Company or other obligor upon the Debentures of that series wherever situated the moneys adjudged or decreed to be payable.

(c) In case of any receivership, insolvency, liquidation, bankruptcy, reorganization, readjustment, arrangement, composition or other judicial proceedings affecting the Company, any other obligor on such Debentures, or the creditors or property of either, the Trustee shall have the power to intervene in such proceedings and take any action therein that may be permitted by the court and shall (except as may be otherwise provided by law) be entitled to file such proofs of claim and other papers and documents as may be necessary or advisable in order to have the claims of the Trustee and of the holders of Debentures of such series allowed for the entire amount due and payable by the Company or such other obligor under the Indenture at the date of institution of such proceedings and for any additional amount which may become due and payable by the Company or such other obligor after such date, and to collect and receive any moneys or other property payable or deliverable on any such claim, and to distribute the same after the deduction of the amount payable to the Trustee under Section 7.06; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of Debentures of such series to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to such Debentureholders, to pay to the Trustee any amount due it under Section 7.06.

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(d) All rights of action and of asserting claims under this Indenture, or under any of the terms established with respect to Debentures of that series, may be enforced by the Trustee without the possession of any of such Debentures, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for payment to the Trustee of any amounts due under Section 7.06, be for the ratable benefit of the holders of the Debentures of such series.

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

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Debentureholder any

plan of reorganization, arrangement, adjustment or composition affecting the Debentures of that series or the rights of any holder thereof or to authorize the Trustee to vote in respect of the claim of any Debentureholder in any such proceeding.

SECTION 6.03. APPLICATION OF MONEYS COLLECTED BY TRUSTEE. Any moneys collected by the Trustee pursuant to this Article with respect to a particular series of Debentures shall be applied in the order following, at the date or dates fixed by the Trustee and, in case of the distribution of such moneys on account of principal (or premium, if any) or interest, upon presentation of the several Debentures of that series, and stamping thereon the payment, if only partially paid, and upon surrender thereof if fully paid:

FIRST: To the payment of costs and expenses of collection and of all amounts payable to the Trustee under Section 7.06;

SECOND: To the payment of all Senior Debt of the Company if and to the extent required by Article 14;

THIRD: To the payment of the amounts then due and unpaid upon Debentures of such series for principal (and premium, if any) and interest, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Debentures for principal (and premium, if any) and interest, respectively; and

FOURTH: The balance, if any, to the Person or Persons entitled thereto.

SECTION 6.04. LIMITATION ON SUITS BY HOLDERS OF DEBENTURES. No holder of any Debenture of any series shall have any right by virtue or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless (i) such holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof with respect to Debentures of such series specifying such Event of Default, as hereinbefore provided, (ii) the holders of not less than 25% in aggregate principal amount of the Debentures of such series then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as trustee hereunder, (iii) shall have offered to the Trustee indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby, (iv) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity, shall have failed to institute any such action, suit or proceeding and (v) during such 60 day period, the holders of a majority in principal amount of the Debentures of that series do not give the Trustee a direction inconsistent with the

request; it being understood and intended, and being expressly covenanted by the taker and holder of every Debenture of such series with every other such taker and holder and Trustee, that no one or more holders of Debentures of such series shall have any right in any manner whatsoever by virtue or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of the holders of any other of such Debentures, or to obtain or seek to obtain priority over or preference to any other such holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Debentures of such series. For the protection and enforcement of the provisions of this Section, each and every Debentureholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provisions of this Indenture, however, the right of any holder of any Debenture to receive payment of the principal of (and premium, if any) and interest on such Debenture, as therein provided, on or after the respective due dates expressed in such Debenture (or in the case of redemption, on the redemption date), or to institute suit for the enforcement of any such payment on or after such respective dates or redemption date, shall not be impaired or affected without the consent of such holder.

SECTION 6.05. REMEDIES CUMULATIVE; DELAY OR OMISSION IN EXERCISE OF RIGHTS NOT WAIVER OF DEFAULT.

(a) All powers and remedies given by this Article 6 to the Trustee or to the Debentureholders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any others thereof or of any other powers and remedies available to the Trustee or the holders of the Debentures, by judicial proceedings or otherwise, to enforce performance or observance of the covenants and agreements contained in this Indenture or otherwise established with respect to such Debentures.

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(b) No delay or omission of the Trustee or of any holder of any of the Debentures to exercise any right or power accruing upon any Event of Default occurring and continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and, subject to the provisions of Section 6.04, every power and remedy given by this Article or by law to the Trustee or to the Debentureholders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Debentureholders.

SECTION 6.06. RIGHTS OF HOLDERS OF MAJORITY IN PRINCIPAL AMOUNT OF DEBENTURES TO DIRECT TRUSTEE AND TO WAIVE DEFAULTS. The holders of a majority in aggregate principal amount of the Debentures of any series at the time Outstanding, determined in accordance with Section 8.04 (with, in the case of

any series of Debentures held as trust assets of a Trust and with respect to which a Security Exchange has not theretofore occurred, such consent of holders of the Preferred Securities and the Common Securities of such Trust as may be required under the Declaration of Trust of such Trust), 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 such series; provided, however, that such direction shall not be in conflict with any rule of law or with this Indenture or unduly prejudicial to the rights of holders of Debentures of any other series at the time Outstanding determined in accordance with Section 8.04 not parties thereto. Subject to the provisions of Section 7.01, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall, by a Responsible Officer or Officers of the Trustee, determine that the proceeding so directed would involve the Trustee in personal liability. The holders of a majority in aggregate principal amount of the Debentures of any series at the time Outstanding affected thereby, determined in accordance with section 8.04 (with, in the case of any series of Debentures held as trust assets of a Trust and with respect to which a Security Exchange has not theretofore occurred, such consent of holders of the Preferred Securities and the Common Securities of such Trust as may be required under the Declaration of Trust of such Trust), may on behalf of the holders of all of the Debentures of such series waive any past default in the performance of any of the covenants contained herein or established pursuant to Section 2.01 with respect to such series and its consequences, except a default in the payment of the principal of, or premium, if any, or interest on, any of the Debentures of that series as and when the same shall become due by the terms of such Debentures otherwise than by acceleration (unless such default has been cured and a sum sufficient to pay all matured installments of interest and principal and any premium has been deposited with the Trustee (in accordance with Section 6.01(c)), or a call for redemption of Debentures of that series. Upon any such waiver, the default covered thereby shall be deemed to be cured for all purposes of this Indenture and the Company, the Trustee and the holders of the Debentures of such series shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

SECTION 6.07. TRUSTEE TO GIVE NOTICE OF DEFAULTS KNOWN TO IT, BUT MAY WITHHOLD IN CERTAIN CIRCUMSTANCES. The Trustee shall, within 90 days after the

occurrence of a default with respect to a particular series, transmit by mail, first class postage prepaid, to the holders of Debentures of that series, as their names and addresses appear upon the Debenture Register, notice of all defaults with respect to that series known to the Trustee, unless such defaults shall have been cured before the giving of such notice (the term "defaults" for the purposes of this Section being hereby defined to be the events specified in subsections (1), (2), (3), (4) and (5) of Section 6.01(a), not including any

periods of grace provided for therein and irrespective of the giving of notice provided for by subsection (3) of Section 6.01(a)); provided, that, except in the case of default in the payment of the principal of (or premium, if any) or interest on any of the Debentures of that series or in the payment of any sinking fund installment established with respect to that series, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or Responsible Officers, of the Trustee in good faith determine that the withholding of such notice is in the interests of the holders of Debentures of that series; provided further, that in the case of any default of the character specified in Section 6.01(a)(3) with respect to Debentures of such series no such notice to the holders of the Debentures of that series shall be given until at least 30 days after the occurrence thereof.

The Trustee shall not be deemed to have knowledge of any default, except (i) a default under subsection (a)(1) or (a)(2) of Section 6.01 as long as the Trustee is acting as paying agent for such series of Debentures or (ii) any default as to which a Responsible Officer of the Trustee shall have received written notice.

SECTION 6.08. REQUIREMENTS OF AN UNDERTAKING TO PAY COSTS IN CERTAIN SUITS UNDER INDENTURE OR AGAINST TRUSTEE. All parties to this Indenture agree, and each holder of any Debentures by his or her acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any Debentureholder, or group of Debentureholders, holding more than 10% in aggregate principal amount of the outstanding Debentures of any series, or to any suit instituted by any Debentureholder for the enforcement of the payment of the principal of (or premium, if any) or interest on any Debenture of such series, on or after the respective due dates expressed in such Debenture or established pursuant to this Indenture.

## ARTICLE 7 CONCERNING THE TRUSTEE

SECTION 7.01. UPON EVENT OF DEFAULT OCCURRING AND CONTINUING, TRUSTEE SHALL EXERCISE POWERS VESTED IN IT, AND USE SAME DEGREE OF CARE AND SKILL IN THEIR EXERCISE, AS PRUDENT INDIVIDUAL WOULD USE. (a) The Trustee, prior to the

occurrence of an Event of Default with respect to Debentures of a series and after the curing of all Events of Default with respect to Debentures of that series which may have occurred, shall undertake to perform with respect to Debentures of such series such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants shall be read into this Indenture against the Trustee. In case an Event of Default with respect to Debentures of a series has occurred (which has not been cured or waived), the Trustee shall exercise with respect to Debentures of that 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 person would exercise or use under the circumstances in the conduct of his or her own affairs.

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

(1) prior to the occurrence of an Event of Default with respect to Debentures of a series and after the curing or waiving of all such Events of Default with respect to that series which may have occurred:

(i) the duties and obligations of the Trustee shall with respect to Debentures of such series be determined solely by the express provisions of this Indenture and the Trust Indenture Act, and the Trustee shall not be liable with respect to Debentures of such series except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on the part of the Trustee, the Trustee may with respect to Debentures of such series conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine

the same to determine whether or not they conform to the requirements of this Indenture but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein;

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

(3) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of not less than a majority in principal amount of the Debentures of any series at the time outstanding 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 Debentures of that series;

(4) none of the provisions contained in this Indenture 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 there is reasonable ground for believing that the repayment of such funds or liability is not reasonably assured to it under the terms of this Indenture or adequate indemnity against such risk is not reasonably assured to it; and

(5) 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 Article 7.

SECTION 7.02. CERTAIN RIGHTS OF THE TRUSTEE. Except as otherwise provided in Section 7.01:

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

(b) Any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by a Board Resolution or an instrument signed in the name of the Company by the President or any Vice President and by the Secretary or an Assistant Secretary or the

Treasurer or an Assistant Treasurer (unless other evidence in respect thereof is specifically prescribed herein);



(c) The Trustee may consult with counsel of its selection 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 or suffered or omitted hereunder in good faith and in reliance thereon;

(d) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Debentureholders, pursuant to the provisions of this Indenture, unless such Debentureholders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby; nothing herein contained shall, however, relieve the Trustee of the obligation, upon the occurrence of an Event of Default with respect to a series of the Debentures (which has not been cured or waived) to exercise with respect to Debentures of that series such of the rights and powers vested in it by this Indenture, and to use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs;

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

(f) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, security, or other papers or documents, unless requested in writing so to do by the holders of not less than a majority in principal amount of the outstanding Debentures of the particular series affected thereby (determined as provided in Section 8.04); PROVIDED, HOWEVER, that if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require indemnity satisfactory to it against such costs, expenses or liabilities as a condition to so proceeding. The reasonable expense of every such examination shall be paid by the Company or, if paid by the Trustee, shall be repaid by the Company upon demand;

(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 rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder.

SECTION 7.03. TRUSTEE NOT LIABLE FOR RECITALS IN INDENTURE OR IN DEBENTURES. (a) The recitals contained herein and in the Debentures (other than the Certificate of Authentication on the Debentures) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same.

(b) The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Debentures.

(c) The Trustee shall not be accountable for the use or application by the Company of any of the Debentures or of the proceeds of such Debentures, or for the use or application of any moneys paid over by the Trustee in accordance with any provision of this Indenture or established pursuant to Section 2.01, or for the use or application of any moneys received by any paying agent other than the Trustee.

SECTION 7.04. TRUSTEE, PAYING AGENT OR DEBENTURE REGISTRAR MAY OWN DEBENTURES. The Trustee or any paying agent or Debenture Registrar, in its individual or any other capacity, may become the owner or pledgee of Debentures and, subject to Sections 7.08 and 7.13, may otherwise deal with the Company with the same rights it would have if it were not Trustee, paying agent or Debenture Registrar.

SECTION 7.05. MONEYS RECEIVED BY TRUSTEE TO BE HELD IN TRUST WITHOUT INTEREST. Subject to the provisions of Section 11.05, all moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any moneys received by it hereunder except such as it may agree in writing to pay thereon.

SECTION 7.06. TRUSTEE ENTITLED TO COMPENSATION, REIMBURSEMENT AND INDEMNITY. (a) The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation as the Company and the Trustee shall from time to time agree in writing (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) for all services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties hereunder of the Trustee, and the Company will pay or

reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances

incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the reasonable expenses and disbursements of its counsel and of all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence or bad faith. The Company also covenants to indemnify each of the Trustee and its officers, agents, directors and employees for, and to hold them harmless against, any loss, liability or expense including taxes (other than taxes based upon, measured by or determined by the income of the Trustee) incurred without negligence or bad faith on the part of the Trustee and arising out of or in connection with the acceptance or administration of this trust, including the reasonable costs and expenses of defending itself against any claim of liability in the premises. The provisions of this Section 7.06 shall survive the termination of this Indenture and resignation or removal of the Trustee.

(b) The obligations of the Company under this Section to compensate and indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall constitute additional indebtedness hereunder. Such additional indebtedness shall be secured by a lien prior to that of the Debentures upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the holders of particular Debentures.

SECTION 7.07. RIGHT OF TRUSTEE TO RELY ON CERTIFICATE OF OFFICERS OF COMPANY WHERE NO OTHER EVIDENCE SPECIFICALLY PRESCRIBED. Except as otherwise provided in Sections 7.01 and 7.02, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering or omitting to take any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee and such certificate, in the absence of negligence or bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted to be taken by it under the provisions of this Indenture upon the faith thereof.

SECTION 7.08. DISQUALIFICATION; CONFLICTING INTERESTS. 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 the Company shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act. Nothing herein shall prevent the Trustee from filing with the Commission the application referred to in the second to last paragraph of said Section 310(b).

SECTION 7.09. REQUIREMENTS FOR ELIGIBILITY OF TRUSTEE. There shall at all times be a Trustee with respect to the Debentures issued hereunder which shall at all times be a corporation or banking association 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 other Person permitted to act as trustee by the Commission, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus

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of at least 50 million U.S. dollars, 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 aforesaid supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. The Company may not, nor may any person directly or indirectly controlling, controlled by, or under common control with the Company, serve as Trustee. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, the Trustee shall resign immediately in the manner and with the effect specified in Section 7.10.

SECTION 7.10. RESIGNATION OF TRUSTEE AND APPOINTMENT OF SUCCESSOR.

(a) The Trustee or any successor hereafter appointed, may at any time resign with respect to the Debentures of one or more series by giving written notice thereof to the Company and by transmitting notice of resignation by mail, first class postage prepaid, to the Debentureholders of such series, as their names and addresses appear upon the Debenture Register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee with respect to Debentures of such series by written instrument, in duplicate, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 60 days after the mailing 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 Debentures of such series, or any Debentureholder of that series who has been a bona fide holder of a Debenture or Debentures for at least six months may, subject to the provisions of Section 6.08, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

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

(1) the Trustee shall fail to comply with the provisions of Section

7.08 after written request therefor by the Company or by any Debentureholder who has been a bona fide holder of a Debenture or Debentures for at least six months; or

(2) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.09 and shall fail to resign after written request therefor by the Company or by any such Debentureholder; or

(3) the Trustee shall become incapable of acting, or shall be adjudged 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,

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conservation or liquidation, then, in any such case, the Company may remove the Trustee with respect to all Debentures and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 30 days after the mailing of such notice of removal, the Trustee so removed may petition any court of competent jurisdiction for the appointment of a successor trustee with respect to Debentures of such series, or any Debentureholder of that series who has been a bona fide holder of a Debenture or Debentures for at least six months may, subject to the provisions of Section 6.08, on behalf of himself and all others similarly situated, petition any such court for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The holders of a majority in aggregate principal amount of the Debentures of any series at the time outstanding may at any time remove the Trustee with respect to such series and appoint a successor trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee with respect to the Debentures of a series pursuant to any of the provisions of this Section shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.11.

(e) Any successor trustee appointed pursuant to this Section may be appointed with respect to the Debentures of one or more series or all of such series, and at any time there shall be only one Trustee with respect to the Debentures of any particular series.

(a) In case of the appointment hereunder of a successor trustee with respect to all Debentures, every such successor trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor trustee all the rights, powers, and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor trustee all property and money held by such retiring Trustee hereunder.

(b) In case of the appointment hereunder of a successor trustee with respect to the Debentures of one or more (but not all) series, the Company, the retiring Trustee and each successor trustee with respect to the Debentures of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor trustee shall accept such appointment and which shall (1) 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 Debentures of that or those series to which the appointment of such successor trustee relates, (2) 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 Debentures 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) 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, 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 that no Trustee shall be responsible for any act or failure to act on the part of any other Trustee hereunder; 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, such retiring Trustee shall with respect to the Debentures of that or those series to which the appointment of such successor trustee relates have no further responsibility for the exercise of rights and powers or for the performance of the duties and obligations vested in the Trustee under this Indenture, and each such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Debentures 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 shall duly assign, transfer and deliver to such successor trustee, to the extent contemplated by such supplemental indenture, the property and money held by such retiring Trustee hereunder with respect to the Debentures of that or those series to which the appointment of such successor trustee relates.

(c) Upon request of any such successor trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor trustee all such rights, power and trusts referred to in paragraph (a) or (b) of this Section 7.11, 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.

(e) Upon acceptance of appointment by a successor trustee as provided in this Section 7.11, the successor trustee shall transmit notice of the succession of such trustee hereunder by mail, first class postage prepaid, to the Debentureholders, as their names and addresses appear upon the Debenture Register.

SECTION 7.12. SUCCESSOR TO TRUSTEE BY MERGER, CONSOLIDATION OR SUCCESSION TO BUSINESS. Any corporation or banking association into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding. In case any Debentures shall have been authenticated, but not made available for delivery, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and make available for delivery the Debentures so authenticated with the same effect as if such successor Trustee had itself authenticated such Debentures.

SECTION 7.13. PREFERENTIAL COLLECTION OF CLAIMS AGAINST THE COMPANY. The Trustee shall comply with Section 311(a) of the Trust Indenture Act, excluding any creditor relationship described in Section 311(b) of the Trust Indenture Act. A Trustee who has resigned or been removed shall be subject to Section 311(a) of the Trust Indenture Act to the extent included therein as though such resignation or removal, as the case may be, had not occurred.



SECTION 8.01. EVIDENCE OF ACTION BY DEBENTUREHOLDERS. Whenever in this Indenture it is provided that the holders of a majority or specified percentage in aggregate principal amount of the Debentures of a particular series may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such majority or specified percentage of that series have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by such holders of Debentures of that series in person or by agent or proxy appointed in writing.

If the Company shall solicit from the Debentureholders of any series any request, demand, authorization, direction, notice, consent, waiver or other action, the Company may, at its option, as evidenced by an Officers' Certificate, fix in advance a record date for such series for the determination of Debentureholders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other action, but the Company shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other action may be given before or after the record date, but only the Debentureholders of record at the close of

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business on the record date shall be deemed to be Debentureholders for the purposes of determining whether Debentureholders of the requisite proportion of Outstanding Debentures of that series have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other action, and for that purpose the Outstanding Debentures of that series shall be computed as of the record date; provided that no such authorization, agreement or consent by such Debentureholders on the record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

SECTION 8.02. PROOF OF EXECUTION OF INSTRUMENTS AND OF HOLDING OF DEBENTURES. Subject to the provisions of Sections 7.01 and 7.02, proof of the execution of any instrument by a Debentureholder (such proof will not require notarization) or his agent or proxy and proof of the holding by any person of any of the Debentures shall be sufficient if made in the following manner;

(a) The fact and date of the execution by any such person of any instrument may be proved in any reasonable manner acceptable to the Trustee.

(b) The ownership of Debentures shall be proved by the Debenture Register of such Debentures or by a certificate of the Debenture Registrar thereof.

(c) The Trustee may require such additional proof of any matter referred to in this Section as it shall deem necessary.

SECTION 8.03. WHO MAY BE DEEMED OWNERS OF DEBENTURES. Prior to the due presentment for registration of transfer of any Debenture, the Company, the Trustee, any paying agent and any Debenture Registrar may deem and treat the person in whose name such Debenture shall be registered in the Debenture Register as the absolute owner of such Debenture (whether or not such Debenture shall be overdue and notwithstanding any notice of ownership or writing thereon made by anyone other than the Debenture Registrar) for the purpose of receiving payment of or on account of the principal of, premium, if any, and (subject to Section 2.03) interest on such Debenture and for all other purposes; and neither the Company nor the Trustee nor any paying agent nor any Debenture Registrar shall be affected by any notice to the contrary.

SECTION 8.04. DEBENTURES OWNED BY THE COMPANY OR CONTROLLED OR CONTROLLING COMPANIES DISREGARDED FOR CERTAIN PURPOSES. In determining whether the holders of the requisite aggregate principal amount of Debentures of a particular series have concurred in any direction, consent or waiver under this Indenture, Debentures of that series which are owned by the Company or any other obligor on the Debentures of that series or by any Subsidiary of the Company or of such other obligor on the Debentures of that series shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, except that for the purpose of determining whether the Trustee shall be

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protected in relying on any such direction, consent or waiver, only Debentures of such series which a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded. Debentures so owned which have been pledged in good faith may be regarded as outstanding for the purposes of this Section, if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right so to act with respect to such Debentures and that the pledgee is not a person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any such other obligor. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

SECTION 8.05. INSTRUMENTS EXECUTED BY DEBENTUREHOLDERS BIND FUTURE HOLDERS. At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the holders of the majority or percentage in aggregate principal amount of the Debentures of a particular series specified in this Indenture in connection with such action, any holder of a Debenture of that series which is shown by the evidence to be included in the Debentures the holders of which have consented to such action may, by filing written notice with the Trustee, and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Debenture. Except as

aforesaid any such action taken by the holder of any Debenture shall be conclusive and binding upon such holder and upon all future holders and owners of such Debenture, and of any Debenture issued in exchange therefor, on registration of transfer thereof or in place thereof, irrespective of whether or not any notation in regard thereto is made upon such Debenture. Any action taken by the holders of the majority or percentage in aggregate principal amount of the Debentures of a particular series specified in this Indenture in connection with such action shall be conclusively binding upon the Company, the Trustee and the holders of all the Debentures of that series.

## ARTICLE 9 SUPPLEMENTAL INDENTURES

SECTION 9.01. PURPOSES FOR WHICH SUPPLEMENTAL INDENTURE MAY BE ENTERED INTO WITHOUT CONSENT OF DEBENTUREHOLDERS. In addition to any supplemental indenture otherwise authorized by this Indenture, the Company and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as then in effect), without the consent of the Debentureholders, for one or more of the following purposes:

(a) to evidence the succession of another corporation or other entity to the Company, and the assumption by any such successor of the obligations of the Company contained herein or otherwise established with respect to the Debentures;

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(b) to add further covenants, restrictions, conditions or provisions for the protection of the holders of the Debentures of all or any series as the Board of Directors and the Trustee shall consider to be for the protection of the holders of Debentures of all or any series, and to make the occurrence, or the occurrence and continuance, of a default in any of such additional covenants, restrictions, conditions or provisions a default or an Event of Default with respect to such series permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth; provided, however, that in respect of any such additional covenant, restriction, condition or provision such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee upon such default or may limit the right of the holders of a majority in aggregate principal amount of the Debentures of such series to waive such default;

(c) to cure any ambiguity or to correct or supplement any provision

contained herein or in any supplemental indenture which may be defective or inconsistent with any other provision contained herein or in any supplemental indenture, or to make such other provisions in regard to matters or questions arising under this Indenture as shall not be inconsistent with the provisions of this Indenture and shall not materially adversely affect the interests of the holders of the Debentures of any series;

(d) to add to, change or eliminate any of the provisions of this Indenture, provided that any such addition, change or elimination shall become effective only when there is no Debenture outstanding of any series created prior to the execution of such supplemental indenture which is entitled to the benefit of such provision;

(e) to provide for the issuance under this Indenture of Debentures in coupon form (including Debentures registrable as to principal only) and to provide for exchangeability of such Debentures with the Debentures issued hereunder in fully registered form and to make all appropriate changes for such purposes;

(f) to evidence and provide for the acceptance of appointment hereunder by a successor trustee with respect to the Debentures;

(g) to qualify or maintain qualification of this Indenture under the Trust Indenture Act;

(h) to establish the form or terms of Debentures of any series as permitted by Section 2.01; or

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(i) to make any addition, change or elimination of any provision of this Indenture that does not adversely affect the rights of any Debentureholder in any material respect.

The Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, and to make any further appropriate agreements and stipulations which may be therein contained, but the Trustee shall not be obligated to, but may in its discretion, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section may be executed by the Company and the Trustee without the consent of the holders of any of the Debentures at the time outstanding, notwithstanding any of the provisions of Section 9.02.

#### SECTION 9.02. MODIFICATION OF INDENTURE WITH CONSENT OF DEBENTUREHOLDERS.

With the consent (evidenced as provided in Section 8.01) of the holders of not less than a majority in aggregate principal amount of the Debentures of each series affected by such supplemental indenture or indentures at the time outstanding (and, in the case of any series of Debentures held as trust assets of a Trust and with respect to which a Security Exchange has not theretofore occurred, such consent of holders of the Preferred Securities and the Common Securities of such Trust as may be required under the Declaration of Trust of such Trust), the Company and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as then in effect) for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the holders of the Debentures of such series under this Indenture; provided, however, that no such supplemental indenture shall (i) extend the fixed maturity of any Debentures of any series, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption thereof, without the consent of the holder of each Debenture so affected or (ii) reduce the aforesaid percentage of Debentures, the holders of which are required to consent to any such supplemental indenture, without the consent of the holders of each Debenture (and, in the case of any series of Debentures held as trust assets of a Trust and with respect to which a Security Exchange has not theretofore occurred, such consent of the holders of the Preferred Securities and the Common Securities of such Trust as may be required under the Declaration of Trust of such Trust) then outstanding and affected thereby.

Upon the request of the Company, and upon the filing with the Trustee of evidence of the consent of Debentureholders (and, in the case of any series of Debentures held as trust assets of a Trust and with respect to which a Security Exchange has not theretofore occurred, such consent of holders of the Preferred Securities and the Common Securities of such Trust as may be required under the Declaration of Trust of such Trust) required to consent thereto as aforesaid, the Trustee shall join with the Company in the

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execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion but shall not be obligated to enter into such supplemental indenture.

It shall not be necessary for the consent of the Debentureholders of any series affected thereby under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of this Section, the Trustee

shall transmit by mail, first class postage prepaid, a notice, setting forth in general terms the substance of such supplemental indenture, to the Debentureholders of all series affected thereby as their names and addresses appear upon the Debenture Register. Any failure of the Trustee to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

SECTION 9.03. EFFECT OF SUPPLEMENTAL INDENTURES. Upon the execution of any supplemental indenture pursuant to the provisions of this Article or of Section 10.01, this Indenture shall, with respect to such series, be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the holders of Debentures of the series affected thereby shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

SECTION 9.04. DEBENTURES MAY BEAR NOTATION OF CHANGES BY SUPPLEMENTAL INDENTURES. Debentures of any series, affected by a supplemental indenture, authenticated and delivered after the execution of such supplemental indenture pursuant to the provisions of this Article or of Section 10.01, may bear a notation in form approved by the Company, provided such form meets the requirements of any exchange upon which such series may be listed or traded, as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Debentures of that series so modified as to conform, in the opinion of the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may be prepared by the Company, authenticated by the Trustee and delivered in exchange for the Debentures of that series then outstanding.

SECTION 9.05. OPINION OF COUNSEL. The Trustee, subject to the provisions of Sections 7.01 and 7.02, may receive an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article 9.

## ARTICLE 10

### CONSOLIDATION, MERGER, SALE OR CONVEYANCE

SECTION 10.01. COMPANY MAY CONSOLIDATE, ETC. ON CERTAIN TERMS. The Company shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any other Person, and the Company shall not permit any other Person to consolidate with or merge into the Company, unless:

- (a) either the Company shall be the continuing corporation, or

the corporation (if other than the Company) formed by such consolidation or into which the Company is merged or to which the properties and assets of the Company substantially as an entity are transferred or leased shall be a corporation, limited liability company, partnership or trust organized and existing under the laws of the United States of America or any state thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, all the obligations of the Company under the Debentures and this Indenture; and

(b) immediately after giving effect to such transaction no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing.

SECTION 10.02. SUCCESSOR CORPORATION SUBSTITUTED. The successor corporation formed by such consolidation or into which the Company is merged or to which such transfer or lease is made shall succeed to and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor corporation had been named as the Company herein, and thereafter (except in the case of a lease to another Person) the predecessor corporation shall be relieved of all obligations and covenants under the Indenture and the Debentures and, in the event of such conveyance or transfer, any such predecessor corporation may be dissolved and liquidated.

SECTION 10.03. OPINION OF COUNSEL. The Trustee, subject to the provisions of Sections 7.01 and 7.02, may receive an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale, conveyance, transfer or other disposition, and any such assumption, comply with the provisions of this Article.

## ARTICLE 11

### SATISFACTION AND DISCHARGE OF INDENTURE; UNCLAIMED MONEYS

SECTION 11.01. SATISFACTION AND DISCHARGE OF INDENTURE. (A) If at any time (a) the Company shall have paid or caused to be paid the principal of, premium, if any, and interest on all the Debentures of any series Outstanding hereunder (other than Debentures of such series which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.07) as and when the same shall have become due and payable, or (b) the Company shall have delivered to the Trustee for cancellation all Debentures of any series theretofore authenticated (other than any Debentures of such series which shall have been destroyed, lost or stolen and which shall have been replaced or paid as provided in Section 2.07) or (c) (i) all the Debentures of any series not theretofore delivered to the Trustee for cancellation shall have become due and payable, or are by their terms will become due and payable within one year or



are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption, and (ii) the Company shall have irrevocably deposited or caused to be deposited with the Trustee as trust funds the entire amount in cash (other than moneys repaid by the Trustee or any paying agent to the Company in accordance with Section 11.04) or Government Obligations, maturing as to principal and interest at such times and in such amounts as will insure the availability of cash, or a combination thereof, sufficient in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay (A) the principal of, premium, if any, and interest on all Debentures of such series on each date that such principal or interest is due and payable and (B) any mandatory sinking fund payments on the dates on which such payments are due and payable in accordance with the terms of the Indenture and the Debentures of such series; and if, in any such case, the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this Indenture shall cease to be of further effect (except as to (i) rights of registration of transfer and exchange of Debentures of such series and the Company's right of optional redemption, if any, (ii) substitution of mutilated, defaced, destroyed, lost or stolen Debentures, (iii) rights of holders of Debentures to receive payments of principal thereof and interest thereon, upon the original stated due dates therefor (but not upon acceleration), and remaining rights of the Debentureholders to receive mandatory sinking fund payments, if any, (iv) the rights, obligations, duties and immunities of the Trustee hereunder, (v) the rights of the holders of Debentures of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them, and (vi) the obligations of the Company under Section 4.02) and the Trustee, on demand of the Company accompanied by an Officers' Certificate and an Opinion of Counsel and at the cost and expense of the Company, shall execute proper instruments acknowledging such satisfaction of and discharging this Indenture; provided, that the rights of the Debentureholders to receive amounts in respect of principal of, premium, if any, and interest on the Debentures held by them shall not be delayed longer than required by then-applicable mandatory rules or policies of any securities exchange or automated quotation system upon which the Debentures are listed or traded. The Company agrees to

reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this Indenture or the Debentures of such series.

(B) The following provisions shall apply to the Debentures of each series unless specifically otherwise provided in a Board Resolution or indenture supplemental hereto provided pursuant to Section 2.01. In addition to discharge of the Indenture pursuant to the next preceding paragraph, the Company shall be

deemed to have paid and discharged the entire indebtedness on all the Debentures of a series on the date of the deposit referred to in subparagraph (a) below, and the provisions of this Indenture with respect to the Debentures of such series shall no longer be in effect (except as to (i) rights of registration of transfer and exchange of Debentures of such series and the Company's right of optional redemption, if any, (ii) substitution of mutilated, defaced, destroyed, lost or stolen Debentures, (iii) rights of holders of Debentures to receive payments of principal thereof and interest thereon, upon the original stated due dates therefor (but not upon acceleration), and remaining rights of the holders of Debentures to receive mandatory sinking fund payments, if any, (iv) the rights, obligations, duties and immunities of the Trustee hereunder, (v) the rights of the Holders of Debentures as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them and (vi) the obligations of the Company under Section 4.02) and the Trustee, at the expense of the Company, shall at the Company's request, execute proper instruments acknowledging the same, if

(a) with reference to this provision the Company has irrevocably deposited or caused to be irrevocably deposited with the Trustee as trust funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the holders of the Debentures of such series (i) cash in an amount, or (ii) Governmental Obligations maturing as to principal and interest at such times and in such amounts as will insure the availability of cash or (iii) a combination thereof, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay (A) the principal of, or premium, if any, and interest on all Debentures of such series on each date that such principal or interest is due and payable and (B) any mandatory sinking fund payments on the dates on which such payments are due and payable in accordance with the terms of the Indenture and the Debentures of such series;

(b) such deposit will not result in a breach or violation of, or constitute a default under, any agreement or instrument to which the Company is a party or by which it is bound;

(c) the Company has delivered to the Trustee an Opinion of Counsel based on the fact that (x) the Company has received from, or there has

been published by, the Internal Revenue Service a ruling or (y) since the date hereof, there has been a change in the applicable Federal income tax law, in either case to the effect that, and such opinion shall confirm that, the holders of the Debentures of such series will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit, defeasance and discharge and will be subject

to Federal income tax on the same amount and in the same manner and at the same times, as would have been the case if such deposit, defeasance and discharge had not occurred;

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

(e) no event or condition shall exist that, pursuant to the provisions of Section 14.02 or 14.03, would prevent the Company from making payments of the principal of, premium, if any, or interest on the Debentures of such series on the date of such deposit.

SECTION 11.02. APPLICATION BY TRUSTEE OF FUNDS DEPOSITED FOR PAYMENT OF DEBENTURES. Subject to Section 11.04, all moneys deposited with the Trustee (or other trustee) pursuant to Section 11.01 shall be held in trust and applied by it to the payment, either directly or through any paying agent (including the Company acting as its own paying agent), to the Holders of the particular Debentures of such series for the payment or redemption of which such moneys have been deposited with the Trustee, of all sums due and to become due thereon for principal and interest; but such money need not be segregated from other funds except to the extent required by law.

SECTION 11.03. REPAYMENT OF MONEYS HELD BY THE PAYING AGENT. In connection with the satisfaction and discharge of this Indenture with respect to Debentures of any series, all moneys then held by any paying agent under the provisions of this Indenture with respect to such series of Debentures shall, upon demand of the Company, be repaid to it or paid to the Trustee and thereupon such paying agent shall be released from all further liability with respect to such moneys.

SECTION 11.04. REPAYMENT OF MONEYS HELD BY THE TRUSTEE. Any moneys deposited with or paid to the Trustee or any paying agent for the payment of the principal of or interest on any Debenture of any series and not applied but remaining unclaimed for two years after the date upon which such principal or interest shall have become due and payable, shall, upon the written request of the Company and unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property law, be repaid to the Company by the Trustee for such series or such paying agent, and a holder of the Debentures of such series shall, unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property laws, thereafter look only to

the Company for any payment which such holder may be entitled to collect, and all liability of the Trustee or any paying agent with respect to such moneys shall thereupon cease; provided, however, that the Trustee or such paying agent,

before being required to make any such repayment with respect to moneys deposited with it for any payment series, shall at the expense of the Company, mail by first-class mail to holders of such Debentures at their addresses as they shall appear on the Debenture Register, notice, that such moneys remain and that, after a date specified therein, which shall not be less than 30 days from the date of such mailing or publication, any unclaimed balance of such money then remaining will be repaid to the Company.

SECTION 11.05. INDEMNIFICATION RELATING TO GOVERNMENTAL OBLIGATIONS. The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the Governmental Obligations deposited pursuant to Section 11.01 or the principal or interest received in respect of such obligations.

## ARTICLE 12

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

SECTION 12.01. INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS OF COMPANY EXEMPT FROM INDIVIDUAL LIABILITY. No recourse under or upon any obligation, covenant or agreement of this Indenture, or of any Debenture, or for any claim based thereon or otherwise in respect thereof, shall be had against any incorporator, stockholder, officer or director, past, present or future as such, of the Company or of any predecessor or successor corporation, either directly or through the Company or any such predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Indenture and the obligations issued hereunder are solely corporate obligations, and that no such personal liability whatever shall attach to, or is or shall be incurred by, the incorporators, stockholders, officers or directors as such, of the Company or of any predecessor or successor corporation, or any of them, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any of the Debentures or implied therefrom; and that any and all such personal liability of every name and nature, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer or director as such, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any of the Debentures or implied therefrom, are hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issuance of such Debentures.

## ARTICLE 13

### MISCELLANEOUS PROVISIONS

SECTION 13.01. SUCCESSORS AND ASSIGNS OF COMPANY BOUND BY INDENTURE. All

the covenants, stipulations, promises and agreements in this Indenture contained by or on behalf of the Company shall bind its successors and assigns, whether so expressed or not.

SECTION 13.02. ACTS OF BOARD, COMMITTEE OR OFFICER OF SUCCESSOR COMPANY VALID. Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or officer of the Company shall and may be done and performed with like force and effect by the corresponding board, committee or officer of any corporation that shall at the time be the lawful sole successor of the Company.

SECTION 13.03. SURRENDER OF POWERS OF THE COMPANY. The Company by instrument in writing executed by authority of two-thirds of its Board of Directors and delivered to the Trustee may surrender any of the powers reserved to the Company and thereupon such power so surrendered shall terminate both as to the Company and as to any successor corporation.

SECTION 13.04. REQUIRED NOTICES OR DEMANDS MAY BE SERVED BY MAIL. Except as otherwise expressly provided herein, any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the holders of Debentures to or on the Company may be given or served by being deposited first class postage prepaid in a post office letterbox addressed (until another address is filed in writing by the Company with the Trustee), as follows: Pogo Producing Company, 5 Greenway Plaza, Suite 2700, Houston, Texas 77046, Attention: Corporate Secretary. Any notice, election, request or demand by the Company or any Debentureholder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or made in writing at the Corporate Trust Office of the Trustee.

SECTION 13.05. INDENTURE AND DEBENTURES TO BE CONSTRUED IN ACCORDANCE WITH LAWS OF THE STATE OF NEW YORK. This Indenture and each Debenture shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of said State (without regard to principles of conflicts of laws thereof).

SECTION 13.06. OFFICERS' CERTIFICATE AND OPINION OF COUNSEL TO BE FURNISHED UPON APPLICATION OR DEMANDS BY COMPANY; STATEMENTS TO BE INCLUDED IN EACH CERTIFICATE OR OPINION WITH RESPECT TO COMPLIANCE WITH CONDITION OR COVENANT.

(a) Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent provided for in this

Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions

precedent have been complied with, except that in the case of any such application or demand as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or demand, no additional certificate or opinion need be furnished.

(b) Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant in this Indenture (other than the certificate provided pursuant to Section 5.03(d) of this Indenture) shall include (1) a statement that the person making such certificate or opinion has read such covenant or condition; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (3) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

SECTION 13.07. PAYMENTS DUE ON SUNDAYS OR HOLIDAYS. Except as provided pursuant to Section 2.01 pursuant to a Board Resolution, and as set forth in an Officers' Certificate, or established in one or more indentures supplemental to the Indenture, in any case where the date of maturity of interest or principal of any Debenture or the date of redemption of any Debenture shall not be a Business Day, then payment of interest or principal (and premium, if any) may be made on the next succeeding Business Day, with the same force and effect as if made on the nominal date of maturity or redemption, and no interest shall accrue for the period after such nominal date.

SECTION 13.08. PROVISIONS REQUIRED BY TRUST INDENTURE ACT OF 1939 TO CONTROL. If and to the extent that any provision of this Indenture 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 13.09. INDENTURE MAY BE EXECUTED BY ITS COUNTERPARTS. This Indenture may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same instrument.

SECTION 13.10. SEPARABILITY OF INDENTURE PROVISIONS. In case any one or more of the provisions contained in this Indenture or in the Debentures of any series shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Indenture or of such Debentures, but this Indenture and such Debentures shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.



SECTION 13.11. ASSIGNMENT BY COMPANY TO A SUBSIDIARY OR AFFILIATE. The Company will have the right at all times to assign any of its rights or obligations under this Indenture to a Subsidiary or an Affiliate of the Company; provided that, in the event of any such assignment, the Company will remain jointly and severally liable for all such obligations. Subject to the foregoing, this Indenture is binding upon and inures to the benefit of the parties thereto and their respective successors and assigns. This Indenture may not otherwise be assigned by the parties hereto (other than pursuant to Article 10).

SECTION 13.12. HOLDERS OF PREFERRED SECURITIES AS THIRD PARTY BENEFICIARIES OF THE INDENTURE; HOLDERS OF PREFERRED SECURITIES MAY INSTITUTE LEGAL PROCEEDINGS AGAINST THE COMPANY IN CERTAIN CASES. The Company acknowledges that, prior to a Security Exchange with respect to Debentures of any series held as trust assets of a Trust, if the Property Trustee of such Trust fails to enforce its rights under this Indenture as the holder of the Debentures of a series held as trust assets of such Trust, any holder of the Preferred Securities of such Trust may in accordance with the provisions of the Declaration of Trust of such Trust, to the fullest extent permitted by law, institute legal proceedings directly against the Company to enforce such Property Trustee's rights under this Indenture without first instituting any legal proceedings against such Property Trustee or any other Person; PROVIDED that, if an Event of Default has occurred and is continuing and such event is attributed to the failure of the Company to pay interest or principal on the Debentures on the date such interest or principal is otherwise payable (or in the case of redemption, on the redemption date), then a holder of Preferred Securities of such Trust may directly institute a proceeding for enforcement of payment to such holder of the principal of or interest on the Debentures having a principal amount equal to the aggregate liquidation amount of the Preferred Securities of such holder (a "Holder Direct Action") on or after the respective due date specified in the Debentures. In connection with such Holder Direct Action, the Company shall be subrogated to the rights of such holder of Preferred Securities to the extent of any payment made by the Company to such holders of Preferred Securities in such Holder Direct Action. Except as provided in the preceding sentences, the holders of Preferred Securities of such Trust shall not be able to exercise directly any other remedy available to the holders of the Debentures.

#### ARTICLE 14 SUBORDINATION OF DEBENTURES

SECTION 14.01. AGREEMENT TO SUBORDINATE. The Company covenants and agrees, and each Debentureholder issued hereunder by his acceptance thereof likewise covenants and agrees, that all Debentures shall be issued subject to the provisions of this Article 14; and each person holding any Debenture, whether upon original issue or upon transfer, assignment or exchange thereof accepts and agrees to be bound by such provisions.



The payment by the Company of the principal of, premium, if any, and interest on all Debentures issued hereunder shall, to the extent and in the manner hereinafter set forth, be subordinated and junior in right of payment to all Senior Debt, whether outstanding at the date of this Indenture or thereafter incurred.

No provision of this Article 14 shall prevent the occurrence of any Default or Event of Default hereunder.

SECTION 14.02. DEFAULT ON SENIOR DEBT. In the event and during the continuation of any default by the Company in the payment of principal, premium, interest or any other payment due on any Senior Debt, or in the event that the maturity of any Senior Debt has been accelerated because of a default, then, in either case, no payment shall be made by the Company with respect to the principal (including redemption payments) of or premium, if any, or interest on the Debentures until such default shall have been cured or waived in writing or shall have ceased to exist or such Senior Debt shall have been discharged or paid in full.

In the event of the acceleration of the maturity of the Debentures, then no payment shall be made by the Company with respect to the principal (including redemption payments) of or premium, if any, or interest on the Debentures until the holders of all Senior Debt outstanding at the time of such acceleration shall receive payment in full of such Senior Debt (including any amounts due upon acceleration).

In the event that, notwithstanding the foregoing, any payment shall be received by the Trustee or any Debentureholder when such payment is prohibited by the preceding paragraphs of this Section 14.02, such payment shall be held in trust for the benefit of, and shall be paid over or delivered to, the holders of Senior Debt or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any of such Senior Debt may have been issued, as their respective interests may appear.

SECTION 14.03. LIQUIDATION; DISSOLUTION; BANKRUPTCY. Upon any payment by the Company or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to creditors upon any liquidation, dissolution, winding up, receivership, reorganization, assignment for the benefit of creditors, marshaling of assets and liabilities or any bankruptcy, insolvency or similar proceedings of the Company, all amounts due or to become due upon all Senior Debt shall first be paid in full, in cash or cash equivalents, or payment thereof provided for in accordance with its terms, before any payment is made on account of the principal of, premium, if any, or interest on the indebtedness evidenced by the Debentures, and upon any such liquidation, dissolution, winding up, receivership, reorganization, assignment, marshaling or proceeding, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the Debentureholders or the Trustee under this Indenture would be entitled, except for the provisions of this Article 14, shall be paid by the Company or by any

liquidating trustee, agent or other Person making such payment or distribution, or by the Debentureholders or by the Trustee under this Indenture if received by them or it, directly to the holders of Senior Debt (pro rata to such holders on the basis of the respective amounts of Senior Debt held by such holders) or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any of such Senior Debt may have been issued, as their respective interests may appear, to the extent necessary to pay all Senior Debt in full (including, without limitation, except to the extent, if any, prohibited by mandatory provisions of law, post-petition interest, in any such proceedings), after giving effect to any concurrent payment or distribution to or for the holders of Senior Debt, before any payment or distribution is made to the holders of the indebtedness evidenced by the Debentures or to the Trustee under this Indenture.

In the event that, notwithstanding the foregoing, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, prohibited by the foregoing, shall be received by the Trustee under this Indenture or the holders of the Debentures before all Senior Debt is paid in full or provision is made for such payment in accordance with its terms, such payment or distribution shall be held in trust for the benefit of and shall be paid over or delivered to the holders of such Senior Debt or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any of such Senior Debt may have been issued, as their respective interests may appear, for application to the payment of all Senior Debt remaining unpaid until all such Senior Debt shall have been paid in full in accordance with its terms, after giving effect to any concurrent payment or distribution to or for the holders of such Senior Debt.

For purposes of this Article 14, the words "cash, property or securities" shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of arrangement, reorganization or readjustment, the payment of which is subordinated (at least to the extent provided in this Article 14 with respect to the Debentures) to the payment of all Senior Debt which may at the time be outstanding; PROVIDED, that (i) the Senior Debt is assumed by the new corporation, if any, resulting from any such arrangement, reorganization or readjustment, and (ii) the rights of the holders of the Senior Debt are not, without the consent of such holders, altered by such arrangement, reorganization or readjustment. 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 in Article 10 shall not be deemed a dissolution, winding-up,

liquidation or reorganization for the purposes of this Section if such other Person shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions stated in Article 10. Nothing in Section 14.02 or this Section 14.03 shall apply to claims of, or payments to, the Trustee under or pursuant to Article 7, except as provided therein. This Section shall be subject to the further provisions of Section 14.06.

SECTION 14.04. SUBROGATION OF DEBENTURES. Subject to the payment in full of all Senior Debt, the rights of the holders of the Debentures shall be subrogated to the rights of the holders of Senior Debt to receive payments or distributions of cash, property or securities of the Company applicable to the Senior Debt until the principal of, premium, if any, and interest on the Debentures shall be paid in full; and, for the purposes of such subrogation, no payments or distributions to the holders of the Senior Debt of any cash, property or securities to which the holders of the Debentures or the Trustee on their behalf would be entitled except for the provisions of this Article 14 and no payment over pursuant to the provisions of this Article 14 to the holders of Senior Debt by holders of the Debentures or the Trustee on their behalf shall, as between the Company, its creditors other than holders of Senior Debt and the holders of the Debentures, be deemed to be a payment by the Company to or on account of the Senior Debt; and no payments or distributions of cash, property or securities to or for the benefit of the Debentureholders pursuant to the subrogation provisions of this Article, which would otherwise have been paid to the holders of Senior Debt shall be deemed to be a payment by the Company to or for the account of the Debentures. It is understood that the provisions of this Article 14 are and are intended solely for the purpose of defining the relative rights of the holders of the Debentures, on the one hand, and the holders of the Senior Debt, on the other hand.

Nothing contained in this Article 14 or elsewhere in this Indenture or in the Debentures is intended to or shall impair, as between the Company, its creditors other than the holders of Senior Debt, and the holders of the Debentures, the obligation of the Company, which is absolute and unconditional, to pay to the holders of the Debentures the principal of, premium, if any, and interest on the Debentures as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the holders of the Debentures and creditors of the Company other than the holders of the Senior Debt, nor shall anything herein or therein prevent the holder of any Debenture or the Trustee on his behalf from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article 14 of the holders of Senior Debt in respect of cash, property or securities of the Company received upon the exercise of any such remedy.

Upon any payment or distribution of assets of the Company referred to in this Article 14, the Trustee, subject to the provisions of Article 7, and the

holders of the Debentures shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which such liquidation, dissolution, winding up, receivership, reorganization, assignment or marshaling proceedings are pending, or a certificate of the receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution, delivered to the Trustee or to the holders of the Debentures, for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of the Senior Debt 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 14.

SECTION 14.05. AUTHORIZATION BY DEBENTUREHOLDERS. Each holder of a Debenture by his acceptance thereof authorizes and directs the Trustee in his behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article 14 and appoints the Trustee his attorney-in-fact for any and all such purposes.

SECTION 14.06. NOTICE TO TRUSTEE. The Company shall give prompt written notice to the Trustee and to any paying agent of any fact known to the Company which would prohibit the making of any payment of moneys to or by the Trustee or any paying agent in respect of the Debentures pursuant to the provisions of this Article 14. Regardless of anything to the contrary contained in this Article 14 or elsewhere in this Indenture, the Trustee shall not be charged with knowledge of the existence of any Senior Debt or of any default or event of default with respect to any Senior Debt or of any other facts which would prohibit the making of any payment of moneys to or by the Trustee, unless and until the Trustee shall have received notice in writing at its principal Corporate Trust Office to that effect signed by an officer of the Company, or by a holder or agent of a holder of Senior Debt who shall have been certified by the Company or otherwise established to the reasonable satisfaction of the Trustee to be such holder or agent, or by the trustee under any indenture pursuant to which Senior Debt shall be outstanding, and, prior to the receipt of any such written notice, the Trustee shall, subject to the provisions of Article 7, be entitled to assume that no such facts exist; PROVIDED, HOWEVER, that if on a date at least three Business Days prior to the date upon which by the terms hereof any such moneys shall become payable for any purpose (including, without limitation, the payment of the principal of, or interest on any Debenture) the Trustee shall not have received with respect to such moneys the notice provided for in this Section 14.06, then, regardless of anything herein to the contrary, the Trustee shall have full power and authority to receive such moneys and to 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 prior date.

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 Debt (or a trustee on behalf of such holder) to establish that such notice has been

given by a holder of Senior Debt or a trustee on behalf of any 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 Debt to participate in any payment or distribution pursuant to this Article 14, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Debt held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article 14, and if such evidence is not furnished the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

SECTION 14.07. TRUSTEE'S RELATION TO SENIOR DEBT. The Trustee and any agent of the Company or the Trustee shall be entitled to all the rights set forth in this

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Article 14 with respect to any Senior Debt which may at any time be held by it in its individual or any other capacity to the same extent as any other holder of Senior Debt and nothing in this Indenture shall deprive the Trustee or any such agent, of any of its rights as such holder. Nothing in this Article 14 shall apply to claims of, or payments to, the Trustee under or pursuant to Article 7.

With respect to the holders of Senior Debt, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article 14, and no implied covenants or obligations with respect to the holders of Senior Debt shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Debt and, subject to the provisions of Article 7, the Trustee shall not be liable to any holder of Senior Debt if it shall pay over or deliver to holders of Debentures, the Company or any other person moneys or assets to which any holder of Senior Debt shall be entitled by virtue of this Article 14 or otherwise.

SECTION 14.08. NO IMPAIRMENT TO SUBORDINATION. No right of any present or future holder of any Senior Debt to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof which any such holder may have or otherwise be charged with.

Without in any way limiting the generality of the foregoing paragraph, the holders of Senior Debt may, at any time and from time to time, without the consent of or notice to the Trustee or the Debentureholders, without incurring responsibility to the Debentureholders and without impairing or releasing the

subordination provided in this Article 14 or the obligations hereunder of the holders of the Debentures to the holders of such Senior Debt, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, such Senior Debt, or otherwise amend or supplement in any manner such Senior Debt or any instrument evidencing the same or any agreement under which such Senior Debt is outstanding; (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing such Senior Debt; (iii) release any Person liable in any manner for the collection of such Senior Debt; and (iv) exercise or refrain from exercising any rights against the Company, as the case may be, and any other Person.

SECTION 14.09. ARTICLE APPLICABLE TO PAYING AGENTS. 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 14 shall in such case (unless the context otherwise requires) 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 14 in addition to or in place of the Trustee.

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SECTION 14.10. TRUST MONEYS NOT SUBORDINATED. Notwithstanding anything contained herein to the contrary, payments from money or the proceeds of U.S. Government Obligations held in trust under Section 11.02 of this Indenture by the Trustee for the payment of principal of and interest on the Debentures shall not be subordinated to the prior payment of any Senior Debt or subject to the restrictions set forth in this Article 14, and none of the Debentureholders shall be obligated to pay over any such amount to the Company or any holder of Senior Debt or any other creditor of the Company.

Wilmington Trust Company, as Trustee, hereby accepts the trust in this Indenture declared and provided, upon the terms and conditions herein above set forth.

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

POGO PRODUCING COMPANY

By \_\_\_\_\_  
Name:  
Title:

By \_\_\_\_\_  
Name:  
Title:



DECLARATION OF TRUST, dated as of March 17, 1999 between Pogo Producing Company, a Delaware corporation, as Sponsor (the "Sponsor"), and Wilmington Trust Company, not in its individual capacity but solely as trustee (the "Property Trustee"), Wilmington Trust Company, not in its individual capacity but solely as trustee (the "Delaware Trustee"), and Gerald A. Morton, not in his individual capacity but solely as trustee (the Property Trustee, Delaware Trustee and such individual as trustee, collectively the "Trustees"). The Sponsor and the Trustees hereby agree as follows:

1. The Delaware business trust created hereby shall be known as "Pogo Trust I" (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.

2. The Sponsor hereby assigns, transfers, conveys and sets over to the Trust the sum of \$10. The Trust hereby acknowledges receipt of such amount from the Sponsor, which amount shall constitute the initial trust estate. It is the intention of the parties hereto that the Trust created hereby constitute a business trust under Chapter 38 of Title 12 of the Delaware Code, 12 DEL. CODE Section 3801 ET SEQ. (the "Business Trust Act"), and that this document constitutes the governing instrument of the Trust. The Trustees are hereby authorized and directed to execute and file a certificate of trust with the Secretary of State of the State of Delaware in the form attached hereto in accordance with the provisions of the Business Trust Act. The Trust is hereby established by the Sponsor and the Trustees for the purposes of (i) issuing preferred securities representing undivided beneficial interests in the assets of the Trust ("Preferred Securities") in exchange for cash and investing the proceeds thereof in junior subordinated debentures of the Sponsor, (ii) issuing and selling common securities representing an undivided beneficial interest in the assets of the Trust ("Common Securities") to the Sponsor in exchange for cash and investing the proceeds thereof in additional junior subordinated debentures of the Sponsor and (iii) engaging in such other activities as are necessary, convenient or incidental thereto.

3. The Sponsor and the Trustees will enter into an Amended and Restated Declaration of Trust, satisfactory to each such party and substantially in the form included as an exhibit to the 1933 Act Registration Statement referred to below, to provide for the contemplated operation of the Trust created hereby and the issuance of the Preferred Securities and Common Securities referred to therein. Prior to the execution and delivery of such Amended and Restated Declaration of Trust, the Trustees shall not have any duty or obligation hereunder or with respect to the trust estate, except as otherwise required by applicable law or as may be necessary to obtain prior to such execution and delivery any licenses, consents or approvals required by applicable law or otherwise.

4. The Sponsor, as the sponsor of the Trust, is hereby authorized (i) to prepare and file with the Securities and Exchange Commission (the "Commission") and execute, in each case on behalf of the Trust, (a) a Registration Statement on Form S-3 (the "1933 Act Registration Statement"), including any pre-effective or post-effective amendments to such Registration

Statement, relating to the registration under the Securities Act of 1933, as amended, of the Preferred Securities and certain other securities of the Sponsor and (b) if the Sponsor shall deem it desirable, a Registration Statement on Form 8-A (the "1934 Act Registration Statement") (including all pre-effective and post-effective amendments thereto) relating to the registration of the Preferred Securities under Section 12 of the Securities Exchange Act of 1934, as amended; (ii) if the Sponsor shall deem it desirable, to prepare and file with the New York Stock Exchange or one or more national securities exchange(s) (each, an "Exchange") or the National Association of Securities Dealers, Inc. (the "NASD") and execute on behalf of the Trust a listing application or applications and all other applications, statements, certificates, agreements and other instruments as shall be necessary or desirable to cause the Preferred Securities to be listed on any such Exchange or the NASD's Nasdaq National Market ("Nasdaq"); (iii) to prepare and file and execute on behalf of the Trust such applications, reports, surety bonds, irrevocable consents, appointments of attorney for service of process and other papers and documents as the Sponsor, on behalf of the Trust, may deem necessary or desirable to register the Preferred Securities under the securities or "Blue Sky" laws of such jurisdictions as the Sponsor, on behalf of the Trust, may deem necessary or desirable, (iv) to negotiate the terms of and execute on behalf of the Trust an underwriting agreement among the Trust, the Sponsor and any underwriter(s), dealer(s) or agent(s) relating to the Preferred Securities, as the Sponsor, on behalf of the Trust, may deem necessary or desirable and (v) to execute and deliver on behalf of the Trust letters or documents to, or instruments for filing with, a depository relating to the Preferred Securities. In the event that any filing referred to in clauses (i)-(iii) above is required by the rules and regulations of the Commission, any Exchange, Nasdaq, the NASD or state securities or blue sky laws, to be executed on behalf of the Trust by the Trustees, any Trustee appointed pursuant to Section 6 hereof, in their capacities as Trustees of the Trust, and the Sponsor are hereby authorized and directed to join in any such filing and to execute on behalf of the Trust any and all of the foregoing, it being understood that the Property Trustee, the Delaware Trustee and Gerald A. Morton, in his capacity as a Trustee of the Trust, shall not be required to join in any such filing or execute on behalf of the Trust any such document unless required by the rules and regulations of the Commission, any Exchange, Nasdaq, the NASD or state securities or blue sky laws. In connection with all of the foregoing, the Sponsor and each Trustee, solely in its capacity as Trustee of the Trust, hereby constitutes and appoints Paul G. Van Wagenen, Thomas E. Hart and Gerald A. Morton, and each of them, his, her or its, as the case may be, true and lawful attorneys-in-fact, and agents, with full power of substitution and resubstitution, for the Sponsor or such Trustee and in the Sponsor's or such Trustee's name, place and stead, in any and all capacities, to sign and file (i)

any and all amendments (including post-effective amendments) to the 1933 Act Registration Statement and the 1934 Act Registration Statement with all exhibits thereto, and other documents in connection therewith, and (ii) a registration statement, and any and all amendments thereto, relating thereto filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended, with the Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as the Sponsor or such Trustee might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

5. (a) Except as otherwise expressly required in Section 4 of this Trust Agreement, the Trustees shall not have any duty or liability with respect to the administration of the Trust, the investment of the Trust's property or the payment of dividends or other distributions of income or principal to the Trust's beneficiaries, and no implied obligations shall be inferred from this Trust Agreement on the part of the Trustees. the Trustees shall not be liable for the acts or omissions of the Sponsor or any other person who acts on behalf of the Trust or shall the Trustees be liable for any act or omission by them in good faith in accordance with the directions of the Sponsor.

(b) The Trustees accept the trusts hereby created and agrees to perform their duties hereunder with respect to the same but only upon the terms of this Trust Agreement. The Trustees shall not be personally liable under any circumstances, except for their own willful misconduct or gross negligence. In particular, but not by way of limitation:

(i) The Trustees shall not be personally liable for any error of judgment made in good faith by an officer or employee of the Trustees;

(ii) No provision of this Trust Agreement shall require the Trustees to expend or risk their personal funds or otherwise incur any financial liability in the performance of its rights or duties hereunder, if the Trustees shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured or provided to them;

(iii) Under no circumstance shall the Trustees be personally liable for any representation, warranty, covenant or indebtedness of the Trust;

(iv) The Trustees shall not be personally responsible for or in respect of the genuineness, form or value of the Trust property, the validity or sufficiency of this Trust Agreement or for the due execution hereof by the Sponsor;

(v) In the event that they are unsure as to the course of action to be taken by them hereunder, the Trustees may request instructions from the Sponsor and to the extent the Trustees follow such instructions in good faith they shall not be liable to any person. In the event that no instructions are provided within the time requested by the Trustees, they shall have no duty or liability for their failure to take any action or for any action they take in good faith;

(vi) All funds deposited with the Trustees hereunder may be held in a non-interest bearing trust account and the Trustees shall not be liable for any interest thereon or for any loss as a result of the investment thereof at the direction of the Sponsor;

(vii) To the extent that, at law or in equity, the Trustees have duties and liabilities relating thereto to the Sponsor or the Trust, the Sponsor agrees that such duties and liabilities are replaced by the terms of this Trust Agreement.

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(c) The Trustees shall incur no liability to anyone in acting upon any document believed by them to be genuine and believed by them to be signed by the proper party or parties. The Trustees may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the manner of ascertainment is not specifically prescribed herein, the Trustees may for all purposes hereof rely on a certificate, signed by the Sponsor, as to such fact or matter, and such certificate shall constitute full protection to the Trustees for any action taken or omitted to be taken by them in good faith in reliance thereon.

(d) In the exercise or administration of the trusts hereunder, the Trustees (i) may act directly or, at the expense of the Sponsor, through agents or attorneys, and the Trustees shall not be liable for the default or misconduct of such attorneys or agents if such agents and attorneys shall have been selected by the Trustees in good faith, and (ii) may, at the expense of the Sponsor, consult with counsel, accountants and other experts, and they shall not be liable for anything done, suffered or omitted in good faith by them in accordance with the advice or opinion of any such counsel, accountants or other experts.

(e) Notwithstanding anything contained herein to the contrary, the Delaware Trustee shall not be required to take any action in any jurisdiction other than the State of Delaware if the taking of such action will (i) require the consent or approval or authorization or order of or the giving of notice to, or the registration with or the taking of any other action in respect of, any state or other governmental authority or agency of any jurisdiction other than the State of Delaware, (ii) result in any fee, tax or other governmental charge

under the laws of any jurisdiction or any political subdivision thereof in existence becoming payable by the Delaware Trustee, or (iii) subject the Delaware Trustee to personal jurisdiction in any jurisdiction other than the State of Delaware for causes of action arising from acts unrelated to the consummation of the transactions by the Delaware Trustee, as the case may be, contemplated hereby.

(f) In accepting and performing the trust hereby created, the Trustees act solely as trustees hereunder and not in their individual capacity, and all persons having any claim against the Trustees by reason of the transactions contemplated by this Trust Agreement shall look only to the Trust's property for payment or satisfaction thereof.

6. The Sponsor hereby agrees to (i) compensate the Trustees for their services hereunder in an amount separately agreed to by the Sponsor and the Trustees, (ii) reimburse the Trustees for all reasonable expenses (including reasonable fees and expenses of counsel and other experts) and (iii) indemnify, defend and hold harmless the Trustees and any of the officers, directors, employees and agents of the Trustees (the "Indemnified Persons") from and against any and all losses, damages, liabilities, claims, actions, suits, costs, expenses, disbursements (including reasonable fees and expenses of their counsel), taxes and penalties of any kind and nature whatsoever (collectively, "Expenses"), to the extent that such Expenses arise out of or are imposed upon or asserted at any time against such Indemnified Person with respect to the performance of this Trust Agreement, the

creation, operation or termination of the Trust or the transactions contemplated hereby; PROVIDED, HOWEVER, that the Sponsor shall not be required to indemnify any Indemnified Person for any Expenses which are a result of the willful misconduct, bad faith or gross negligence of such Indemnified Person. The obligations of the Sponsor under this Section 6 shall survive the termination of this Trust Agreement.

7. This Declaration of Trust may be executed in one or more counterparts.

8. The number of Trustees initially shall be three (3) and thereafter the number of Trustees shall be such number as shall be fixed from time to time by a written instrument signed by the Sponsor which may increase or decrease the number of Trustees; provided, however, that the number of Trustees shall in no event be less than three (3); and provided, further that to the extent required by the Business Trust Act, one Trustee shall either be a natural person who is a resident of the State of Delaware or, if not a natural person, an entity which has its principal place of business in the State of Delaware and meets other requirements imposed by applicable law. Subject to the foregoing, the Sponsor is entitled to appoint or remove without cause any Trustee at any time. Any Trustee may resign upon thirty days' prior notice to the Sponsor.

9. Wilmington Trust Company, in its capacity as Delaware Trustee, shall not have any of the powers or duties of the Trustees set forth herein and shall be a Trustee of the Trust for the sole purpose of satisfying the requirements of Section 3807(a) of the Business Trust Act.

10. The Trust may be dissolved and terminated before the issuance of any Preferred Securities at the election of the Sponsor.

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

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

POGO PRODUCING COMPANY,  
as Sponsor

By: /s/ Gerald A. Morton

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Name: Gerald A. Morton  
Title: Vice President--Law and  
Corporate Secretary

WILMINGTON TRUST COMPANY,  
not in its individual capacity but solely as  
Property Trustee

By: /s/ Jill K. Morrison

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Name: Jill K. Morrison  
Title: Administrative Account Manager

WILMINGTON TRUST COMPANY,  
not in its individual capacity but solely as  
Delaware Trustee

By: /s/ Jill K. Morrison

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Name: Jill K. Morrison  
Title: Administrative Account Manager

GERALD A. MORTON,  
not in his individual capacity but solely as  
Trustee

By: /s/ Gerald A. Morton  
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6

CERTIFICATE OF TRUST  
OF  
POGO TRUST I

THIS CERTIFICATE OF TRUST of Pogo Trust I (the "TRUST"), dated as of March 17, 1999, is being duly executed and filed by the undersigned, as trustees, with the Secretary of State of the State of Delaware to form a business trust under the Delaware Business Trust Act (12 DEL. CODE Section 3801 ET SEQ.).

1. NAME. The name of the business trust being formed hereby is Pogo Trust I.
2. DELAWARE TRUSTEE. The name and business address of the trustee of the Trust with a principal place of business in the State of Delaware are Wilmington Trust Company, 1100 North Market Street, Wilmington, Delaware 19810.
3. EFFECTIVE DATE. This Certificate of Trust shall be effective at the time of its filing with the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the undersigned, being the sole trustees of the Trust at the time of filing this Certificate of Trust, have executed this Certificate of Trust as of the date first above written.

WILMINGTON TRUST COMPANY,  
as Delaware Trustee

By: /s/ Jill K. Morrison  
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Name: Jill K. Morrison



Title: Administrative Account Manager

WILMINGTON TRUST COMPANY,  
as Property Trustee

By: /s/ Jill K. Morrison

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Name: Jill K. Morrison

Title: Administrative Account Manager

Gerald A. Morton,  
as Regular Trustee

By: /s/ Gerald A. Morton

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DECLARATION OF TRUST, dated as of March 17, 1999 between Pogo Producing Company, a Delaware corporation, as Sponsor (the "Sponsor"), and Wilmington Trust Company, not in its individual capacity but solely as trustee (the "Property Trustee"), Wilmington Trust Company, not in its individual capacity but solely as trustee (the "Delaware Trustee"), and Gerald A. Morton, not in his individual capacity but solely as trustee (the Property Trustee, Delaware Trustee and such individual as trustee, collectively the "Trustees"). The Sponsor and the Trustees hereby agree as follows:

1. The Delaware business trust created hereby shall be known as "Pogo Trust II" (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.

2. The Sponsor hereby assigns, transfers, conveys and sets over to the Trust the sum of \$10. The Trust hereby acknowledges receipt of such amount from the Sponsor, which amount shall constitute the initial trust estate. It is the intention of the parties hereto that the Trust created hereby constitute a business trust under Chapter 38 of Title 12 of the Delaware Code, 12 DEL. CODE Section 3801 ET SEQ. (the "Business Trust Act"), and that this document constitutes the governing instrument of the Trust. The Trustees are hereby authorized and directed to execute and file a certificate of trust with the Secretary of State of the State of Delaware in the form attached hereto in accordance with the provisions of the Business Trust Act. The Trust is hereby established by the Sponsor and the Trustees for the purposes of (i) issuing preferred securities representing undivided beneficial interests in the assets of the Trust ("Preferred Securities") in exchange for cash and investing the proceeds thereof in junior subordinated debentures of the Sponsor, (ii) issuing and selling common securities representing an undivided beneficial interest in the assets of the Trust ("Common Securities") to the Sponsor in exchange for cash and investing the proceeds thereof in additional junior subordinated debentures of the Sponsor and (iii) engaging in such other activities as are necessary, convenient or incidental thereto.

3. The Sponsor and the Trustees will enter into an Amended and Restated Declaration of Trust, satisfactory to each such party and substantially in the form included as an exhibit to the 1933 Act Registration Statement referred to below, to provide for the contemplated operation of the Trust created hereby and the issuance of the Preferred Securities and Common Securities referred to therein. Prior to the execution and delivery of such Amended and Restated Declaration of Trust, the Trustees shall not have any duty or obligation hereunder or with respect to the trust estate, except as otherwise required by applicable law or as may be necessary to obtain prior to such execution and delivery any licenses, consents or approvals required by applicable law or otherwise.

4. The Sponsor, as the sponsor of the Trust, is hereby authorized (i) to prepare and file with the Securities and Exchange Commission (the "Commission") and execute, in each case on behalf of the Trust, (a) a Registration Statement on Form S-3 (the "1933 Act Registration Statement"), including any pre-effective or post-effective amendments to such Registration

Statement, relating to the registration under the Securities Act of 1933, as amended, of the Preferred Securities and certain other securities of the Sponsor and (b) if the Sponsor shall deem it desirable, a Registration Statement on Form 8-A (the "1934 Act Registration Statement") (including all pre-effective and post-effective amendments thereto) relating to the registration of the Preferred Securities under Section 12 of the Securities Exchange Act of 1934, as amended; (ii) if the Sponsor shall deem it desirable, to prepare and file with the New York Stock Exchange or one or more national securities exchange(s) (each, an "Exchange") or the National Association of Securities Dealers, Inc. (the "NASD") and execute on behalf of the Trust a listing application or applications and all other applications, statements, certificates, agreements and other instruments as shall be necessary or desirable to cause the Preferred Securities to be listed on any such Exchange or the NASD's Nasdaq National Market ("Nasdaq"); (iii) to prepare and file and execute on behalf of the Trust such applications, reports, surety bonds, irrevocable consents, appointments of attorney for service of process and other papers and documents as the Sponsor, on behalf of the Trust, may deem necessary or desirable to register the Preferred Securities under the securities or "Blue Sky" laws of such jurisdictions as the Sponsor, on behalf of the Trust, may deem necessary or desirable, (iv) to negotiate the terms of and execute on behalf of the Trust an underwriting agreement among the Trust, the Sponsor and any underwriter(s), dealer(s) or agent(s) relating to the Preferred Securities, as the Sponsor, on behalf of the Trust, may deem necessary or desirable and (v) to execute and deliver on behalf of the Trust letters or documents to, or instruments for filing with, a depository relating to the Preferred Securities. In the event that any filing referred to in clauses (i)-(iii) above is required by the rules and regulations of the Commission, any Exchange, Nasdaq, the NASD or state securities or blue sky laws, to be executed on behalf of the Trust by the Trustees, any Trustee appointed pursuant to Section 6 hereof, in their capacities as Trustees of the Trust, and the Sponsor are hereby authorized and directed to join in any such filing and to execute on behalf of the Trust any and all of the foregoing, it being understood that the Property Trustee, the Delaware Trustee and Gerald A. Morton, in his capacity as a Trustee of the Trust, shall not be required to join in any such filing or execute on behalf of the Trust any such document unless required by the rules and regulations of the Commission, any Exchange, Nasdaq, the NASD or state securities or blue sky laws. In connection with all of the foregoing, the Sponsor and each Trustee, solely in its capacity as Trustee of the Trust, hereby constitutes and appoints Paul G. Van Wagenen, Thomas E. Hart and Gerald A. Morton, and each of them, his, her or its, as the case may be, true and lawful attorneys-in-fact, and agents, with full power of substitution and resubstitution, for the Sponsor or such Trustee and in the Sponsor's or such Trustee's name, place and stead, in any and all capacities, to sign and file (i)

any and all amendments (including post-effective amendments) to the 1933 Act Registration Statement and the 1934 Act Registration Statement with all exhibits thereto, and other documents in connection therewith, and (ii) a registration statement, and any and all amendments thereto, relating thereto filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended, with the Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as the Sponsor or such Trustee might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

5. (a) Except as otherwise expressly required in Section 4 of this Trust Agreement, the Trustees shall not have any duty or liability with respect to the administration of the Trust, the investment of the Trust's property or the payment of dividends or other distributions of income or principal to the Trust's beneficiaries, and no implied obligations shall be inferred from this Trust Agreement on the part of the Trustees. the Trustees shall not be liable for the acts or omissions of the Sponsor or any other person who acts on behalf of the Trust or shall the Trustees be liable for any act or omission by them in good faith in accordance with the directions of the Sponsor.

(b) The Trustees accept the trusts hereby created and agrees to perform their duties hereunder with respect to the same but only upon the terms of this Trust Agreement. The Trustees shall not be personally liable under any circumstances, except for their own willful misconduct or gross negligence. In particular, but not by way of limitation:

(i) The Trustees shall not be personally liable for any error of judgment made in good faith by an officer or employee of the Trustees;

(ii) No provision of this Trust Agreement shall require the Trustees to expend or risk their personal funds or otherwise incur any financial liability in the performance of its rights or duties hereunder, if the Trustees shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured or provided to them;

(iii) Under no circumstance shall the Trustees be personally liable for any representation, warranty, covenant or indebtedness of the Trust;

(iv) The Trustees shall not be personally responsible for or in respect of the genuineness, form or value of the Trust property, the validity or sufficiency of this Trust Agreement or for the due execution hereof by the Sponsor;

(v) In the event that they are unsure as to the course of action to be taken by them hereunder, the Trustees may request instructions from the Sponsor and to the extent the Trustees follow such instructions in good faith they shall not be liable to any person. In the event that no instructions are provided within the time requested by the Trustees, they shall have no duty or liability for their failure to take any action or for any action they take in good faith;

(vi) All funds deposited with the Trustees hereunder may be held in a non-interest bearing trust account and the Trustees shall not be liable for any interest thereon or for any loss as a result of the investment thereof at the direction of the Sponsor;

(vii) To the extent that, at law or in equity, the Trustees have duties and liabilities relating thereto to the Sponsor or the Trust, the Sponsor agrees that such duties and liabilities are replaced by the terms of this Trust Agreement.

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(c) The Trustees shall incur no liability to anyone in acting upon any document believed by them to be genuine and believed by them to be signed by the proper party or parties. The Trustees may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the manner of ascertainment is not specifically prescribed herein, the Trustees may for all purposes hereof rely on a certificate, signed by the Sponsor, as to such fact or matter, and such certificate shall constitute full protection to the Trustees for any action taken or omitted to be taken by them in good faith in reliance thereon.

(d) In the exercise or administration of the trusts hereunder, the Trustees (i) may act directly or, at the expense of the Sponsor, through agents or attorneys, and the Trustees shall not be liable for the default or misconduct of such attorneys or agents if such agents and attorneys shall have been selected by the Trustees in good faith, and (ii) may, at the expense of the Sponsor, consult with counsel, accountants and other experts, and they shall not be liable for anything done, suffered or omitted in good faith by them in accordance with the advice or opinion of any such counsel, accountants or other experts.

(e) Notwithstanding anything contained herein to the contrary, the Delaware Trustee shall not be required to take any action in any jurisdiction other than the State of Delaware if the taking of such action will (i) require the consent or approval or authorization or order of or the giving of notice to, or the registration with or the taking of any other action in respect of, any state or other governmental authority or agency of any jurisdiction other than the State of Delaware, (ii) result in any fee, tax or other governmental charge

under the laws of any jurisdiction or any political subdivision thereof in existence becoming payable by the Delaware Trustee, or (iii) subject the Delaware Trustee to personal jurisdiction in any jurisdiction other than the State of Delaware for causes of action arising from acts unrelated to the consummation of the transactions by the Delaware Trustee, as the case may be, contemplated hereby.

(f) In accepting and performing the trust hereby created, the Trustees act solely as trustees hereunder and not in their individual capacity, and all persons having any claim against the Trustees by reason of the transactions contemplated by this Trust Agreement shall look only to the Trust's property for payment or satisfaction thereof.

6. The Sponsor hereby agrees to (i) compensate the Trustees for their services hereunder in an amount separately agreed to by the Sponsor and the Trustees, (ii) reimburse the Trustees for all reasonable expenses (including reasonable fees and expenses of counsel and other experts) and (iii) indemnify, defend and hold harmless the Trustees and any of the officers, directors, employees and agents of the Trustees (the "Indemnified Persons") from and against any and all losses, damages, liabilities, claims, actions, suits, costs, expenses, disbursements (including reasonable fees and expenses of their counsel), taxes and penalties of any kind and nature whatsoever (collectively, "Expenses"), to the extent that such Expenses arise out of or are imposed upon or asserted at any time against such Indemnified Person with respect to the performance of this Trust Agreement, the

creation, operation or termination of the Trust or the transactions contemplated hereby; PROVIDED, HOWEVER, that the Sponsor shall not be required to indemnify any Indemnified Person for any Expenses which are a result of the willful misconduct, bad faith or gross negligence of such Indemnified Person. The obligations of the Sponsor under this Section 6 shall survive the termination of this Trust Agreement.

7. This Declaration of Trust may be executed in one or more counterparts.

8. The number of Trustees initially shall be three (3) and thereafter the number of Trustees shall be such number as shall be fixed from time to time by a written instrument signed by the Sponsor which may increase or decrease the number of Trustees; provided, however, that the number of Trustees shall in no event be less than three (3); and provided, further that to the extent required by the Business Trust Act, one Trustee shall either be a natural person who is a resident of the State of Delaware or, if not a natural person, an entity which has its principal place of business in the State of Delaware and meets other requirements imposed by applicable law. Subject to the foregoing, the Sponsor is entitled to appoint or remove without cause any Trustee at any time. Any Trustee may resign upon thirty days' prior notice to the Sponsor.

9. Wilmington Trust Company, in its capacity as Delaware Trustee, shall not have any of the powers or duties of the Trustees set forth herein and shall be a Trustee of the Trust for the sole purpose of satisfying the requirements of Section 3807(a) of the Business Trust Act.

10. The Trust may be dissolved and terminated before the issuance of any Preferred Securities at the election of the Sponsor.

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

5

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

POGO PRODUCING COMPANY,  
as Sponsor

By: /s/ Gerald A. Morton

-----  
Name: Gerald A. Morton  
Title: Vice President--Law and  
Corporate Secretary

WILMINGTON TRUST COMPANY,  
not in its individual capacity but solely as  
Property Trustee

By: /s/ Jill K. Morrison

-----  
Name: Jill K. Morrison  
Title: Administrative Account Manager

WILMINGTON TRUST COMPANY,  
not in its individual capacity but solely as  
Delaware Trustee

By: /s/ Jill K. Morrison

-----  
Name: Jill K. Morrison



GERALD A. MORTON,  
not in his individual capacity but solely as  
Trustee

By: /s/ Gerald A. Morton  
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6

CERTIFICATE OF TRUST  
OF  
POGO TRUST II

THIS CERTIFICATE OF TRUST of Pogo Trust II (the "TRUST"), dated as of March 17, 1999, is being duly executed and filed by the undersigned, as trustees, with the Secretary of State of the State of Delaware to form a business trust under the Delaware Business Trust Act (12 DEL. CODE Section 3801 ET SEQ.).

4. NAME. The name of the business trust being formed hereby is Pogo Trust II.

5. DELAWARE TRUSTEE. The name and business address of the trustee of the Trust with a principal place of business in the State of Delaware are Wilmington Trust Company, 1100 North Market Street, Wilmington, Delaware 19810.

6. EFFECTIVE DATE. This Certificate of Trust shall be effective at the time of its filing with the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the undersigned, being the sole trustees of the Trust at the time of filing this Certificate of Trust, have executed this Certificate of Trust as of the date first above written.

WILMINGTON TRUST COMPANY,  
as Delaware Trustee

By: /s/ Jill K. Morrison

-----  
Name: Jill K. Morrison  
Title: Administrative Account Manager

WILMINGTON TRUST COMPANY,  
as Property Trustee

By: /s/ Jill K. Morrison  
-----

Name: Jill K. Morrison  
Title: Administrative Account Manager

Gerald A. Morton,  
as Regular Trustee

By: /s/ Gerald A. Morton  
-----

-----  
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FORM OF  
AMENDED AND RESTATED DECLARATION OF TRUST  
OF  
POGO TRUST I

-----  
DATED AS OF [\_\_\_\_\_, \_\_\_\_]  
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AMENDED AND RESTATED  
DECLARATION OF TRUST  
OF  
POGO TRUST I

AMENDED AND RESTATED DECLARATION OF TRUST (this "Declaration") dated and effective as of [\_\_\_\_\_, \_\_\_\_] by \_\_\_\_\_, an individual, \_\_\_\_\_, an individual, and \_\_\_\_\_, an individual, as Regular Trustees (the "Regular Trustees"), Wilmington Trust Company, as Property Trustee (the "Property Trustee") and Wilmington Trust Company, as Delaware Trustee (the "Delaware Trustee") (together with all other Persons from time to time duly appointed and serving as trustees in accordance with the provisions of this Declaration, the "Trustees"), Pogo Producing Company, a Delaware corporation, as trust sponsor ("Pogo" or the "Sponsor"), and by the holders, from time to time, of undivided beneficial interests in the assets of the Trust to be issued pursuant to this Declaration.

WHEREAS, the Sponsor and certain of the Trustees entered into a Declaration of Trust dated as of March 17, 1999 (the "Original Declaration") in order to establish Pogo Trust I, a statutory business trust (the "Trust"), under the Business Trust Act (as hereinafter defined);

WHEREAS, the Certificate of Trust (the "Certificate of Trust") of the

Trust was filed with the office of the Secretary of State of the State of Delaware on March 18, 1999; and

WHEREAS, the Trustees and the Sponsor desire to continue the Trust pursuant to the Business Trust Act for the purpose of, as described more fully in Sections 3.03 and 3.04 hereof, (i) issuing and selling Preferred Securities (as hereinafter defined) representing preferred undivided beneficial interests in the assets of the Trust for cash and investing the proceeds thereof in Debentures (as hereinafter defined) of Pogo issued under the Indenture (as hereinafter defined) to be held as assets of the Trust and (ii) issuing and selling Common Securities (as hereinafter defined) representing common undivided beneficial interests in the assets of the Trust to Pogo in exchange for cash and investing the proceeds thereof in additional Debentures issued under the Indenture to be held as assets of the Trust;

NOW, THEREFORE, it being the intention of the parties hereto that the Trust constitute a business trust under the Business Trust Act, that the Original Declaration be amended and restated in its entirety as provided herein and that this Declaration constitute the governing instrument of such business trust, the Trustees declare that all Debentures referred to in clauses (i) and (ii) of the previous paragraph purchased by the Trust will be held for the benefit of the Holders (as hereinafter defined) from time to time, of the Certificates (as hereinafter defined) representing undivided beneficial interests in the assets of the Trust issued hereunder, subject to the provisions of this Declaration.

## ARTICLE 1 DEFINITIONS

### SECTION 1.01. DEFINITIONS.

(a) Capitalized terms used in this Declaration but not defined in the preamble above have the respective meanings assigned to them in this Section 1.01;

(b) a term defined anywhere in this Declaration has the same meaning throughout;

(c) all references to "the Declaration" or "this Declaration" are to this Amended and Restated Declaration of Trust (including Exhibits A, B and C hereto (the "Exhibits")) as modified, supplemented or amended from time to time;

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

(e) a term defined in the Trust Indenture Act has the same meaning when used in this Declaration unless otherwise defined in this Declaration or unless the context otherwise requires; and

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

"AFFILIATE" means, with respect to any specified Person, 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 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. For purposes of this definition, beneficial ownership of 10% or more of the voting common equity (on a fully diluted basis) or options or warrants to purchase such equity (but only if exercisable at the date of determination or within 60 days thereof) of a Person shall be deemed to constitute control of such Person. No Person shall be deemed an Affiliate of an oil and gas royalty trust solely by virtue of ownership of units of beneficial interest in such trust.

"BOOK ENTRY INTEREST" means a beneficial interest in a Global Certificate registered in the name of a Clearing Agency or a nominee thereof, ownership and transfers of which shall be maintained and made through book entries by such Clearing Agency as described in Section 9.04.

"BUSINESS DAY" means any day other than a Saturday or Sunday or a day on which banking institutions in the Borough of Manhattan, The City and State of New York, Wilmington, Delaware or Houston, Texas are authorized or required by law or executive order to close.

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"BUSINESS TRUST ACT" means Chapter 38 of Title 12 of the Delaware Code, 12 DEL. CODE Section 3801 ET SEQ., as it may be amended from time to time, or any successor legislation.

"CERTIFICATE" means a Common Security Certificate or a Preferred Security Certificate.

"CERTIFICATE OF TRUST" has the meaning set forth in the second WHEREAS clause above.

"CLEARING AGENCY" means an organization registered as a "Clearing Agency" pursuant to Section 17A of the Exchange Act that is acting as depository for the Preferred Securities and in whose name or in the name of a nominee of that organization shall be registered a Global Certificate and which shall undertake to effect book entry transfers and pledges of the Preferred Securities.

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

"CLOSING DATE" means the Closing Date as specified in the Underwriting Agreement, which date is also the date of execution and delivery of this Declaration.

"CODE" means the Internal Revenue Code of 1986, as amended from time to time, or any successor legislation. A reference to a specific section (Sec.) of

the Code refers not only to such specific section but also to any corresponding provision of any Federal tax statute enacted after the date of this Declaration, as such specific section or corresponding provision is in effect on the date of application of the provisions of this Declaration containing such reference.

"COMMISSION" means the Securities and Exchange Commission.

"COMMON SECURITIES" has the meaning specified in Section 7.01(b).

"COMMON SECURITY CERTIFICATE" means a definitive certificate in fully registered form representing a Common Security substantially in the form of Annex I to Exhibit C.

["COMMON STOCK" means the common stock, par value \$1.00 per share, of Pogo or any other class of stock, other securities, cash or other assets into which the Debentures are then convertible.]

["CONVERSION AGENT" has the meaning specified in Section 7.02.]

"COVERED PERSON" means (i) any officer, director, shareholder, partner, member, representative, employee or agent of the Trust or of any of its Affiliates, (ii) any officer, director, shareholder, employee, representative or agent of Pogo or of any of its Affiliates and (iii) the Holders from time to time of the Securities.

"CREDITOR" has the meaning specified in Section 4.02(c).

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"DEBENTURE TRUSTEE" means Wilmington Trust Company, a Delaware banking corporation, as trustee under the Indenture until a successor is appointed thereunder and thereafter means such successor trustee.

"DEBENTURES" means the series of junior subordinated debentures issued by Pogo under the Indenture to the Property Trustee and entitled the "[\_\_\_\_]% Junior Subordinated Debentures due [\_\_\_\_\_]".

"DEFINITIVE PREFERRED SECURITY CERTIFICATES" has the meaning set forth in Section 9.04.

"DELAWARE TRUSTEE" has the meaning set forth in Section 5.01(a)(3).

"DEPOSITARY AGREEMENT" means the agreement among the Trust, the Property Trustee and DTC dated as of the Closing Date, as the same may be amended or supplemented from time to time.

"DISTRIBUTION" means a distribution payable to Holders of Securities in accordance with Section 6.01.

"DTC" means The Depository Trust Company, the initial Clearing Agency.

"EVENT OF DEFAULT" in respect of the Securities means that an Indenture Event of Default has occurred and is continuing with respect to the Debentures.

"EXCHANGE" has the meaning specified in Section 3.13.

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

"FISCAL YEAR" has the meaning specified in Section 11.01.

"GLOBAL CERTIFICATE" has the meaning set forth in Section 9.04.

"HOLDER" means a Person in whose name a Certificate representing a Security is registered, such Person being a beneficial owner within the meaning of the Business Trust Act.

"HOLDER DIRECT ACTION" has the meaning specified in Section 3.10(e).

"INDEMNIFIED PERSON" means any Trustee, any Affiliate of any Trustee, [any Conversion Agent], any Paying Agent, any officers, directors, shareholders, members, partners, employees, representatives or agents of any Trustee, [Conversion Agent] or Paying Agent, or any employee or agent of the Trust or of any of its Affiliates.

"INDENTURE" means the Junior Subordinated Indenture dated as of [\_\_\_\_\_, \_\_\_\_] between Pogo and the Debenture Trustee as supplemented by the [\_\_\_\_\_] Supplemental Indenture thereto dated as of [\_\_\_\_\_, \_\_\_\_], pursuant to which the Debentures are to be issued.

"INDENTURE EVENT OF DEFAULT" means that an event or condition defined as an "Event of Default" with respect to the Debentures under Section 6.01(a) of the Indenture has occurred and is continuing.

"INVESTMENT COMPANY" means an "investment company" as defined in the Investment Company Act.

"INVESTMENT COMPANY ACT" means the Investment Company Act of 1940, as amended from time to time, or any successor legislation.

"LEGAL ACTION" has the meaning specified in Section 3.08(g).

"LIQUIDATION DISTRIBUTION" has the meaning set forth in Exhibits B and C hereto establishing the terms of the Securities.

"LIST OF HOLDERS" has the meaning specified in Section 2.02(a).

"MAJORITY IN LIQUIDATION AMOUNT OF THE SECURITIES" means, except as otherwise required by the Trust Indenture Act and except as provided in the penultimate paragraph of section 6 of Exhibit B hereto, Holder(s) of outstanding Securities voting together as a single class or, as the context may require, Holder(s) of outstanding Preferred Securities or Common Securities voting separately as a class, who are the record owners of a relevant class of Securities whose liquidation amount (including the stated amount that would be

paid on redemption, liquidation or otherwise, plus accumulated and unpaid Distributions to the date upon which the voting percentages are determined) represents more than 50% of the liquidation amount of all outstanding Securities of such class.

"NASD" has the meaning specified in Section 3.13.

"NASDAQ" has the meaning specified in Section 3.13.

"1933 ACT REGISTRATION STATEMENT" has the meaning specified in Section 3.13.

"1934 ACT REGISTRATION STATEMENT" has the meaning specified in Section 3.13.

"OFFICERS' CERTIFICATE" means a certificate signed by the Chairman of the Board, the Chief Executive Officer, the President or a Vice President, and by the Treasurer, an Associate Treasurer, an Assistant Treasurer, the Controller, 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 2.04 shall be the principal executive, financial or accounting officer of the Sponsor. Any 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;

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(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.

"OPINION OF COUNSEL" means a written opinion of counsel, who may be counsel for the Trust, the Property Trustee or the Sponsor, which may be an employee of the Sponsor but not an employee of the Trust or the Property Trustee, and who shall be reasonably acceptable to the Property Trustee. Any Opinion of Counsel pertaining to federal income tax matters may rely on published rulings of the Internal Revenue Service.

"OPTION CLOSING DATE" means the Option Closing Date as specified in the Underwriting Agreement.

"ORIGINAL DECLARATION" has the meaning set forth in the first WHEREAS clause above.

"PAYING AGENT" has the meaning specified in Section 3.10(i).

"PAYMENT AMOUNT" has the meaning specified in Section 6.01.

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

"POGO" or "SPONSOR" means Pogo Producing Company, a Delaware corporation, or any successor entity resulting from any merger, consolidation, amalgamation or other business combination, in its capacity as sponsor of the Trust.

"PREFERRED SECURITIES GUARANTEE" means the Guarantee Agreement dated as of [\_\_\_\_\_, \_\_\_\_] of Pogo and Wilmington Trust Company as initial guarantee trustee thereunder, in respect of the Preferred Securities.

"PREFERRED SECURITIES" has the meaning specified in Section 7.01(b).

"PREFERRED SECURITY BENEFICIAL OWNER" means, with respect to a Book Entry Interest, a Person who is the beneficial owner of such Book Entry Interest, as reflected on the books of the Clearing Agency, or on the books of a Person maintaining an account with such Clearing Agency (directly as a Clearing Agency Participant or as an indirect participant, in each case in accordance with the rules of such Clearing Agency).

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"PREFERRED SECURITY CERTIFICATE" means a definitive certificate in fully registered form representing a Preferred Security substantially in the form of Annex I to Exhibit B.

"PROPERTY TRUSTEE" means the Trustee meeting the eligibility requirements set forth in Section 5.01(c) and having the duties set forth for the Property Trustee herein.

"PROPERTY ACCOUNT" has the meaning specified in Section 3.10(c)(i).

"QUORUM" means a majority of the Regular Trustees or, if there are only two Regular Trustees, both such Regular Trustees.

"REGULAR TRUSTEE" means any Trustee other than the Property Trustee and the Delaware Trustee.

"RELATED PARTY" means any direct or indirect wholly owned subsidiary of Pogo or any other Person which owns, directly or indirectly, 100% of the outstanding voting securities of Pogo.

"RESIGNATION REQUEST" has the meaning specified in Section 5.02(d).

"RESPONSIBLE OFFICER" means, when used with respect to the Property



Trustee, any officer within the corporate department of the Property Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Property Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such Person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Declaration.

"RULE 3a-7" means Rule 3a-7 under the Investment Company Act or any successor rule thereunder.

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

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

"SPECIAL EVENT" has the meaning set forth in the terms of the Securities as set forth in section 4 of Exhibits B and C hereto.

"SPONSOR" or "POGO" means Pogo Producing Company, a Delaware corporation, or any successor entity resulting from any merger, consolidation, amalgamation or other business combination, in its capacity as sponsor of the Trust.

"SUCCESSOR DELAWARE TRUSTEE" has the meaning specified in Section 5.02(b) (ii).

"SUCCESSOR ENTITY" has the meaning specified in Section 3.18(b) (i).

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"SUCCESSOR PROPERTY TRUSTEE" has the meaning specified in Section 5.02(b) (i).

"SUCCESSOR SECURITIES" has the meaning specified in Section 3.18(b) (i) (B).

"SUPER MAJORITY" has the meaning specified in Section 2.06(a) (ii).

"SUPPLEMENTAL INDENTURE" means the [\_\_\_\_\_] Supplemental Indenture dated as of [\_\_\_\_\_, \_\_\_\_] between Pogo and the Debenture Trustee, pursuant to which the Debentures are to be issued.

"10% IN LIQUIDATION AMOUNT OF THE SECURITIES" means, except as otherwise required by the Trust Indenture Act and except as provided in the penultimate paragraph of section 6 of Exhibit B hereto, Holder(s) of outstanding Securities voting together as a single class or, as the context may require, Holder(s) of outstanding Preferred Securities or Common Securities, voting separately as a class, who are the record owners of a relevant class of Securities whose liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accumulated and unpaid Distributions to the date upon which the voting percentages are determined)

represents 10% or more of the liquidation amount of all outstanding Securities of such class.

"TREASURY REGULATIONS" means the income tax regulations, including temporary and proposed regulations, promulgated under the Code by the United States Treasury, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"TRUST" has the meaning set forth in the first WHEREAS clause above.

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

"TRUST INDENTURE ACT" means the Trust Indenture Act of 1939, as amended from time to time, or any successor legislation.

"UNDERWRITING AGREEMENT" means the Underwriting Agreement dated as of [\_\_\_\_\_, \_\_\_\_] among the Trust, the Sponsor and [\_\_\_\_\_] and [\_\_\_\_\_] as representatives of the several underwriters named therein.

## ARTICLE 2 TRUST INDENTURE ACT

### SECTION 2.01. TRUST INDENTURE ACT; APPLICATION.

(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) if and to the extent that any provision of this Declaration limits, qualifies or conflicts with the duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control;

(c) the Property Trustee, to the extent permitted by applicable law and/or the rules and regulations of the Commission, shall be the only Trustee which is a trustee for the purposes of the Trust Indenture Act; and

(d) the application of the Trust Indenture Act to this Declaration shall not affect the nature of the Securities as equity securities representing undivided beneficial interests in the assets of the Trust.

### SECTION 2.02. LISTS OF HOLDERS OF PREFERRED SECURITIES.

(a) Each of the Sponsor and the Regular Trustees on behalf of the Trust shall provide the Property Trustee unless the Property Trustee is registrar for the Securities, (i) on each regular record date for payment of Distributions, a list, in such form as the Property Trustee may reasonably

require, of the names and addresses of the Holders ("List of Holders") as of such record date, PROVIDED THAT neither the Sponsor nor the Regular Trustees on behalf of the Trust shall be obligated to provide such List of Holders at any time that the List of Holders does not differ from the most recent List of Holders given to the Property Trustee by the Sponsor and the Regular Trustees on behalf of the Trust, and (ii) at any other time, within 30 days of receipt by the Trust of a written request for a List of Holders as of a date no more than 15 days before such List of Holders is given to the Property Trustee. The Property Trustee shall preserve, in as current a form as is reasonably practicable, all information contained in Lists of Holders given to it or which it receives in the capacity as Paying Agent (if acting in such capacity) PROVIDED THAT the Property Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

(b) The Property Trustee shall comply with its obligations under Sections 310(b), 311 and 312(b) of the Trust Indenture Act.

#### SECTION 2.02. REPORTS BY THE PROPERTY TRUSTEE.

Within 60 days after May 15 of each year, commencing May 15, [\_\_\_\_], the Property Trustee shall provide to the Holders of the Securities such reports as are required by Section 313 of the Trust Indenture Act, if any, in the form, in the manner and at the times provided by Section 313 of the Trust

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Indenture Act. The Property Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act. A copy of each such report shall, at the time of such transmission to Holders, be filed by the Property Trustee with the Company, with each stock exchange upon which any Preferred Securities are listed (if so listed) and also with the Commission. The Company agrees to notify the Property Trustee when any Preferred Securities become listed on any stock exchange and of any delisting thereof.

#### SECTION 2.04. PERIODIC REPORTS TO THE PROPERTY TRUSTEE.

Each of the Sponsor and the Regular Trustees on behalf of the Trust shall provide to the Property Trustee, the Commission and the Holders of the Securities, as applicable, such documents, reports and information as required by Section 314(a)(1)-(3) (if any) of the Trust Indenture Act and the compliance certificates required by Section 314(a)(4) and (c) of the Trust Indenture Act, any such certificates to be provided in the form, in the manner and at the times required by Section 314(a)(4) and (c) of the Trust Indenture Act (PROVIDED THAT any certificate to be provided pursuant to Section 314(a)(4) of the Trust Indenture Act shall be provided within 120 days of the end of each Fiscal Year).

#### SECTION 2.05. EVIDENCE OF COMPLIANCE WITH CONDITIONS PRECEDENT.

Each of the Sponsor and the Regular Trustees on behalf of the Trust shall provide to the Property Trustee such evidence of compliance with any conditions precedent provided for in this Declaration which 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) may be

given in the form of an Officers' Certificate.

SECTION 2.06. EVENTS OF DEFAULT; WAIVER.

(a) The Holders of a Majority in liquidation amount of Preferred Securities may, by vote, on behalf of the Holders of all of the Preferred Securities, waive any past Event of Default in respect of the Preferred Securities and its consequences, PROVIDED THAT, if the underlying Event of Default under the Indenture:

(i) is not waivable under the Indenture, the Event of Default under this Declaration shall also not be waivable; or

(ii) requires the consent or vote of the holders of greater than a majority in aggregate principal amount of the Debentures (a "Super Majority") to be waived under the Indenture, the Event of Default under this Declaration may only be waived by the vote of the Holders of at least the proportion in aggregate liquidation amount of the Preferred Securities that the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding.

The foregoing provisions of this Section 2.06(a) shall be in lieu of Section 316(a) (1) (B) of the Trust Indenture Act and such Section 316(a) (1) (B) of the Trust Indenture Act is hereby expressly excluded from this Declaration and the Securities, as permitted by the Trust Indenture Act. Upon such waiver, any

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such default shall cease to exist, and any Event of Default with respect to the Preferred Securities arising therefrom shall be deemed to have been cured, for every purpose of this Declaration, but no such waiver shall extend to any subsequent or other default or an Event of Default with respect to the Preferred Securities or impair any right consequent thereon. Any waiver by the Holders of the Preferred Securities of an Event of Default with respect to the Preferred Securities shall also be deemed to constitute a waiver by the Holders of the Common Securities of any such Event of Default with respect to the Common Securities for all purposes of this Declaration without any further act, vote or consent of the Holders of the Common Securities.

(b) The Holders of a Majority in liquidation amount of the Common Securities may, by vote, on behalf of the Holders of all of the Common Securities, waive any past Event of Default with respect to the Common Securities and its consequences, PROVIDED THAT, if the underlying Event of Default under the Indenture:

(i) is not waivable under the Indenture, except where the Holders of the Common Securities are deemed to have waived such Event of Default under this Declaration as provided above in Section 2.06(a) or below in this Section 2.06(b), the Event of Default under this Declaration shall also not be waivable; or

(ii) requires the consent or vote of a Super Majority to be waived, except where the Holders of the Common Securities are deemed to

have waived such Event of Default under this Declaration as provided above in Section 2.06(a) or below in this Section 2.06(b), the Event of Default under this Declaration may only be waived by the vote of the Holders of at least the proportion in aggregate liquidation amount of the Common Securities that the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding;

PROVIDED, FURTHER, that the Holders of Common Securities will be deemed to have waived any such Event of Default and all Events of Defaults with respect to the Common Securities and their consequences until all Events of Default with respect to the Preferred Securities have been cured, waived or otherwise eliminated, and until such Events of Default have been so cured, waived or otherwise eliminated, the Property Trustee will be deemed to be acting solely on behalf of the Holders of the Preferred Securities and only the Holders of the Preferred Securities will have the right to direct the Property Trustee in accordance with the terms of the Securities. The foregoing provisions of this Section 2.06(b) shall be in lieu of Sections 316(a)(1)(A) and 316(a)(1)(B) of the Trust Indenture Act and such Sections 316(a)(1)(A) and 316(a)(1)(B) of the Trust Indenture Act are hereby expressly excluded from this Declaration and the Securities, as permitted by the Trust Indenture Act. In the event that any Event of Default with respect to the Preferred Securities is waived by the Holders of Preferred Securities as provided in this Declaration, the Holders of Common Securities agree that such waiver shall also constitute the waiver of such Event of Default with respect to the Common Securities for all purposes under this Declaration without any further act, vote or consent of the Holders of the Common Securities. Subject to the foregoing provisions of this Section 2.06(b), upon waiver, any such default shall cease to exist and any Event of Default with respect to the Common Securities arising therefrom shall be deemed to have been cured for every purpose of

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this Declaration, but no such waiver shall extend to any subsequent or other default or Event of Default with respect to the Common Securities or impair any right consequent thereon.

(c) A waiver of an Event of Default under the Indenture by the Property Trustee, at the direction of the Holders of Preferred Securities, constitutes a waiver of the corresponding Event of Default under this Declaration. The foregoing provisions of this Section 2.06(c) shall be in lieu of Section 316(a)(1)(B) of the Trust Indenture Act and such Section 316(a)(1)(B) of the Trust Indenture Act is hereby expressly excluded from this Declaration and the Securities, as permitted by the Trust Indenture Act.

#### SECTION 2.07. DISCLOSURE OF INFORMATION.

The disclosure of information as to the names and addresses of the Holders of the Securities in accordance with Section 312 of the Trust Indenture Act, regardless of the source from which such information was derived, shall not be deemed to be a violation of any existing law, or any law hereafter enacted which does not specifically refer to Section 312 of the Trust Indenture Act, nor shall the Property Trustee be held accountable by reason of mailing any material pursuant to a request made under Section 312(b) of the Trust Indenture Act.

ARTICLE 3  
ORGANIZATION

SECTION 3.01. NAME.

The Trust continued by this Declaration is named "Pogo Trust I" as such name may be modified from time to time by the Regular Trustees following written notice to the Holders of the Securities. The Trust's activities may be conducted under the name of the Trust or any other name deemed advisable by the Regular Trustees.

SECTION 3.02. OFFICE.

The address of the principal office of the Trust is c/o Pogo Producing Company, 5 Greenway Plaza, Suite 2700, Houston, Texas 77046. Upon ten days' written notice to the Holders, the Regular Trustees may change the location of the Trust's principal office.

SECTION 3.03. ISSUANCE OF THE SECURITIES.

On [\_\_\_\_\_, \_\_\_\_] the Sponsor, on behalf of the Trust and pursuant to the Original Declaration, executed and delivered the Underwriting Agreement. On the Closing Date and contemporaneously with the execution and delivery of this Declaration, the Regular Trustees, on behalf of the Trust, shall execute and deliver (i) one or more Global Certificates, registered in the name of the nominee of the initial Clearing Agency as specified in Section 9.04 for the benefit of the

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underwriters named in the Underwriting Agreement, 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 \$[\_\_\_\_\_] , and (ii) to the Sponsor, one or more Common Securities Certificates, registered in the name of the Sponsor, in an aggregate amount of [\_\_\_\_\_] Common Securities having an aggregate liquidation amount of \$[\_\_\_\_\_] , against receipt of the aggregate purchase price of such Common Securities of \$[\_\_\_\_\_] . [In the event and to the extent the overallotment option granted by the Trust pursuant to the Underwriting Agreement is exercised by such underwriters, on the Option Closing Date the Regular Trustees, on behalf of the Trust, shall execute and deliver one or more Global Certificates, registered in the name of the nominee of the initial Clearing Agency as specified in Section 9.04 for the benefit of the underwriters named in the Underwriting Agreement, in an aggregate amount of up to [\_\_\_\_\_] Preferred Securities having an aggregate liquidation amount of up to \$[\_\_\_\_\_] , against receipt of the aggregate purchase price of such Preferred Securities of up to \$[\_\_\_\_\_] .]

SECTION 3.04. PURCHASE OF DEBENTURES.

On the Closing Date and contemporaneously with the execution and delivery of this Declaration, the Regular Trustees, on behalf of the Trust, shall purchase from the Sponsor with the proceeds received by the Trust from the sale of the Securities on such date pursuant to Section 3.03, at a purchase price of 100% of the principal amount thereof, Debentures, registered in the name of the Property Trustee and having an aggregate principal amount equal to \$[\_\_\_\_\_], and, in satisfaction of the purchase price for such Debentures, the Property Trustee, on behalf of the Trust, shall deliver or cause to be delivered to the Sponsor the sum of \$[\_\_\_\_\_]. [In the event the overallotment option granted by the Trust with respect to the Preferred Securities pursuant to the Underwriting Agreement is exercised by the underwriters named therein, on the Option Closing Date the Regular Trustees, on behalf of the Trust, shall purchase from the Sponsor with the proceeds received by the Trust from the sale of the Preferred Securities on such date pursuant to Section 3.03, at a purchase price of 100% of the principal amount thereof, additional Debentures, registered in the name of the Property Trustee and having an aggregate principal amount of up to \$[\_\_\_\_\_], and, in satisfaction of the purchase price for such Debentures, the Property Trustee, on behalf of the Trust, shall deliver or cause to be delivered to the Sponsor an amount equal to the aggregate principal amount of the Debentures being purchased.]

#### SECTION 3.05. PURPOSE.

The exclusive purposes and functions of the Trust are: (a) (i) to issue and sell Preferred Securities for cash and use the proceeds of such sales to acquire from Pogo Debentures issued under the Indenture having an aggregate principal amount equal to the aggregate liquidation amount of the Preferred Securities so issued and sold; (ii) to enter into such agreements and arrangements as may be necessary in connection with the sale of Preferred Securities to the initial purchasers thereof (including the Underwriting Agreement) and to take all action, and exercise such discretion, as may be necessary or desirable in connection therewith and to file such registration statements or make such other filings under the Securities Act, the Exchange Act or state securities or "Blue Sky" laws

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as may be necessary or desirable in connection therewith and the issuance of the Preferred Securities; and (iii) to issue and sell Common Securities to Pogo for cash and use the proceeds of such sale to purchase as trust assets an equal aggregate principal amount of Debentures issued under the Indenture; and (b) except as otherwise limited herein, to engage in only those other activities necessary, convenient or incidental thereto, including such other activities specifically authorized in this Declaration. The Trust shall not borrow money, issue debt or reinvest proceeds derived from investments, mortgage or pledge any of its assets or at any time while the Securities are outstanding, otherwise undertake (or permit to be undertaken) any activity that would result in or cause the Trust not to be classified for United States Federal income tax purposes as a grantor trust.

#### SECTION 3.06. AUTHORITY.



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

#### SECTION 3.07. TITLE TO PROPERTY OF THE TRUST.

Except as provided in Section 3.10 with respect to the Debentures and the Property Account or unless otherwise provided in this Declaration, legal title to all assets of the Trust shall be vested in the Trust. The Holders shall not have legal title to any part of the assets of the Trust, but shall have undivided beneficial interests in the assets of the Trust.

#### SECTION 3.08. POWERS AND DUTIES OF THE REGULAR TRUSTEES.

The Regular Trustees shall have the exclusive power, authority and duty to cause the Trust, and shall cause the Trust, to engage in the following activities:

(a) to issue Preferred Securities and Common Securities, in each case in accordance with this Declaration; PROVIDED, HOWEVER, that the Trust may issue no more than one series of Preferred Securities and no more than one series of Common Securities, and, PROVIDED FURTHER, that there shall be no interests in the Trust other than the Securities and the issuance of Securities shall be limited to (x) a one-time, simultaneous issuance of both Preferred Securities and Common Securities on the Closing Date [and (y) any subsequent issuance of Preferred Securities on the Option Closing Date pursuant to an exercise of the over-allotment option granted to the underwriters in the Underwriting Agreement];

(b) in connection with the issuance of the Preferred Securities, at the direction of the Sponsor, to effect or cause to be effected the filings, and to execute or cause to be executed, the

documents, set forth in Section 3.13 and to execute, deliver and perform on behalf of the Trust the Depositary Agreement;

(c) to acquire as trust assets Debentures with the proceeds of the sale of the Preferred Securities and the Common Securities; PROVIDED, HOWEVER, that the Regular Trustees shall cause legal title to all of the Debentures to be vested in, and the Debentures to be held of record in the name of, the Property Trustee for the benefit of the Holders of the Preferred Securities and the Common Securities;

(d) if and to the extent that the Sponsor on behalf of the Trust has not already done so, to cause the Trust to enter into the Underwriting Agreement and such other agreements and arrangements as may be necessary or desirable in connection with the sale of the Preferred Securities to the initial purchasers thereof and the consummation thereof, and to take all action, and exercise all discretion, as may be necessary or desirable in connection with the consummation thereof;

(e) to give the Sponsor and the Property Trustee prompt written notice of the occurrence of a Special Event;

(f) 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 Section 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 Preferred Securities and Common Securities as to such actions and applicable record dates;

(g) to bring or defend, pay, collect, compromise, arbitrate, resort to legal action or otherwise adjust claims or demands of or against the Trust ("Legal Action"), unless pursuant to Section 3.10(e), the Property Trustee has the exclusive power to bring such Legal Action;

(h) 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;

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

(j) to give the certificate to the Property Trustee required by Section 314(a) (4) of the Trust Indenture Act, which certificate may be executed by any Regular Trustee;

(k) to incur expenses which are necessary or incidental to carrying out any of the purposes of the Trust;

(l) to act as, or appoint another Person to act as, registrar and transfer agent for the Securities, the Regular Trustees hereby initially appointing the Property Trustee for such purposes;

(m) to take all actions and perform such duties as may be required of the Regular Trustee pursuant to the terms of the Securities set forth in Exhibits B and C hereto;

(n) to take all actions which may be necessary or appropriate for the preservation and the continuation of the Trust's valid existence, rights, franchises and privileges as a statutory business trust under the laws of the State of Delaware and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Holders of the Securities or

to enable the Trust to effect the purposes for which the Trust has been created;

(o) to take all actions, not inconsistent with this Declaration or with applicable law, which the Regular Trustees determine in their discretion to be necessary or desirable in carrying out the purposes of the Trust and the activities of the Trust as set out in this Section 3.08, including, but not limited to:

(i) causing the Trust not to be deemed to be an Investment Company required to be registered under the Investment Company Act;

(ii) causing the Trust to be classified for United States Federal income tax purposes as a grantor trust; and

(iii) cooperating with the Sponsor to ensure that the Debentures will be treated as indebtedness of the Sponsor for United States Federal income tax purposes;

(p) to take all actions 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, and to comply with any requirements imposed by any taxing authority on holders of instruments treated as indebtedness for United States Federal income tax purposes;

(q) subject to the requirements of Rule 3a-7 (if the Trust is excluded from the definition of an Investment Company solely by reason of Rule 3a-7) and Section 317(b) of the Trust Indenture Act, to appoint one or more Paying Agents in addition to the Property Trustee; and

(r) to execute all documents or instruments, perform all duties and powers and do all things for and on behalf of the Trust in all matters necessary or incidental to the foregoing.

The Regular Trustees must exercise the powers set forth in this Section 3.08 in a manner which is consistent with the purposes and functions of the Trust set out in Section 3.05, and the Regular Trustees shall not take any action which is inconsistent with the purposes and functions of the Trust set forth in Section 3.05.

Subject to this Section 3.08, the Regular Trustees shall have none of the powers or any of the authority of the Property Trustee set forth in Section 3.10.

The Regular Trustees shall take all actions on behalf of the Trust that are not specifically required by this Declaration to be taken by any other Trustee.

Any expenses incurred by the Regular Trustees pursuant to this Section 3.08 shall be reimbursed by the Sponsor.

SECTION 3.09. PROHIBITION OF ACTIONS BY THE TRUST AND THE TRUSTEES.

The Trust shall not, and the Trustees (including the Property Trustee) shall cause the Trust not to, engage in any activity other than in connection with the purposes of the Trust or other than as required or authorized by this Declaration. In particular, the Trust shall not and the Trustees (including the Property Trustee) shall not cause the Trust to:

(a) invest any proceeds received by the Trust from holding the Debentures but shall promptly distribute from the Property Account all such proceeds to Holders of Securities pursuant to the terms of this Declaration and of the Securities;

(b) acquire any assets other than as expressly provided herein;

(c) possess Trust property for other than a Trust purpose;

(d) make any loans, other than loans represented by the Debentures;

(e) possess any power or otherwise act in such a way as to vary the Trust assets or the terms of the Securities in any way whatsoever, except as otherwise expressly provided herein;

(f) issue any securities or other evidences of beneficial ownership of, or beneficial interests in, the Trust other than the Securities;

(g) incur any indebtedness for borrowed money;

(h) (i) direct the time, method and place of conducting any proceeding for any remedy available to the Debenture Trustee or exercising any trust or power conferred upon the Debenture Trustee with respect to the Debentures, (ii) waive any past default that is waivable under Section 6.06 of the Indenture, or (iii) exercise any right to rescind or annul a declaration of acceleration of the maturity of the principal of the Debentures, without, in each case, obtaining the prior approval of the Holders of a Majority in liquidation amount of all outstanding Securities;

(i) revoke any action previously authorized or approved by a vote of the Holders of Preferred Securities except by subsequent vote of such Holders;

(j) consent to any amendment, modification or termination of the Indenture or the Debentures, where such consent shall be required, unless in the case of this clause (j) the Property Trustee shall have received an Opinion of Counsel experienced in such matters to the effect that such amendment, modification or termination will not cause more than an insubstantial risk that for United States Federal income tax purposes the Trust will not be classified as a grantor trust;

(k) take or consent to any action that would result in the placement of a lien, pledge, charge, mortgage or other encumbrance on any of the Trust property;

(l) vary the investment (within the meaning of Treasury Regulation Section 301.7701-4(c)) of the Trust or of the Holders of Securities; or

(m) after the date hereof, enter into any contract or agreement (other than any depositary agreement or any agreement with any securities exchange or automated quotation system) that does not expressly provide that the Holders of Preferred Securities, in their capacities as such, have limited liability (in accordance with the provisions of the Business Trust Act) for the liabilities and obligations of the Trust, which express provision shall be in substantially the following form, "The Holders of the Preferred Securities, in their capacities as such, shall not be personally liable for any liabilities or obligations of the Trust arising out of this Agreement, and the parties hereto hereby agree that the Holders of the Preferred Securities, in their capacities as such, shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware."

#### SECTION 3.10. POWERS AND DUTIES OF THE PROPERTY TRUSTEE.

(a) The legal title to the Debentures shall be owned by and held of record in the name of the Property Trustee in trust for the benefit of the Holders of the Securities. The right, title and interest of the Property Trustee to the Debentures shall vest automatically in each Person who may hereafter be appointed as Property Trustee in accordance with Article 5. Such vesting and cessation of title shall be effective whether or not conveyancing documents with regard to the Debentures have been executed and delivered.

(b) The Property Trustee shall not transfer its right, title and interest in the Debentures to the Regular Trustees or, if the Property Trustee does not also act as the Delaware Trustee, the Delaware Trustee.

(c) The Property Trustee shall:

(i) establish and maintain a segregated non-interest bearing bank account (the "Property Account") in the name of and under the exclusive control of the Property Trustee on behalf of the Holders of the Securities and on the receipt of payments of funds made in respect of the Debentures held by the Property Trustee, deposit such funds into the Property Account and, without any further acts of the Property Trustee or the Regular Trustees, promptly make payments to the Holders of the Preferred Securities and Common Securities from the Property Account in accordance with Section 6.01. Funds in the Property Account shall be held uninvested, and without liability for interest thereon, until disbursed in accordance with this Declaration. The Property Account shall be an account which is maintained with a banking institution whose long term unsecured indebtedness is rated by a "nationally recognized statistical rating organization", as such term is defined for purposes of Rule 436(g)(2) under the Securities Act, at least investment grade;

(ii) engage in such ministerial activities as shall be necessary

or appropriate to effect promptly the redemption of the Preferred Securities and the Common Securities to the extent the Debentures are redeemed or mature;

(iii) upon notice of distribution issued by the Regular Trustees in accordance with the terms of the Preferred Securities and the Common Securities, engage in such ministerial activities as shall be necessary or appropriate to effect promptly pursuant to terms of the Securities the distribution of Debentures to Holders of Securities upon the election of the Holder of Common Securities to distribute the Debentures to Holders of Securities and dissolve the Trust; and

(iv) have the legal power to exercise all of the rights, powers and privileges of a holder of the Debentures under the Indenture and, if an Event of Default occurs and is continuing, the Property Trustee, subject to Section 3.10(e), shall for the benefit of the Holders of the Securities, enforce its rights as holder of the Debentures under the Indenture, subject to the rights of the Holders of the Preferred Securities pursuant to the terms of this Declaration, the Business Trust Act and the Trust Indenture Act.

(d) The Property Trustee shall take all actions and perform such duties as may be specifically required of the Property Trustee pursuant to the terms of the Securities set forth in Exhibits B and C hereto.

(e) If an Event of Default has occurred and is continuing, then the Holders of a Majority in 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 Property Trustee or to direct the exercise of any trust or power conferred upon the Property Trustee under this Declaration, including the right to direct the Property Trustee to exercise the remedies available to it as a holder of the Debentures. If the Property Trustee fails to enforce its rights under the Debentures, a Holder of Preferred Securities, to the extent permitted by applicable law, may, after a period of 30 days has elapsed since such Holder's written request to the Property Trustee to enforce such rights, institute a legal proceeding directly against the Sponsor to enforce the Property Trustee's rights under the Debentures without first instituting any legal proceeding against the Property Trustee or any other Person; PROVIDED FURTHER, that, if an Event of Default has occurred and is continuing and such event is attributed to the failure of the Sponsor to pay interest or principal on the Debentures on the date such interest or principal is otherwise payable (or in the case of redemption, on the redemption date), then a Holder of Preferred Securities may directly institute a proceeding for enforcement of payment to such Holder of the principal of or interest on the Debentures having a principal amount equal to the aggregate liquidation amount of the Preferred Securities of such Holder (a "Holder Direct Action") on or after the respective due date specified in the Debentures. In connection with such Holder Direct Action, the Sponsor will be subrogated to the rights of such Holder of Preferred Securities to the extent of any payment made by the Sponsor to such Holders of Preferred Securities in such Holder Direct Action. Except as provided in the preceding sentences, the Holders of Preferred Securities will not be able to exercise directly any other remedy available to the Holders of the Debentures.

(f) All moneys deposited in the Property Account and all Debentures held by the Property Trustee for the benefit of the Holders of the Securities will not be subject to any right, charge, security interest, lien or claim of any kind in favor of, or for the benefit of the Property Trustee or its agents or their creditors.

(g) The Property Trustee shall, within 90 days after the occurrence of a default with respect to the Securities actually known to a Responsible Officer of the Property Trustee, transmit by mail, first class postage prepaid, to the holders of the Securities, as their names and addresses appear upon the register, notice of such defaults with respect to the Securities known to the Property Trustee, unless such defaults shall have been cured before the giving of such notice (the term "defaults" for the purposes of this Section 3.10(g) being hereby defined to be an Indenture Event of Default, not including any periods of grace provided for in the Indenture and irrespective of the giving of any notice provided therein); PROVIDED, THAT, except in the case of default in the payment of the principal of (or premium, if any) or interest on any of the Debentures, the Property Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers, of the Property Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of the Securities. The Property Trustee shall not be deemed to have knowledge of any default, except (i) a default in the payment of principal, premium or interest on the Debentures or (ii) any default as to which the Property Trustee shall have received written notice or a Responsible Officer charged with the administration of this Declaration shall have obtained written notice.

(h) The Property Trustee shall continue to serve as a Trustee until either:

(i) the Trust has been completely liquidated and the proceeds thereof distributed to the Holders of Securities pursuant to the terms of the Securities; or

(ii) a Successor Property Trustee has been appointed and accepted that appointment in accordance with Article 5.

(i) The Property Trustee shall act as paying agent in respect of the Common Securities and, if the Preferred Securities are not in book entry only form, the Preferred Securities and, subject to Section 3.08(q), may authorize one or more Persons (each, a "Paying Agent") to pay Distributions, redemption payments or liquidation payments on behalf of the Trust with respect to the Preferred Securities. Any such Paying Agent shall comply with Section 317(b) of the Trust Indenture Act. Any Paying Agent may be removed by the Property Trustee, after consultation with the Regular Trustees, at any time and a successor Paying Agent or additional Paying Agents may be appointed at any time by the Property Trustee, subject to Section 3.08(q).

(j) The Property Trustee shall give prompt written notice to the Holders of the Securities of any notice received by it from Pogo of its election



to defer payments of interest on the Debentures by extending the interest payment period with respect thereto.

(k) Subject to this Section 3.10, the Property Trustee shall have none of the powers or the authority of the Regular Trustees set forth in Section 3.08.

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(l) The Property Trustee shall exercise the powers, duties and rights set forth in this Section 3.10 and Section 3.12 in a manner which is consistent with the purposes and functions of the Trust set out in Section 3.05, and the Property Trustee shall not take any action which is inconsistent with the purposes and functions of the Trust set forth in Section 3.05.

#### SECTION 3.11. DELAWARE TRUSTEE.

Notwithstanding any other provision of this Declaration other than Section 5.01(a)(3), 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 Trustees described in this Declaration. Except as set forth in Section 5.01(a)(3), the Delaware Trustee shall be a Trustee for the sole and limited purpose of fulfilling the requirements of Section 3807(a) of the Business Trust Act. No implied covenants or obligations shall be read into this Declaration against the Delaware Trustee.

#### SECTION 3.12. CERTAIN RIGHTS AND DUTIES OF THE PROPERTY TRUSTEE.

(a) The Property Trustee, before the occurrence of an Event of Default and after the curing of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Declaration, and no implied covenants shall be read into this Declaration against the Property Trustee. In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.06), the Property Trustee shall exercise such of the rights and powers vested in it by this Declaration, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

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

(i) prior to the occurrence of an Event of Default and after the curing or waiving of all such Events of Default that may have occurred:

(A) the duties and obligations of the Property Trustee shall be determined solely by the express provisions of this Declaration, and the Property Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Declaration, and no implied covenants or obligations shall be read into this Declaration against the Property Trustee; and

(B) in the absence of bad faith on the part of the Property Trustee, the Property Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Property Trustee and conforming to the requirements of this Declaration; PROVIDED, HOWEVER, that in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Property

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Trustee, the Property Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Declaration;

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

(iii) the Property Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a Majority in liquidation amount of the Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Property Trustee hereunder or under the Indenture, or exercising any trust or power conferred upon the Property Trustee under this Declaration; and

(iv) no provision of this Declaration shall require the Property Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if it 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 Declaration or adequate indemnity against such risk or liability is not reasonably assured to it.

(c) Subject to the provisions of Section 3.12(a) and (b):

(i) whenever in the administration of this Declaration, the Property Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Property Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part and, if the Trust is excluded from the definition of Investment Company solely by means of Rule 3a-7, subject to the requirements of Rule 3a-7, request and rely upon an Officers' Certificate which, upon receipt of such request, shall be promptly delivered by the Sponsor or the Regular Trustees;

(ii) the Property Trustee (A) may consult with counsel (which may

be counsel to the Sponsor or any of its Affiliates and may include any of its employees) selected by it in good faith and with due care and the written advice or opinion of such counsel with respect to legal matters 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 and in accordance with such advice and opinion and (B) shall have the right at any time to seek instructions concerning the administration of this Declaration from any court of competent jurisdiction;

(iii) the Property Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Property Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed by it in good faith and with due care;

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(iv) the Property Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Declaration at the request or direction of any Holder, unless such Holder shall have offered to the Property Trustee security and indemnity satisfactory to the Property 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; PROVIDED THAT nothing contained in this clause (iv) shall relieve the Property Trustee of the obligation, upon the occurrence of an Event of Default (which has not been cured or waived) to exercise such of the rights and powers vested in it by this Declaration, and to use the same degree of care and skill in this exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs; and

(v) any action taken by the Property Trustee or its agents hereunder shall bind the Holders of the Securities, and the signature of the Property Trustee or its agents alone shall be sufficient and effective to perform any such action; and no third party shall be required to inquire as to the authority of the Property Trustee to so act, or as to its compliance with any of the terms and provisions of this Declaration, both of which shall be conclusively evidenced by the Property Trustee's or its agent's taking such action.

(d) The Property Trustee, in its individual or any other capacity, may become the owner or pledgee of Preferred Securities and may otherwise deal with the Sponsor with the same rights it would have if it were not the Property Trustee.

(e) All moneys received by the Property Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. The Property Trustee shall be under no liability for interest on any moneys received by it hereunder except such as it may agree in writing to pay thereon.

(f) Whether or not expressly stated, every provision of this Declaration pertaining to the Property Trustee shall be subject to this Section 3.12.

### SECTION 3.13. REGISTRATION STATEMENT AND RELATED MATTERS.

In accordance with the Original Declaration, Pogo, as the sponsor of the Trust, was authorized (i) to file with the Commission and execute, in each case on behalf of the Trust, (a) the Registration Statement on Form S-3 (Registration Nos. 333-[\_\_\_\_], 333-[\_\_\_\_]-01 and 333-[\_\_\_\_]-02) (the "1933 Act Registration Statement") including any pre-effective or post-effective amendments thereto, relating to the registration under the Securities Act of the Preferred Securities and (b) if Pogo shall deem it desirable, a Registration Statement on Form 8-A or other appropriate form (the "1934 Act Registration Statement") (including all pre-effective and post-effective amendments thereto) relating to the registration of the Preferred Securities under Section 12 of the Exchange Act; if Pogo shall deem it desirable, to prepare and file with the New York Stock Exchange or one or more national securities exchange(s) (each, an "Exchange") or the National Association of Securities Dealers, Inc. (the "NASD") and execute on behalf of the Trust a listing application or applications and all other applications, statements, certificates, agreements and other

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instruments as shall be necessary or desirable to cause the Preferred Securities to be listed on any such Exchange or the NASD's Nasdaq National Market ("Nasdaq"); (iii) to file and execute on behalf of the Trust such applications, reports, surety bonds, irrevocable consents, appointments of attorney for service of process and all other papers and documents as Pogo, on behalf of the Trust, may deem necessary or desirable to register the Preferred Securities under the securities or "Blue Sky" laws of such jurisdictions as Pogo on behalf of the Trust, may deem necessary or desirable; and (iv) to negotiate the terms and execute on behalf of the Trust the Underwriting Agreement. In the event that any filing referred to in clauses (i)-(iii) above is required by the rules and regulations of the Commission, any Exchange, Nasdaq, the NASD or state securities or blue sky laws, to be executed on behalf of the Trust by the Trustees, the Regular Trustees, in their capacities as Trustees of the Trust, and Pogo are hereby authorized and directed to join in any such filing and to execute on behalf of the Trust any and all of the foregoing, it being understood that the Property Trustee and the Delaware Trustee, in their capacities as Trustees of the Trust, shall not be required to join in any such filing or execute on behalf of the Trust any such document unless required by the rules and regulations of the Commission, any Exchange, Nasdaq, the NASD or state securities or blue sky laws. In connection with all of the foregoing, Pogo and each Trustee, solely in its capacity as Trustee of the Trust, have constituted and appointed, and hereby confirm the appointment of, [\_\_\_\_], [\_\_\_\_] and [\_\_\_\_] and each of them, as his, her or its, as the case may be, true and lawful attorneys-in-fact, and agents, with full power of substitution and resubstitution, for Pogo or such Trustee or in Pogo's or such Trustee's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to the 1933 Act Registration Statement and the 1934 Act Registration Statement and to file the same, with all

exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as Pogo or such Trustee might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

#### SECTION 3.14. FILING OF AMENDMENTS TO CERTIFICATE OF TRUST.

The Certificate of Trust as filed with the Secretary of State of the State of Delaware on [\_\_\_\_\_, \_\_\_\_\_] is attached hereto as Exhibit A. On or after the date of execution of this Declaration, the Trustees shall cause the filing with the Secretary of State of the State of Delaware of such amendments, if any, to the Certificate of Trust as the Trustees shall deem necessary or desirable.

#### SECTION 3.15. EXECUTION OF DOCUMENTS BY THE REGULAR TRUSTEES.

Except as otherwise required by the Business Trust Act with respect to the Certificate of Trust or otherwise and except as provided in Sections 7.01(c) and 9.08, any Regular Trustee, or if there is only one, such Regular Trustee is authorized to execute and deliver on behalf of the Trust any documents which the Regular Trustees have the power and authority to execute or deliver pursuant to this Declaration.

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#### SECTION 3.16. TRUSTEES NOT RESPONSIBLE FOR RECITALS OR ISSUANCE OF SECURITIES.

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

#### SECTION 3.17. DURATION OF THE TRUST.

The Trust, absent dissolution pursuant to the provisions of Article 8 hereof, shall continue without dissolution until [\_\_\_\_\_, \_\_\_\_].

#### SECTION 3.18. MERGERS.

(a) The Trust may not merge with or into, convert into, consolidate, amalgamate, or be replaced by, or convey, transfer or lease its properties and assets substantially as an entirety to any Person, except as described in Section 3.18(b) and (c) of this Declaration.

(b) The Trust may, at the request of the Sponsor, with the consent of the Regular Trustees or, if there are more than two, a majority of the Regular Trustees and without the consent of the Holders, the Delaware Trustee or the

Property Trustee, merge with or into, convert into, consolidate, amalgamate, or be replaced by, or convey, transfer or lease its properties and assets as an entirety or substantially as an entirety to, a trust organized as such under the laws of any State; PROVIDED THAT:

(i) such successor entity (the "Successor Entity") either:

(A) expressly assumes all of the obligations of the Trust under the Securities and this Declaration; or

(B) substitutes for the Securities other securities having substantially the same terms as the Securities (the "Successor Securities") so long as the Successor Securities rank the same as the Securities rank with respect to Distributions and payments upon liquidation, redemption and otherwise;

(ii) the Sponsor expressly appoints a trustee of the Successor Entity that possesses the same powers and duties as the Property Trustee as the holder of the Debentures;

(iii) the Successor Securities are listed, or any Successor Securities will be listed upon notification of issuance, on any national securities exchange or with another organization in which the Preferred Securities are then listed or quoted, if any;

(iv) if the Preferred Securities (including any Successor Securities) are rated by any nationally recognized statistical rating organization prior to such transaction, such merger, conversion, consolidation, amalgamation, replacement, conveyance, transfer or lease does

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not cause the Preferred Securities (including any Successor Securities), or if the Debentures are so rated, the Debentures, to be downgraded by any nationally recognized statistical rating organization;

(v) such merger, conversion, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the Holders (including the holders of any Successor Securities) in any material respect (other than with respect to any dilution of such Holders' interests in the new entity);

(vi) such Successor Entity has purposes substantially identical to those of the Trust;

(vii) prior to such merger, conversion, consolidation, amalgamation, replacement, conveyance, transfer or lease, the Sponsor has received an Opinion of Counsel experienced in such matters that:

(A) such merger, conversion, consolidation, amalgamation,

replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the Holders (including the holders of any Successor Securities) in any material respect (other than with respect to any dilution of the Holders' interest in the new entity);

(B) following such merger, conversion, consolidation, amalgamation, replacement, conveyance, transfer or lease, neither the Trust nor the Successor Entity will be required to register as an Investment Company under the Investment Company Act; and

(C) following such merger, conversion, consolidation, amalgamation, replacement, conveyance, transfer or lease, the Trust (or the Successor Entity) will continue to be classified as a grantor trust for United States Federal income tax purposes;

(viii) the Sponsor or any permitted successor or assignee owns all of the common securities of such Successor Entity and guarantees the obligations of such Successor Entity under the Successor Securities at least to the extent provided by the Preferred Securities Guarantee; and

(ix) there shall have been furnished to the Property Trustee an Officers' Certificate and an Opinion of Counsel, each to the effect that all conditions precedent in this Declaration to such transaction have been satisfied.

(c) Notwithstanding Section 3.18(b), the Trust shall not, except with the consent of Holders of 100% in liquidation amount of the Securities, consolidate, amalgamate, merge with or into, convert into, or be replaced by, or convey, transfer or lease its properties and assets as an entirety or substantially as an entirety to, any other Person or permit any other Person to consolidate, amalgamate, merge with or into, or replace it if such consolidation, amalgamation, merger,

conversion, replacement, conveyance, transfer or lease would cause the Trust or the Successor Entity not to be classified as a grantor trust for United States Federal income tax purposes or would cause the Holders of the Securities not to be treated as owning an undivided interest in the Debentures.

#### SECTION 3.19. PROPERTY TRUSTEE MAY FILE PROOFS OF CLAIM.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other similar judicial proceeding relative to the Trust or any other obligor upon the Securities or the property of the Trust or of such other obligor or their creditors, the Property Trustee (irrespective of whether any Distributions on the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Property Trustee shall have made any demand on the Trust for the payment of any past due Distributions) shall be entitled and empowered, to the fullest extent permitted by law, by



intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of any Distributions owing and unpaid in respect of the Securities (or, if the Securities are original issue discount Securities, such portion of the liquidation amount as may be specified in the terms of such Securities) and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Property Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Property Trustee, its agents and counsel) 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 Property Trustee and, in the event the Property Trustee shall consent to the making of such payments directly to the Holders to pay to the Property Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Property Trustee, its agents and counsel, and any other amounts due the Property Trustee.

Nothing herein contained shall be deemed to authorize the Property Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or compensation affecting the Securities or the rights of any Holder thereof to authorize the Property Trustee to vote in respect of the claim of any Holder in any such proceeding.

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#### ARTICLE 4 SPONSOR

##### SECTION 4.01. PURCHASE OF COMMON SECURITIES BY THE SPONSOR.

On the Closing Date, the Sponsor will purchase all of the Common Securities issued by the Trust at the same time as the Preferred Securities to be issued on such date are issued, such purchase to be in an amount equal to or greater than 3% of the total capital of the Trust [(including for this purpose the maximum amount of Preferred Securities, if any, which may be issued on the Option Closing Date pursuant to the exercise of the overallotment option set forth in the Underwriting Agreement)].

##### SECTION 4.02. EXPENSES.

(a) In connection with the purchase of the Debentures by the Trust, the Sponsor, in its capacity as Sponsor and not as a Holder, shall be responsible for and shall pay for all debts and obligations (other than with respect to the Securities) and all costs and expenses of the Trust (including, but not limited to, costs and expenses relating to the organization of the Trust, the issuance of the Preferred Securities to initial purchasers thereof, the fees and expenses (including reasonable counsel fees and expenses) of the Trustees (including any amounts payable under Article 10), the costs and expenses relating to the

operation of the Trust, including, without limitation, costs and expenses of accountants, attorneys, statistical or bookkeeping services, expenses for printing and engraving and computing or accounting equipment, paying agent(s), registrar(s), transfer agent(s), duplicating, travel and telephone and other telecommunications expenses and costs and expenses incurred in connection with the disposition of Trust assets).

(b) In connection with the purchase of the Debentures by the Trust, the Sponsor, in its capacity as Sponsor and not as a Holder, shall pay any and all taxes (other than United States withholding taxes attributable to the Trust or its assets) and all liabilities, costs and expenses with respect to such taxes of the Trust.

(c) The Sponsor's obligations under this Section 4.02 shall be for the benefit of, and shall be enforceable by, any Person to whom any such debts, obligations, costs, expenses and taxes are owed (a "Creditor") whether or not such Creditor has received notice hereof. Any such Creditor may enforce the Sponsor's obligations under this Section 4.02 directly against the Sponsor and the Sponsor irrevocably waives any right or remedy to require that any such Creditor take any action against the Trust or any other Person before proceeding against the Sponsor.

(d) The Sponsor shall be subrogated to all (if any) rights of the Trust in respect of any amounts paid to any Creditor by the Sponsor under this Section 4.02.

## ARTICLE 5 TRUSTEES

### SECTION 5.01. NUMBER OF TRUSTEES; QUALIFICATIONS.

(a) The number of Trustees initially shall be five (5). At any time (i) before the issuance of the Securities, the Sponsor may, by written instrument, increase or decrease the number of, and appoint, remove and replace, the Trustees, and (ii) after the issuance of the Securities the number of Trustees may be increased or decreased solely by, and Trustees may be appointed, removed or replaced solely by, vote of Holders of Common Securities representing a Majority in liquidation amount of the Common Securities voting as a class; PROVIDED THAT in any case:

(1) the number of Trustees shall be at least five (5) unless the Trustee that acts as the Property Trustee also acts as the Delaware Trustee, in which case the number of Trustees shall be at least four (4);

(2) at least a majority of the Trustees shall at all times be officers, directors or employees of Pogo;

(3) if required by the Business Trust Act, one Trustee (the "Delaware Trustee") shall be either a natural person who is a resident of the State of Delaware or, if not a natural person, an

entity which has its principal place of business in the State of Delaware and otherwise is permitted to act as a Trustee hereunder under the laws of the State of Delaware, except that if the Property Trustee has its principal place of business in the State of Delaware and otherwise is permitted to act as a Trustee hereunder under the laws of the State of Delaware, then the Property Trustee shall also be the Delaware Trustee and Section 3.11 shall have no application; and

(4) there shall at all times be a Property Trustee hereunder which shall satisfy the requirements of Section 5.01(c).

Each Trustee shall be either a natural person at least 21 years of age or a legal entity which shall act through one or more duly appointed representatives.

(b) The initial Regular Trustees shall be:

[-----]  
[-----]  
[-----]

c/o POGO PRODUCING COMPANY  
5 Greenway Plaza, Suite 2700  
Houston, Texas 77046

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(c) There shall at all times be one Trustee which shall act as the Property Trustee. In order to act as the Property Trustee hereunder, such Trustee shall:

(i) not be an Affiliate of the Sponsor;

(ii) be a corporation or national banking association 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, national banking association or Person permitted by the Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by Federal, State, Territorial or District of Columbia authority. If such corporation or national banking association publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then for the purposes of this Section 5.01(c)(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; and

(iii) if the Trust is excluded from the definition of an Investment Company solely by reason of Rule 3a-7 and to the extent Rule 3a-7 requires a trustee having certain qualifications to hold title to the "eligible assets" (as defined in Rule 3a-7) of the Trust,

the Property Trustee shall possess those qualifications.

If at any time the Property Trustee shall cease to satisfy the requirements of clauses (i)-(iii) above, the Property Trustee shall immediately resign in the manner and with the effect set out in Section 5.02(d). If the Property Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of the Trust Indenture Act, the Property Trustee and the Holders of the Common Securities (as if such Holders were the obligor referred to in Section 310(b) of the Trust Indenture Act) shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act. The Preferred Securities Guarantee and the Indenture shall be deemed to be specifically described in this Declaration for the purposes of clause (i) of the first proviso contained in Section 310(b) of the Trust Indenture Act.

The initial Trustee which shall serve as the Property Trustee is Wilmington Trust Company, whose address is as set forth in Section 14.01(b).

(d) The initial Trustee which shall serve as the Delaware Trustee is Wilmington Trust Company, whose address is as set forth in Section 14.01(c).

(e) Any action taken by the Holders of Common Securities pursuant to this Article 5 shall be taken at a meeting of the Holders of Common Securities convened for such purpose or by written consent as provided in Section 12.02.

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(f) No amendment may be made to this Section 5.01 which would change any rights with respect to the number, existence or appointment and removal of Trustees, except with the consent of each Holder of Common Securities.

#### SECTION 5.02. APPOINTMENT, REMOVAL AND RESIGNATION OF THE TRUSTEES.

(a) Subject to Section 5.02(b), Trustees may be appointed or removed without cause at any time:

(i) until the issuance of the Securities, by written instrument executed by the Sponsor; and

(ii) after the issuance of the Securities by vote of the Holders of a Majority in liquidation amount of the Common Securities voting as a class.

(b) (i) The Trustee that acts as the Property Trustee shall not be removed in accordance with Section 5.02(a) until a Successor Trustee possessing the qualifications to act as the Property Trustee under Section 5.01(c) (a "Successor Property Trustee") has been appointed and has accepted such appointment by written instrument executed by such Successor Property Trustee and delivered to the Regular Trustees, the Sponsor and the Property Trustee being removed; and

(ii) the Trustee that acts as the Delaware Trustee shall not be removed in accordance with Section 5.02(a) until a successor Trustee

possessing the qualifications to act as the Delaware Trustee under Section 5.01(a)(3) (a "Successor Delaware Trustee") has been appointed and has accepted such appointment by written instrument executed by such Successor Delaware Trustee and delivered to the Regular Trustees, the Sponsor and the Delaware Trustee being removed.

(c) A Trustee appointed to office shall hold such office until his successor shall have been appointed or until his death, removal or resignation.

(d) Any Trustee may resign from office (without need for prior or subsequent accounting) by an instrument (a "Resignation Request") in writing signed by the Trustee and delivered to the Sponsor and the Trust, which resignation shall take effect upon such delivery or upon such later date as is specified therein; PROVIDED, HOWEVER, that:

(i) no such resignation of the Trustee that acts as the Property Trustee shall be effective until:

(A) a Successor Property Trustee has been appointed and has accepted such appointment by instrument executed by such Successor Property Trustee and delivered to the Regular Trustees, the Sponsor and the resigning Property Trustee; or

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(B) if the Trust is excluded from the definition of an Investment Company solely by reason of Rule 3a-7, until the assets of the Trust have been completely liquidated and the proceeds thereof distributed to the Holders of the Securities; and

(ii) no such resignation of the Trustee that acts as the Delaware Trustee shall be effective until a Successor Delaware Trustee has been appointed and has accepted such appointment by instrument executed by such Successor Delaware Trustee and delivered to the Regular Trustees, the Sponsor and the resigning Delaware Trustee.

(e) If no Successor Property Trustee or Successor Delaware Trustee shall have been appointed and accepted appointment as provided in this Section 5.02 within 60 days after delivery of a notice of removal or a Resignation Request, the Property Trustee or Delaware Trustee being removed of resigning as the case may be may petition any court of competent jurisdiction for appointment of a Successor Property Trustee or Successor Delaware Trustee, as the case may be. Such court may thereupon after prescribing such notice, if any, as it may deem proper and prescribe, appoint a Successor Property Trustee or Successor Delaware Trustee, as the case may be.

#### SECTION 5.03. VACANCIES AMONG THE TRUSTEES.

If a Trustee ceases to hold office for any reason and the number of Trustees is not reduced pursuant to Section 5.01 or if the number of Trustees is increased pursuant to Section 5.01, a vacancy shall occur. A resolution certifying the existence of such vacancy by a majority of the Regular

Trustees shall be conclusive evidence of the existence of such vacancy. The vacancy shall be filled with a Trustee appointed in accordance with the requirements of this Article 5.

#### SECTION 5.04. EFFECT OF VACANCIES.

The death, resignation, retirement, removal, bankruptcy, dissolution, liquidation, incompetence or incapacity to perform the duties of a Trustee, or any one of them, shall not operate to dissolve, terminate or annul the Trust. Whenever a vacancy in the number of Regular Trustees shall occur until such vacancy is filled as provided in this Article 5, the Regular Trustees in office, regardless of their number, shall have all the powers granted to the Regular Trustees and shall discharge all the duties imposed upon the Regular Trustees by this Declaration.

#### SECTION 5.05. MEETINGS.

Meetings of the Regular Trustees shall be held from time to time upon the call of any Regular Trustee. Regular meetings of the Regular Trustees may be held at a time and place fixed by resolution of the Regular Trustees. Notice of any in-person meeting of the Regular Trustees shall be hand delivered or otherwise delivered in writing (including by facsimile, with a hard copy by overnight courier) not less than 48 hours before such meeting. Notice of any telephonic meeting of the Regular Trustees or any committee thereof shall be hand delivered or otherwise delivered in writing (including by facsimile, with a hard copy by overnight courier) not less than 24 hours before such meeting. Notices shall contain a brief statement of the time, place and anticipated purposes of the meeting. The presence (whether in person or by telephone) of a Regular Trustee at a meeting

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shall constitute a waiver of notice of such meeting except where a Regular Trustee attends a meeting for the express purpose of objecting to the transaction of any activity on the ground that the meeting has not been lawfully called or convened. Unless otherwise provided in this Declaration, any action of the Regular Trustees may be taken at a meeting by vote of a majority of the Regular Trustees present (whether in person or by telephone) and eligible to vote with respect to such matter, PROVIDED THAT a Quorum is present, or without a meeting by the unanimous written consent of the Regular Trustees.

#### SECTION 5.06. 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 registration statement or amendment thereto or other document or schedule filed with the Commission or making any other governmental filing (including, without limitation, the filings referred to in Section 3.13).

(b) The Regular Trustees shall have power to delegate from time to time to such of their number or to officers of the Trust the doing of such things and the execution of such instruments either in the name of the Trust or the names

of the 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 5.07. MERGER, CONVERSION, CONSOLIDATION OR SUCCESSION TO BUSINESS.

Any Person into which the Property Trustee or the Delaware Trustee or any Regular Trustee that is not a natural person, as the case may be, may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Property Trustee or the Delaware Trustee or the Regular Trustees, as the case may be, shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of the Property Trustee or the Delaware Trustee or any Regular Trustee, as the case may be, shall be the successor of the Property Trustee or the Delaware Trustee or that Regular Trustee, as the case may be, hereunder, PROVIDED THAT 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.

### ARTICLE 6 DISTRIBUTIONS

#### SECTION 6.01. DISTRIBUTIONS.

Holders shall receive periodic distributions, redemption payments and liquidation distributions in accordance with the applicable terms of the relevant Holder's Securities as set forth in Exhibits B and C hereto ("Distributions"). If and to the extent that Pogo makes a payment of

interest (including Additional Interest and/or Compounded Interest (as defined in the Indenture)), premium and/or principal on the Debentures held by the Property Trustee (the amount of any such payment being a "Payment Amount"), the Property Trustee shall and is directed, to the extent funds are available for that purpose, to promptly make a Distribution of the Payment Amount to Holders in accordance with the terms of the Securities as set forth in Exhibits B and C hereto. The record dates and payment dates for Distributions shall be the same as the record dates and payment dates for the Debentures held by the Property Trustee.

### ARTICLE 7 ISSUANCE OF THE SECURITIES

#### SECTION 7.01. GENERAL PROVISIONS REGARDING THE SECURITIES.

(a) The Regular Trustees shall issue on behalf of the Trust Securities in fully registered form representing undivided beneficial interests in the assets of the Trust in accordance with Section 7.01(b) and for the consideration specified in Section 3.03.



(b) The Regular Trustees shall issue on behalf of the Trust one class of preferred securities representing preferred undivided beneficial interests in the assets of the Trust having such terms as are set forth in Exhibit B (the "Preferred Securities") hereto, which terms are incorporated by reference in, and made a part of, this Declaration as if specifically set forth herein, and one class of common securities representing common undivided beneficial interests in the assets of the Trust having such terms as are set forth in Exhibit C (the "Common Securities") hereto, which terms are incorporated by reference in, and made a part of, this Declaration as if specifically set forth herein. The Trust shall have no securities or other interests in the assets of the Trust other than the Preferred Securities and the Common Securities.

(c) The Certificates shall be signed on behalf of the Trust by the Regular Trustees (or if there are more than two Regular Trustees by any two of the Regular Trustees). Such signatures may be the manual or facsimile signatures of the present or any future Regular Trustee. Typographical and other minor errors or defects in any such reproduction of any such signature shall not affect the validity of any Certificate. In case any Regular Trustee who shall have signed any of the Certificates shall cease to be such Regular Trustee before the Certificate so signed shall be delivered by the Trust, such Certificate nevertheless may be delivered as though the person who signed such Certificate had not ceased to be such Regular Trustee; and any Certificate may be signed on behalf of the Trust by such persons as, at the actual date of the execution of such Certificate, shall be the Regular Trustees, although at the date of the execution and delivery of this Declaration any such person was not a Regular Trustee. Certificates shall be typewritten, printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Regular Trustees, as evidenced by their execution thereof, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements as the Regular Trustees may deem appropriate, or as may be required to comply with any law or with any rule or regulation made

pursuant thereto or with any rule or regulation of any stock exchange or automated quotation system on which Securities may be listed or traded, or with any rule or regulation of the Clearing Agency, or to conform to usage. Pending the preparation of definitive Certificates, the Regular Trustees on behalf of the Trust may execute temporary Certificates (printed, lithographed or typewritten), in substantially the form of the definitive Certificates in lieu of which they are issued, but with such omissions, insertions and variations as may be appropriate for temporary Certificates, all as may be determined by the Regular Trustees. Each temporary Certificate shall be executed by the Regular Trustees (or, if there are more than two Regular Trustees, by any two of the Regular Trustees) on behalf of the Trust upon the same conditions and in substantially the same manner, and with like effect, as definitive Certificates. Without unnecessary delay, the Regular Trustees on behalf of the Trust will execute and furnish definitive Certificates and thereupon any or all temporary Certificates may be surrendered to the transfer agent and registrar in exchange therefor (without charge to the Holders). Each Preferred Security Certificate whether in temporary or definitive form shall be countersigned upon receipt of a written order of the Trust signed by one Regular Trustee, by the manual signature of an authorized signatory of the Person acting as registrar and

transfer agent for the Preferred Securities, which shall initially be the Property Trustee.

(d) The consideration received by the Trust for the issuance of the Securities shall constitute a contribution to the capital of the Trust and shall not constitute a loan to the Trust.

(e) Upon issuance of the Securities as provided in this Declaration, the Securities so issued shall be deemed to be validly issued, fully paid and non-assessable.

(f) Every Person, by virtue of having become a Holder or a Preferred Security Beneficial Owner in accordance with the terms of this Declaration, shall be deemed to have expressly assented and agreed to the terms of, and shall be bound by this Declaration.

(g) Upon issuance of the Securities as provided in this Declaration, the Regular Trustees on behalf of the Trust shall return to Pogo the \$10 constituting initial trust assets as set forth in the Original Declaration.

#### [SECTION 7.02. CONVERSION AGENT.

The Trust shall maintain an office or agency where Preferred Securities may be presented for conversion ("Conversion Agent"). The Trust may appoint the Conversion Agent and may appoint one or more additional Conversion Agents in such other locations as it may determine. The term "Conversion Agent" includes any additional Conversion Agent. The Trust may change any Conversion Agent without prior notice to any Holders. If the Trust fails to appoint or maintain another entity as Conversion Agent, the Property Trustee will act as such. The Trust or any of its Affiliates may act as Conversion Agent. The Conversion Agent shall be entitled to the rights and protections extended to the Property Trustee when acting in such capacity.

The Property Trustee is hereby initially appointed as the Conversion Agent for the Preferred Securities.]

### ARTICLE 8 DISSOLUTION OF THE TRUST

#### SECTION 8.01. DISSOLUTION OF THE TRUST.

The Trust shall dissolve:

(i) when all of the Securities shall have been called for redemption and the amounts necessary for redemption thereof shall have been paid to the Holders of the Securities in accordance with the terms of the Securities; or

(ii) when all of the Debentures shall have been distributed to the Holders of the Securities in exchange for all of the Securities in accordance with the terms of the Securities; or

(iii) upon the expiration of the term of the Trust as set forth in Section 3.17;

(iv) upon a decree of judicial dissolution [; or

(v) upon the distribution of Common Stock to all Securities Holders upon conversion of all outstanding Securities.]

Upon dissolution and the completion of the winding up of the affairs of the Trust, the Trust and this Declaration shall terminate when a certificate of cancellation is filed by the Trustees with the Secretary of State of the State of Delaware. The Trustees shall so file such a certificate as soon as practicable after the occurrence of an event referred to in this Section 8.01.

The provisions of Sections 3.12 and 4.02 and Article 10 shall survive the dissolution and termination of the Trust and this Declaration.

## ARTICLE 9 TRANSFER OF INTERESTS

### SECTION 9.01. TRANSFER OF SECURITIES.

(a) Securities may only be transferred, in whole or in part, in accordance with the terms and conditions set forth in this Declaration and in the terms of the Securities. To the fullest extent permitted by law, any transfer or purported transfer of any Security not made in accordance with this Declaration shall be null and void.

(b) Subject to this Article 9, Preferred Securities shall be freely transferable.

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(c) The Holder of the Common Securities may not transfer the Common Securities except (a) in connection with transactions permitted under Section 10.01 of the Indenture, or (b) to the Sponsor or an Affiliate thereof in compliance with applicable law (including the Securities Act and applicable state securities and blue sky laws). To the fullest extent permitted by law, any attempted transfer of the Common Securities other than as set forth in the immediately preceding sentence shall be null and void.

### SECTION 9.02. TRANSFER OF CERTIFICATES.

The Regular Trustees shall provide for the registration of Certificates and of transfers of Certificates, which will be effected without charge but only upon payment (with such indemnity as the Regular Trustees may require) in respect of any tax or other government charges which may be imposed in relation to it. Upon surrender for registration of transfer of any Certificate, the Regular Trustees shall cause one or more new Certificates to be issued in the name of the designated transferee or transferees. Every Certificate surrendered for registration of transfer shall be accompanied by a written instrument of transfer in form satisfactory to the Regular Trustees duly executed by the

Holder or such Holder's attorney duly authorized in writing. Each Certificate surrendered for registration of transfer shall be canceled by the Regular Trustees. A transferee of a Certificate shall be entitled to the rights and subject to the obligations of a Holder hereunder upon the receipt by such transferee of a Certificate. By acceptance of a Certificate, each transferee shall be deemed to have agreed to be bound by this Declaration.

#### SECTION 9.03. DEEMED SECURITY HOLDERS.

The Trustees may treat the Person in whose name any Certificate shall be registered on the books and records of the Trust as the sole holder of such Certificate and of the Securities represented by such Certificate for purposes of receiving Distributions and for all other purposes whatsoever and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Certificate or in the Securities represented by such Certificate on the part of any Person, whether or not the Trustees shall have actual or other notice thereof.

#### SECTION 9.04. BOOK ENTRY INTERESTS.

Unless otherwise specified in the terms of the Preferred Securities, the Preferred Security Certificates, on original issuance [(including Preferred Securities, if any, issued on the Option Closing Date pursuant to the exercise of the overallotment option set forth in the Underwriting Agreement)], will be issued in the form of one or more, fully registered, global Preferred Security Certificates (each a "Global Certificate"), to be delivered to DTC, the initial Clearing Agency, by, or on behalf of, the Trust. Such Global Certificates shall initially be registered on the books and records of the Trust in the name of Cede & Co., the nominee of DTC, and no Preferred Security Beneficial Owner will receive a definitive Preferred Security Certificate representing such Preferred Security Beneficial Owner's interests in such Global Certificates, except as provided in Section 9.07. Unless and until definitive, fully registered Preferred Security Certificates (the "Definitive Preferred Security Certificates") have been issued to the Preferred Security Beneficial Owners pursuant to Section 9.07:

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(i) the provisions of this Section 9.04 shall be in full force and effect;

(ii) the Trust and the Trustees shall be entitled to deal with the Clearing Agency for all purposes of this Declaration (including the payment of Distributions on the Global Certificates and receiving approvals, votes or consents hereunder) as the Holder of the Preferred Securities and the sole holder of the Global Certificates and, except as set forth herein in Section 9.07 or in Rule 3a-7 (if the Trust is excluded from the definition of an Investment Company solely by reason of Rule 3a-7) with respect to the Property Trustee, shall have no obligation to the Preferred Security Beneficial Owners;

(iii) to the extent that the provisions of this Section 9.04 conflict with any other provisions of this Declaration, the provisions

of this Section 9.04 shall control; and

(iv) the rights of the Preferred Security Beneficial Owners shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreements between such Preferred Security Beneficial Owners and the Clearing Agency and/or the Clearing Agency Participants. DTC will make book entry transfers among the Clearing Agency Participants and receive and transmit payments of Distributions on the Global Certificates to such 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 Security Certificates have not been issued (pursuant to Section 9.07 hereof), the Trustees may conclusively rely on, and shall be protected in relying on, any written instrument (including a proxy) delivered to the Trustees by the Clearing Agency setting forth the Preferred Security Beneficial Owners' votes or assigning the right to vote on any matter to any other Persons either in whole or in part.

#### SECTION 9.05. NOTICES TO HOLDERS OF CERTIFICATES.

Whenever a notice or other communication to the Holders is required to be given under this Declaration, unless and until Definitive Preferred Security Certificates shall have been issued pursuant to Section 9.07, the relevant Trustees shall give all such notices and communications, specified herein to be given to Holders of Preferred Securities, to the Clearing Agency and, with respect to any Preferred Security Certificate registered in the name of a Clearing Agency or the nominee of a Clearing Agency, the Trustees shall, except in Rule 3a-7 (if the Trust is excluded from the definition of an Investment Company solely by reason of Rule 3a-7) with respect to the Property Trustee, have no notice obligations to the Preferred Security Beneficial Owners.

#### SECTION 9.06. APPOINTMENT OF SUCCESSOR CLEARING AGENCY.

If any Clearing Agency elects to discontinue its services as securities depository with respect to the Preferred Securities, the Regular Trustees may, in their sole discretion, appoint a successor Clearing Agency with respect to the Preferred Securities.

#### SECTION 9.07. DEFINITIVE PREFERRED SECURITIES CERTIFICATES.

If (i) a Clearing Agency elects to discontinue its services as securities depository with respect to the Preferred Securities and a successor Clearing Agency is not appointed within 90 days after such discontinuance pursuant to Section 9.06 or (ii) the Regular Trustees elect after consultation with the Sponsor to terminate the book entry system through the Clearing Agency with respect to the Preferred Securities, then (x) Definitive Preferred Security Certificates shall be prepared by the Regular Trustees on behalf of the Trust with respect to such Preferred Securities and (y) upon surrender of the Global Certificates by the Clearing

Agency, accompanied by registration instructions, the Regular Trustees shall cause Definitive Preferred Security Certificates to be delivered to Preferred Security Beneficial Owners in accordance with the instructions of the Clearing Agency. Neither the Trustees nor the Trust shall be liable for any delay in delivery of such instructions and each of them may conclusively rely on, and shall be protected in relying on, such instructions.

#### SECTION 9.08. MUTILATED, DESTROYED, LOST OR STOLEN CERTIFICATES.

If (a) any mutilated Certificates should be surrendered to the Regular Trustees, or if the Regular Trustees shall receive evidence to their satisfaction of the destruction, loss or theft of any Certificate; and (b) there shall be delivered to the Regular Trustees such security or indemnity as may be required by them to keep each of them and the Trust harmless, then in the absence of notice that such Certificate shall have been acquired by a bona fide purchaser, the Regular Trustees (or if there are more than two Regular Trustees by any two of the Regular Trustees) on behalf of the Trust shall execute and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Certificate, a new Certificate of like denomination. In connection with the issuance of any new Certificate under this Section 9.08, the Regular Trustees 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 Certificate issued pursuant to this section shall constitute conclusive evidence of an ownership interest in the relevant Securities, as if originally issued, whether or not the lost, stolen or destroyed Certificate shall be found at any time.

### ARTICLE 10 LIMITATION OF LIABILITY; INDEMNIFICATION

#### SECTION 10.01. EXCULPATION.

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

Indemnified Person's gross negligence (or, in the case of the Property Trustee, negligence) or willful misconduct with respect to such acts or omissions.

(b) An Indemnified Person shall be fully protected in relying in good faith upon the records of the Trust and upon such information, opinions, reports or statements presented to the Trust by any Person as to matters the Indemnified Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Trust, including information, opinions, reports or statements as to the value

and amount of the assets, liabilities, profits, losses or any other facts pertinent to the existence and amount of assets from which Distributions to Holders of Securities might properly be paid.

(c) Pursuant to Section 3803(a) of the Business Trust Act, the Holders of Securities, in their capacities as Holders, shall be entitled to the same limitation of liability that is extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

#### SECTION 10.02. INDEMNIFICATION.

(a) To the fullest extent permitted by applicable law, the Sponsor shall indemnify and hold harmless each Indemnified Person from and against any loss, damage or claim incurred by such Indemnified Person by reason of any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of authority conferred on such Indemnified Person by this Declaration, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Indemnified Person by reason of gross negligence (or, in the case of the Property Trustee, negligence) or willful misconduct with respect to such acts or omissions.

(b) The provisions of this Section 10.02 shall survive the termination of this Declaration or the resignation or removal of any Trustee.

#### SECTION 10.03. OUTSIDE BUSINESS.

The Sponsor and any Trustee (in the case of the Property Trustee, subject to Section 5.01(c)) may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Trust, and the Trust and the Holders of Securities shall have no rights by virtue of this Declaration in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Trust, shall not be deemed wrongful or improper. Neither the Sponsor nor any Trustee shall be obligated to present any particular investment or other opportunity to the Trust even if such opportunity is of a character that, if presented to the Trust, could be taken by the Trust, and the Sponsor or any Trustee shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment or other opportunity. Any Trustee may engage or be interested in any financial or other transaction with the Sponsor or any Affiliate of the Sponsor or may act as depository for, trustee or agent for,

or act on any committee or body of holders of, securities or other obligations of the Sponsor or any of its Affiliates.

#### ARTICLE 11 ACCOUNTING



SECTION 11.01. FISCAL YEAR.

The fiscal year ("Fiscal Year") of the Trust shall be the calendar year, or such other year as is required by the Code.

SECTION 11.02. CERTAIN ACCOUNTING MATTERS.

(a) At all times during the existence of the Trust, the Regular Trustees shall keep, or cause to be kept, full books of account, records and supporting documents, which shall reflect in reasonable detail each transaction of the Trust. The books of account shall be maintained on the accrual method of accounting, in accordance with generally accepted accounting principles, consistently applied. The Trust shall use the accrual method of accounting for United States Federal income tax purposes.

(b) If required by applicable law, the Regular Trustees shall, as soon as available after the end of each Fiscal Year of the Trust, cause to be prepared and mailed to each Holder of Securities unaudited financial statements of the Trust for such Fiscal Year, prepared in accordance with generally accepted accounting principles; PROVIDED THAT if the Trust is required to comply with the periodic reporting requirements of Section 13(a) or 15(d) of the Exchange Act, such financial statements for such Fiscal Year shall be examined and reported on by a firm of independent certified public accountants selected by the Regular Trustees (which firm may be the firm used by the Sponsor).

(c) The Regular Trustees shall cause to be duly prepared and mailed to each Holder of Securities any annual United States Federal income tax information statement required by the Code, containing such information with regard to the Securities held by each Holder as is required by the Code and the Treasury Regulations. Notwithstanding any right under the Code to deliver any such statement at a later date, the Regular Trustees shall endeavor to deliver all such statements within 30 days after the end of each Fiscal Year of the Trust.

(d) The Regular Trustees shall cause to be duly prepared and filed with the appropriate taxing authority an annual United States Federal income tax return, on such form as is required by the Code, and any other annual income tax returns required to be filed by the Regular Trustees on behalf of the Trust with any state or local taxing authority.

SECTION 11.03. BANKING.

The Trust shall maintain one or more bank accounts in the name and for the sole benefit of the Trust; PROVIDED, HOWEVER, that all payments of funds in respect of the Debentures held by the Property Trustee shall be made directly to the Property Account and no other funds from the Trust shall be deposited in the Property Account. The sole signatories for such accounts shall be designated by the Regular Trustees; PROVIDED, HOWEVER, that the Property Trustee shall designate the sole signatories for the Property Account.

SECTION 11.04. WITHHOLDING.

The Trust and the Trustees shall comply with all withholding requirements under United States Federal, State and local law. The Regular Trustees shall request, and the Holders shall provide to the Trust, such forms or certificates as are necessary to establish an exemption from withholding with respect to each Holder, and any representations and forms as shall reasonably be requested by the Regular Trustees to assist them in determining the extent of, and in fulfilling, the Trust's withholding obligations. The Trust shall file required forms with applicable jurisdictions and, unless an exemption from withholding is properly established by a Holder, shall remit amounts withheld with respect to the Holder to applicable jurisdictions. To the extent that the Trust is required to withhold and pay over any amounts to any authority with respect to Distributions or allocations to any Holder, the amount withheld shall be deemed to be a Distribution in the amount of the withholding to the Holder. In the event of any claimed overwithholding, Holders shall be limited to an action against the applicable jurisdiction. If the amount to be withheld was not withheld from a Distribution, the Trust may reduce subsequent Distributions by the amount of such withholding.

## ARTICLE 12 AMENDMENTS AND MEETINGS

### SECTION 12.01. AMENDMENTS.

(a) Except as otherwise provided in this Declaration or by any applicable terms of the Securities, this Declaration may be amended by, and only by, a written instrument executed by a majority of the Regular Trustees; PROVIDED, HOWEVER, that (i) no amendment or modification to this Declaration shall be made, and any such purported amendment shall be void and ineffective: (A) unless the Regular Trustees shall have first received: (x) an Officers' Certificate that such amendment is permitted by, and conforms to, the terms of this Declaration; and (y) an Opinion of Counsel that such amendment is permitted by, and conforms to, the terms of this Declaration and that all conditions precedent, if any, in this Declaration to the execution and delivery of such amendment have been satisfied; and (B) to the extent the result of such amendment would be to: (x) cause the Trust to fail to continue to be classified for purposes of United States Federal income taxation as a grantor trust; (y) reduce or otherwise adversely affect the rights or powers of the

Property Trustee in contravention of the Trust Indenture Act; or (z) cause the Trust to be deemed to be an Investment Company required to be registered under the Investment Company Act; (ii) at such time after the Trust has issued any Securities which remain outstanding, any amendment which would adversely affect the rights, privileges or preferences of any Holder of Securities may be effected only with such additional requirements as may be set forth in the terms of such Securities; (iii) Section 4.02, Section 9.01(c) and this Section 12.01 shall not be amended without the consent of

all of the Holders of the Securities; (iv) no amendment which adversely affects the rights, powers and privileges of the Property Trustee or the Delaware Trustee shall be made without the consent of the Property Trustee or the Delaware Trustee, respectively; (v) Article 4 shall not be amended without the consent of the Sponsor; and (vi) the rights of the Holders of Common Securities under Article 5 to increase or decrease the number of, and to appoint, replace or remove, Trustees shall not be amended without the consent of each Holder of Common Securities.

(b) Notwithstanding Section 12.02(a), this Declaration may be amended without the consent of the Holders of the Securities to (i) cure any ambiguity, (ii) correct or supplement any provision in this Declaration that may be defective or inconsistent with any other provision of this Declaration, (iii) add to the covenants, restrictions or obligations of the Sponsor, (iv) conform to any changes in Rule 3a-7 (if the Trust is excluded from the definition of an Investment Company solely by reason of Rule 3a-7) or any change in interpretation or application of Rule 3a-7 (if the Trust is excluded from the definition of an Investment Company solely by reason of Rule 3a-7) by the Commission, (v) make any other provisions with respect to matters or questions arising under this Declaration which shall not be inconsistent with the other provisions of this Declaration, (vi) modify, eliminate or add to any provisions of this Declaration to such extent as shall be necessary to ensure that the Trust will be classified for United States federal income tax purposes as a grantor trust at all times that any Securities are outstanding or to ensure that the Trust will not be required to register as an Investment Company under the Investment Company Act, and (vii) pursuant to Section 5.02, evidence the acceptance of the appointment of a successor Trustee or fill a vacancy created by an increase in the number of Regular Trustees, which amendment does not adversely affect in any material respect the rights, preferences or privileges of the Holders.

#### SECTION 12.02. MEETINGS OF THE HOLDERS OF SECURITIES; ACTION BY WRITTEN CONSENT.

(a) Meetings of the Holders of Preferred Securities and/or Common Securities may be called at any time by the Regular Trustees (or as provided in the terms of the Securities) to consider and act on any matter on which the Holders of such class of Securities are entitled to act under the terms of this Declaration, the terms of the Securities or the rules of any stock exchange or automated quotation system on which the Preferred Securities are then listed, traded or quoted. The Regular Trustees shall call a meeting of the Holders of Preferred Securities or Common Securities, if directed to do so by Holders of at least 10% in liquidation amount of such class of Securities. Such direction shall be given by delivering to the Regular Trustees one or more notices in writing stating that the signing Holders of Securities wish to call a meeting and indicating the general or specific purpose for which the meeting is to be called. Any Holders of Securities calling a meeting shall specify in writing the Certificates held by the Holders of Securities exercising the right to call a meeting and only those specified Certificates shall be counted for purposes of determining whether the required percentage set forth in the second sentence of this paragraph has been met.

(b) Except to the extent otherwise provided in the terms of the Securities, the following provision shall apply to meetings of the Holders of Securities:

(i) Notice of any such meeting shall be given by mail to all the Holders of Securities having a right to vote thereat not less than seven (7) days nor more than sixty (60) days prior to the date of such meeting. Whenever a vote, consent or approval of the Holders of Securities is permitted or required under this Declaration or the rules of any stock exchange or automated quotation system on which the Preferred Securities are then listed, traded or quoted, such vote, consent or approval may be given at a meeting of the Holders of Securities. Any action that may be taken at a meeting of the Holders of Securities may be taken without a meeting and without prior notice if a consent in writing setting forth the action so taken is signed by Holders of Securities owning not less than the minimum aggregate liquidation amount of Securities that would be necessary to authorize or take such action at a meeting at which all Holders of Securities having a right to vote thereon were present and voting. Prompt notice of the taking of action without a meeting shall be given to the Holders of Securities entitled to vote who have not consented in writing. The Regular Trustees may specify that any written ballot submitted to the Holders of Securities for the purpose of taking any action without a meeting shall be returned to the Trust within the time specified by the Regular Trustees.

(ii) Each Holder of a Security may authorize any Person to act for it by proxy on all matters in which a Holder of a Security is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Holder of the Security executing it. Except as otherwise provided herein or in the terms of the Securities, all matters relating to the giving, voting or validity of proxies shall be governed by the General Corporation Law of the State of Delaware relating to proxies, and judicial interpretations thereunder, as if the Trust were a Delaware corporation and the Holders of the Securities were stockholders of a Delaware corporation.

(iii) Each meeting of the Holders of the Securities shall be conducted by the Regular Trustees or by such other Person that the Regular Trustees may designate.

(iv) Unless otherwise provided in the Business Trust Act, this Declaration or the rules of any stock exchange or automated quotation system on which the Preferred Securities are then listed, traded or quoted, the Regular Trustees, in their sole discretion, shall establish all other provisions relating to meetings of Holders of Securities, including notice of the time, place or purpose of any meeting at which any matter is to be voted on by any Holders of Securities, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy or any other matter with respect to the exercise of any such right to vote.

ARTICLE 13  
REPRESENTATIONS OF THE PROPERTY TRUSTEE AND THE DELAWARE TRUSTEE

SECTION 13.01. REPRESENTATIONS AND WARRANTIES OF THE PROPERTY TRUSTEE.

The Trustee which acts as the initial Property Trustee represents and warrants to the Trust and to the Sponsor at the date of this Declaration, and each Successor Property Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Property Trustee's acceptance of its appointment as the Property Trustee that:

(i) The Property Trustee is a national banking association or a banking corporation with trust powers, duly organized, validly existing and in good standing under the laws of the United States or the laws of the state of its incorporation, with trust power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, this Declaration.

(ii) The execution, delivery and performance by the Property Trustee of this Declaration have been duly authorized by all necessary corporate action on the part of the Property Trustee. This Declaration has been duly executed and delivered by the Property Trustee, and constitutes a legal, valid and binding obligation of the Property Trustee, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency and other similar laws affecting creditors' rights generally and to general principles of equity and the discretion of the court (regardless of whether the enforcement of such remedies is considered in a proceeding in equity or at law).

(iii) The execution, delivery and performance of this Declaration by the Property Trustee does not conflict with or constitute a breach of the charter or by-laws of the Property Trustee.

(iv) No consent, approval or authorization of, or registration with or notice to, any banking authority which supervises or regulates the Property Trustee is required for the execution, delivery or performance by the Property Trustee of this Declaration.

(v) The Property Trustee satisfies the qualifications set forth in Section 5.01(c).

SECTION 13.02. REPRESENTATIONS AND WARRANTIES OF THE DELAWARE TRUSTEE.

The Trustee which acts as the initial Delaware Trustee represents and warrants to the Trust and the Sponsor at the date of this Declaration, and each Successor Delaware Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Delaware Trustee's acceptance of its appointment as the Delaware Trustee, that:

(i) The Delaware Trustee is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware,

with corporate power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, this Declaration.

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(ii) The execution, delivery and performance by the Delaware Trustee of this Declaration have been duly authorized by all necessary corporate action on the part of the Delaware Trustee. This Declaration has been duly executed and delivered by the Delaware Trustee and constitutes a legal, valid and binding obligation of the Delaware Trustee, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency and other similar laws affecting creditors' rights generally and to general principles of equity and the discretion of the court (regardless of whether the enforcement of such remedies is considered in a proceeding in equity or at law).

(iii) No consent, approval or authorization of, or registration with or notice to, any banking authority which supervises or regulates the Delaware Trustee, if any, is required for the execution, delivery or performance by the Delaware Trustee of this Declaration.

(iv) The Delaware Trustee is a natural person who is a resident of the State of Delaware or, if not a natural person, an entity which has its principal place of business in the State of Delaware and is a Person that satisfies for the Trust Section 3807(a) of the Business Trust Act.

#### ARTICLE 14 MISCELLANEOUS

##### SECTION 14.01. NOTICES.

All notices provided for in this Declaration shall be in writing, duly signed by the party giving such notice, and shall be delivered, telecopied or mailed by first class mail, as follows:

(a) if given to the Trust, in care of the Regular Trustees at the Trust's mailing address set forth below (or such other address as the Regular Trustees on behalf of the Trust may give notice of to the Holders of the Securities):

Pogo Trust I  
c/o Pogo Producing Company  
5 Greenway Plaza, Suite 2700  
Houston, Texas 77046  
Attention: Corporate Secretary  
Telecopy: (713) 297-4970

(b) if given to the Property Trustee, at the mailing address of the Property Trustee set forth below (or such other address as the Property Trustee may give notice of to the Holders of the Securities):

Wilmington Trust Company  
 1100 North Market Street  
 Wilmington, Delaware 19810  
 Attention: Corporate Trust Administration  
 Telecopy: (302) 651-8882

(c) if given to the Delaware Trustee, at the mailing address of the Delaware Trustee set forth below (or such other address as the Delaware Trustee may give notice of to the Holders of the Securities):

Wilmington Trust Company  
 1100 North Market Street  
 Wilmington, Delaware 19810  
 Attention: Corporate Trust Administration  
 Telecopy: (302) 651-8882

(d) if given to the Holder of the Common Securities, at the mailing address of the Sponsor set forth below (or such other address as the Holder of the Common Securities may give notice of to the Trust):

Pogo Producing Company  
 5 Greenway Plaza, Suite 2700  
 Houston, Texas 77046  
 Attention: Corporate Secretary  
 Telecopy: (713) 297-4970

(e) if given to any other Holder, at the address set forth on the books and records of the Trust.

A copy of any notice to the Property Trustee or the Delaware Trustee shall also be sent to the Trust. All notices shall be deemed to have been given, when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

#### SECTION 14.02. UNDERTAKING FOR COSTS.

All parties to this Declaration agree, and each Holder of any Securities by his or her acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Declaration, or in any suit against the Property Trustee for any action taken or omitted by it as Property Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses



made by such party litigant; but the provisions of this Section 14.02 shall not apply to any suit instituted by the Property Trustee, to any suit instituted by any Holder of Preferred Securities, or group of Holders of Preferred Securities, holding more than 10% in aggregate liquidation amount of the outstanding Preferred Securities, or to any suit instituted by any Holder of Preferred Securities for the enforcement of the payment of the principal of (or premium, if any) or interest on the Debentures, on or after the respective due dates expressed in such Debentures.

#### SECTION 14.03. GOVERNING LAW.

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

#### SECTION 14.04. HEADINGS.

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

#### SECTION 14.05. PARTIAL ENFORCEABILITY.

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

#### SECTION 14.06. COUNTERPARTS.

This Declaration may contain more than one counterpart of the signature pages and this Declaration may be executed by the affixing of the signature of the Sponsor and each of the Trustees to one of such counterpart signature pages. All of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

#### SECTION 14.07. INTENTION OF THE PARTIES.

It is the intention of the parties hereto that the Trust not be classified for United States Federal income tax purposes as an association taxable as a corporation or partnership but that the Trust be treated as a grantor trust for United States federal income tax purposes. The provisions of this Declaration shall be interpreted to further this intention of the parties.

#### SECTION 14.08. SUCCESSORS AND ASSIGNS.

Whenever in this Declaration any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included, and all covenants and agreements in this

Declaration by the Sponsor and the Trustees shall bind and inure to the benefit of their respective successors and assigns, whether so expressed.

SECTION 14.09. NO RECOURSE.

The Trust's obligations hereunder are intended to be the obligations of the Trust and no recourse for the payment of Distributions, or for any claim upon the Securities or otherwise in respect thereof, shall be had against any Holder of Securities or any Affiliate of a Holder of Securities, solely by reason of such Person's being a Holder of Securities or an Affiliate of a Holder of Securities, it being understood that the Holder of Securities, solely by reason of being a Holder of Securities, has limited liability (in accordance with the provisions of the Business Trust Act) for the liabilities and obligations of the Trust. Nothing contained in this Section 14.09 shall be construed to limit the exercise or enforcement, in accordance with the terms of this Declaration, the Preferred Guarantee and the Indenture, of the rights and remedies against the Trust or the Sponsor.

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

POGO PRODUCING COMPANY,  
as Sponsor

By:

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Name:

Title:

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[Name],  
as Regular Trustee

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[Name],  
as Regular Trustee

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[Name],  
as Regular Trustee

WILMINGTON TRUST COMPANY,  
as Property Trustee

By: \_\_\_\_\_

Name:

Title:

WILMINGTON TRUST COMPANY,  
as Delaware Trustee

By: \_\_\_\_\_

Name:

Title:

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EXHIBIT A

CERTIFICATE OF TRUST  
OF  
POGO TRUST I

THIS CERTIFICATE OF TRUST of Pogo Trust I (the "Trust"), dated as of March 17, 1999, is being duly executed and filed by the undersigned, as trustees, with the Secretary of State of the State of Delaware to form a business trust under the Delaware Business Trust Act (12 DEL. CODE Section 3801 ET SEQ.).

1. NAME. The name of the business trust being formed hereby is Pogo Trust I.

2. DELAWARE TRUSTEE. The name and business address of the trustee of the Trust with a principal place of business in the State of Delaware are Wilmington Trust Company, 1100 North Market Street, Wilmington, Delaware 19810.

3. EFFECTIVE DATE. This Certificate of Trust shall be effective at the time of its filing with the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the undersigned, being all of the trustees of the Trust at the time of filing this Certificate of Trust, have executed this Certificate of Trust as of the date first above written.

WILMINGTON TRUST COMPANY,  
as Delaware Trustee

By: \_\_\_\_\_

Name:

Title:

WILMINGTON TRUST COMPANY,  
as Property Trustee

By:

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Name:

Title:

GERALD A. MORTON,  
as Regular Trustee

By:

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EXHIBIT B

TERMS OF  
PREFERRED SECURITIES

Pursuant to Section 7.01(b) of the Amended and Restated Declaration of Trust of Pogo Trust I dated as of [\_\_\_\_\_, \_\_\_\_] (as amended from time to time, the "Declaration"), the designations, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred Securities are set forth below (each capitalized term used but not defined herein having the meaning set forth in the Declaration):

1. DESIGNATION AND NUMBER.[ \_\_\_\_\_ (\_\_\_\_\_) ] Preferred Securities of the Trust with an aggregate liquidation amount at any time outstanding with respect to the assets of the Trust of [\_\_\_\_\_] Dollars (\$[\_\_\_\_\_] ) (including up to[\_\_\_\_\_] Dollars (\$[\_\_\_\_\_] ) issuable upon exercise of the overallotment option set forth in the Underwriting Agreement), and each with a liquidation amount with respect to the assets of the Trust of \$[\_\_\_\_\_] per Preferred Security, are hereby designated as "[\_\_\_\_\_] % [Convertible] Preferred Trust Securities, Series [\_\_\_\_\_] ". The Preferred Security Certificates evidencing the Preferred Securities shall be substantially in the form attached hereto as Annex I, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice or to conform to the rules of any stock exchange or automated quotation system on which the Preferred Securities are then listed, traded or quoted. In connection with the issuance and sale of the Preferred Securities and the Common Securities, the Trust will purchase as trust assets Debentures of Pogo having an aggregate principal amount equal to the aggregate liquidation amount of the Preferred Securities and the Common Securities so issued and bearing interest at an annual rate equal to the annual Distribution rate on the Preferred Securities and the Common Securities and having payment and redemption provisions which correspond to the payment and redemption provisions of the Preferred

2. DISTRIBUTIONS. (a) Distributions payable on each Preferred Security will be fixed at a rate per annum of [\_\_\_\_\_] % (the "Coupon Rate") of the stated liquidation amount of \$[\_\_\_\_\_] per Preferred Security, such rate being the rate of interest payable on the Debentures to be held by the Property Trustee. Distributions in arrears for more than one calendar quarter will accumulate additional distributions thereon at the Coupon Rate per annum (to the extent permitted by applicable law), compounded quarterly. The term "Distributions" as used herein means such periodic cash distributions and any such additional distributions payable unless otherwise stated. A Distribution will be made by the Property Trustee only to the extent that interest payments are made in respect of the Debentures held by the Property Trustee and to the extent the Trust has funds on hand legally available therefor. The amount of Distributions payable for any period will be computed for any full quarterly Distribution period on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full quarterly Distribution period for which Distributions are computed, Distributions will be computed on the basis of the actual number of days elapsed per 90-day quarter.

(b) Distributions on the Preferred Securities will accumulate from [\_\_\_\_\_] , [\_\_\_\_\_] and will be payable quarterly in arrears, on [\_\_\_\_\_] , [\_\_\_\_\_] , [\_\_\_\_\_] and [\_\_\_\_\_] of each year, commencing on [\_\_\_\_\_] , \_\_\_\_\_ , except as otherwise described

below, but only if and to the extent that interest payments are made in respect of the Debentures held by the Property Trustee. So long as Pogo shall not be in default in the payment of interest on the Debentures, Pogo has the right under the Indenture for the Debentures to defer payments of interest on the Debentures by extending the interest payment period at any time and from time to time on the Debentures for a period not exceeding 20 consecutive quarterly interest periods (each, an "Extension Period"), during which Extension Period no interest shall be due and payable on the Debentures. As a consequence of such deferral, Distributions shall also be deferred. Despite such deferral, Distributions will continue to accumulate with additional distributions thereon (to the extent permitted by applicable law but not at a rate greater than the rate at which interest is then accruing on the Debentures) at the Coupon Rate compounded quarterly during any such Extension Period; PROVIDED THAT no Extension Period shall extend beyond the stated maturity of the Debentures. Prior to the termination of any such Extension Period, Pogo may further extend such Extension Period; PROVIDED THAT such Extension Period together with all such previous and further extensions thereof may not exceed 20 consecutive quarterly interest periods. Upon the termination of any Extension Period and the payment of all amounts then due, Pogo may commence a new Extension Period, subject to the above requirements. On the Distribution payment date at the end of an Extension Period, payments of accumulated Distributions will be payable to Holders of Preferred Securities as they appear on the books and records of the Trust (regardless of who the Holders may have been on other dates during the Extension Period) on the record date for such Distribution payment date.

(c) Distributions on the Preferred Securities will be payable

promptly by the Property Trustee (or other Paying Agent) upon receipt of immediately available funds to the Holders thereof as they appear on the books and records of the Trust on the relevant record dates. While the Preferred Securities remain in book-entry only form, the relevant record dates shall be one business day prior to the relevant Distribution date, and if the Preferred Securities are no longer in book-entry only form, the relevant record dates will be the fifteenth (15th) day of the month prior to the relevant Distribution date, which record and payment dates correspond to the record and interest payment dates on the Debentures. Distributions payable on any Preferred Securities that are not punctually paid on any Distribution payment date as a result of Pogo's having failed to make the corresponding interest payment on the Debentures will forthwith cease to be payable to the person in whose name such Preferred Security is registered on the relevant record date, and such defaulted Distribution will instead be payable to the person in whose name such Preferred Security is registered on the special record date established by the Regular Trustees, which record date shall correspond to the special record date or other specified date determined in accordance with the Indenture; PROVIDED, HOWEVER, that Distributions shall not be considered payable on any Distribution payment date falling within an Extension Period unless Pogo has elected to make a full or partial payment of interest accrued on the Debentures on such Distribution payment date. Subject to any applicable laws and regulations and the provisions of the Declaration, each payment in respect of the Preferred Securities will be made as described in section 9 hereof. If any date on which Distributions are payable on the Preferred Securities is not a Business Day, then payment of the Distribution payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other

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payment in respect of any such delay) except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on the date such payment was originally payable. Notwithstanding anything herein to the contrary, the record dates and payment dates for Distributions shall be the same as the record dates and payment dates for the Debentures.

(d) All Distributions paid with respect to the Preferred Securities and the Common Securities will be paid Pro Rata (as defined below) to the Holders thereof entitled thereto. If an Event of Default has occurred and is continuing, the Preferred Securities shall have a priority over the Common Securities with respect to Distributions.

[(e) In the event of an election by the Holder to convert its Preferred Securities through the Conversion Agent into Common Stock pursuant to the terms of the Preferred Securities as set forth in this Exhibit B to the Declaration, no payment, allowance or adjustment shall be made with respect to accumulated and unpaid Distributions on such Preferred Securities, or be required to be made; PROVIDED, HOWEVER, that if a Preferred Security is surrendered for conversion after the close of business on any regular record date for payment of a Distribution and

before the opening of business on the corresponding Distribution date, then, notwithstanding such conversion, the Distribution payable on such Distribution date will be paid in cash to the person in whose name the Preferred Security is registered at the close of business on such record date, and (other than a Preferred Security or a portion of a Preferred Security called for redemption on a redemption date occurring after such record date and on or prior to such Distribution date) when so surrendered for conversion, the Preferred Security must be accompanied by payment of an amount equal to the Distribution payable on such Distribution date.]

(f) In the event that there is any money or other property held by or for the Trust that is not accounted for under the Declaration, such money or property shall be distributed Pro Rata among the Holders of the Preferred Securities and the Common Securities.

3. LIQUIDATION DISTRIBUTION UPON DISSOLUTION. (a) In the event of any voluntary or involuntary dissolution of the Trust, the Holders of the Preferred Securities and the Common Securities will be entitled to receive Pro Rata solely out of the assets of the Trust legally available for distribution to Holders of Preferred Securities and Common Securities after satisfaction of liabilities to the creditors of the Trust, an amount equal to the aggregate of the stated liquidation amount of \$\_\_\_\_\_ per Preferred Security and Common Security plus accumulated and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"), unless, in connection with such dissolution and after satisfaction of liabilities to the creditors of the Trust, Debentures in an aggregate principal amount equal to the aggregate stated liquidation amount of such Preferred Securities and the Common Securities and bearing accrued and unpaid interest in an amount equal to the accumulated and unpaid Distributions on, such Preferred Securities and the Common Securities, shall be distributed Pro Rata to the Holders of the Preferred Securities and the Common Securities in exchange for such Securities.

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If, upon any such dissolution, the Liquidation Distribution can be paid only in part because the Trust has insufficient assets on hand legally available to pay in full the aggregate Liquidation Distribution, then the amounts payable directly by the Trust on the Preferred Securities and the Common Securities shall be paid, subject to the next paragraph, on a Pro Rata basis.

Holders of Common Securities will be entitled to receive Liquidation Distributions upon any such dissolution Pro Rata with Holders of Preferred Securities, except that if an Event of Default has occurred and is continuing, the Preferred Securities shall have a priority over the Common Securities with respect to such Liquidation Distribution.

(b) The Holder of the Common Securities shall have the right to direct the Property Trustee in writing at any time to dissolve the Trust and to distribute Debentures to Holders in exchange for Securities (which direction is optional and wholly within the discretion of the Holder of the Common Securities). Upon the receipt of any such written direction, the Property Trustee shall promptly (i) distribute Debentures in an aggregate principal amount equal to the aggregate stated liquidation amount of the Preferred Securities and the Common



Securities held by each Holder, which Debentures bear accrued and unpaid interest in an amount equal to the accumulated and unpaid Distributions on the Preferred Securities and the Common Securities of such Holder, in exchange for the Preferred Securities and Common Securities of such Holder and (ii) dissolve the Trust.

(c) On the date fixed for any distribution of Debentures, upon dissolution of the Trust, (i) the Preferred Securities will no longer be deemed to be outstanding and may be canceled by the Regular Trustees, and (ii) Certificates representing Preferred Securities will be deemed to represent beneficial interests in the Debentures having an aggregate principal amount equal to the stated liquidation amount of, and bearing accrued and unpaid interest equal to accumulated and unpaid Distributions on, such Preferred Securities until such Certificates are presented to Pogo or its agent for transfer or reissuance.

(d) If Debentures are distributed to Holders of the Preferred Securities, Pogo, pursuant to the terms of the Indenture, will use its best efforts to have the Debentures listed on the New York Stock Exchange or on such other exchange as the Preferred Securities were listed immediately prior to the distribution of the Debentures.

4. REDEMPTION OF DEBENTURES. The Preferred Securities may be redeemed only if Debentures having an aggregate principal amount equal to the aggregate liquidation amount of the Preferred Securities and the Common Securities are repaid or redeemed as set forth below:

(a) Upon the repayment of the Debentures, in whole or in part, whether at maturity, upon redemption at any time or from time to time on or after [\_\_\_\_\_, \_\_\_\_], the proceeds of such repayment will be promptly applied to redeem Pro Rata Preferred Securities and Common Securities having an aggregate liquidation amount equal to the aggregate principal amount of the Debentures so repaid or redeemed, upon not less than 30 nor more than 60 days' notice, at a redemption price of \$[\_\_\_\_\_] per Preferred Security and Common Security plus an amount equal to accumulated and unpaid Distributions thereon to, but excluding, the date of redemption, payable in cash (the "Redemption Price"). The date of

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any such repayment or redemption of Preferred Securities and Common Securities shall be established to coincide with the repayment or redemption date of the Debentures.

(b) If fewer than all the outstanding Preferred Securities and Common Securities are to be so redeemed, the Preferred Securities and the Common Securities will be redeemed Pro Rata and the Preferred Securities will be redeemed as described in section 4(f)(ii) below. If a partial redemption would result in the delisting of the Preferred Securities by any national securities exchange or other organization on which the Preferred Securities are then listed or traded, Pogo pursuant to the Indenture will redeem Debentures only in whole and, as a result, the Trust may redeem the Preferred Securities only in whole.

(c) If, at any time, a Tax Event or an Investment Company Event (each as hereinafter defined, and each a "Special Event") shall occur and be continuing, Pogo shall have the right at any time, upon not less than 30 nor more than 60 days' notice, to redeem the Debentures in whole or in part for cash at the Redemption Price within 90 days following the occurrence of such Special Event, and promptly following such redemption, Preferred Securities and Common Securities with an aggregate liquidation amount equal to the aggregate principal amount of the Debentures so redeemed will be redeemed by the Trust at the Redemption Price on a Pro Rata basis. The Common Securities will be redeemed Pro Rata with the Preferred Securities, except that if an Event of Default has occurred and is continuing, the Preferred Securities will have a priority over the Common Securities with respect to payment of the Redemption Price.

"Tax Event" means that the Sponsor and the Regular Trustees shall have received an Opinion of Counsel experienced in such matters to the effect that on or after [\_\_\_\_\_, \_\_\_\_] as a result of (a) any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein, (b) any amendment to, or change in, an interpretation or application of any such laws or regulations by any legislative body, court, governmental agency or regulatory authority (including the enactment of any legislation and the publication of any judicial decision or regulatory determination), (c) any interpretation or pronouncement by any legislative body, court, governmental agency or regulatory authority that provides for a position with respect to such laws or regulations that differs from the theretofore generally accepted position or (d) any action taken by any governmental agency or regulatory authority, which amendment or change is enacted, promulgated, issued or announced or which interpretation or pronouncement is issued or announced or which action is taken, in each case on or after [\_\_\_\_\_, \_\_\_\_], there is more than an insubstantial risk that (i) the Trust is, or will be within 90 days of the date thereof, subject to United States federal income tax with respect to income accrued or received on the Debentures, (ii) the Trust is, or will be within 90 days of the date thereof, subject to more than a de minimis amount of taxes, duties or other governmental charges or (iii) interest payable by Pogo to the Trust on the Debentures is not, or within 90 days of the date thereof will not be, deductible by Pogo for United States Federal income tax purposes.

"Investment Company Event" means that the Sponsor received an Opinion of Counsel experienced in practice under the Investment Company Act that, as a result of the occurrence of a

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change in law or regulation or a change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority (a "Change in Investment Company Act Law"), there is more than an insubstantial risk that the Trust is or will be considered an Investment Company which is required to be registered under the Investment Company Act, which Change in Investment Company Act Law becomes effective on or after [\_\_\_\_\_, \_\_\_\_].

(d) The Trust may not redeem fewer than all the outstanding Preferred Securities unless all accumulated and unpaid Distributions have been paid on all Preferred Securities for all quarterly Distribution periods terminating on or prior to the date of redemption.

(e) [Intentionally omitted.]

(f) (i) Notice of any redemption of, or notice of distribution of Debentures in exchange for, the Preferred Securities and the Common Securities (a "Redemption/Distribution Notice") will be given by the Regular Trustees on behalf of the Trust by mail to each Holder of Preferred Securities and Common Securities to be redeemed or exchanged not less than 30 nor more than 60 days prior to the date fixed for redemption or exchange thereof. For purposes of the calculation of the date of redemption or exchange and the dates on which notices are given pursuant to this section 4(f) (i), a Redemption/Distribution Notice shall be deemed to be given on the day such notice is first mailed by first-class mail, postage prepaid, to Holders of Preferred Securities and Common Securities. Each Redemption/Distribution Notice shall be addressed to the Holders of Preferred Securities and Common Securities at the address of each such Holder appearing in the books and records of the Trust. No defect in the Redemption/Distribution Notice or in the mailing of either thereof with respect to any Holder shall affect the validity of the redemption or exchange proceedings with respect to any other Holder.

(ii) In the event that fewer than all the outstanding Preferred Securities are to be redeemed, the Preferred Securities to be redeemed will be redeemed Pro Rata from each Holder of Preferred Securities, it being understood that, in respect of Preferred Securities registered in the name of and held of record by DTC (or successor Clearing Agency) or any other nominee, the Preferred Securities will be redeemed from, and the distribution of the proceeds of such redemption will be made to, DTC (or successor Clearing Agency).

(iii) Subject to section 9 hereof, if the Trust gives a Redemption/Distribution Notice in respect of a redemption of Preferred Securities as provided in this section 4 then (A) while the Preferred Securities are in book-entry only form, with respect to the Preferred Securities, by 12:00 noon, New York City time, on the redemption date, PROVIDED THAT Pogo has paid the Property Trustee, in immediately available funds, a sufficient amount of cash in connection with the related redemption or maturity of the Debentures, the Property Trustee will deposit irrevocably with DTC (or successor Clearing Agency) funds sufficient to pay the applicable Redemption Price with respect to the Preferred Securities and will give DTC (or successor Clearing Agency) irrevocable instructions and authority to pay the Redemption Price

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to the Holders of the Preferred Securities and (B) if the Preferred Securities are issued in definitive form, with respect to the Preferred Securities and PROVIDED THAT Pogo has paid the Property Trustee, in immediately available funds, a sufficient amount of cash

in connection with the related redemption or maturity of the Debentures, the Property Trustee will pay the relevant Redemption Price to the Holders of such Preferred Securities by check mailed to the address of the relevant Holder appearing on the books and records of the Trust on the redemption date. If a Redemption/Distribution Notice shall have been given and funds deposited as required, if applicable, then immediately prior to the close of business on the redemption date, Distributions will cease to accumulate on the Preferred Securities called for redemption, such Preferred Securities will no longer be deemed to be outstanding and all rights of Holders of such Preferred Securities so called for redemption will cease, except the right of the Holders of such Preferred Securities to receive the Redemption Price, but without interest on such Redemption Price. Neither the Trustees nor the Trust shall be required to register or cause to be registered the transfer of any Preferred Securities which have been so called for redemption. If any date fixed for redemption of Preferred Securities is not a Business Day, then payment of the 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 fixed for redemption. If payment of the Redemption Price in respect of Preferred Securities is improperly withheld or refused and not paid either by the Property Trustee or by Pogo pursuant to the Preferred Securities Guarantee, Distributions on such Preferred Securities will continue to accumulate, from the original redemption date to the date of payment, in which case the actual payment date will be considered the date fixed for redemption for purposes of calculating the Redemption Price.

(iv) Redemption/Distribution Notices shall be sent by the Regular Trustees on behalf of the Trust to DTC or its nominee (or any successor Clearing Agency or its nominee) if the Global Certificates have been issued or, if Definitive Preferred Security Certificates have been issued, to the Holders of the Preferred Securities.

(v) Subject to the foregoing and applicable law (including, without limitation, United States Federal securities laws), Pogo or any of 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.

[5. CONVERSION RIGHTS. The Holders of Preferred Securities shall have the right at any time prior to the close of business on [\_\_\_\_\_, \_\_\_\_] or, in the case of Preferred Securities called for redemption, prior to the close of business on the Business Day prior to the redemption date, at their option, to cause the Conversion Agent to convert Preferred Securities, on behalf of the converting Holders, into shares of Common Stock in the manner described herein on and subject to the following terms and conditions:

(a) The Preferred Securities will be convertible at the office of the Conversion Agent maintained for such purpose in the Borough of Manhattan, The City of New York, into fully paid and nonassessable shares of Common Stock pursuant to the Holder's direction to the Conversion Agent to exchange such Preferred Securities for a portion of the Debentures theretofore held by the Trust on the basis of one Preferred Security per \$[\_\_\_\_\_] principal amount of Debentures, and immediately convert such amount of Debentures into fully paid and nonassessable shares of Common Stock at an initial rate of [\_\_\_] shares of Common Stock per \$[\_\_\_\_\_] principal amount of Debentures (which is equivalent to a conversion price of \$[\_\_\_] per share of Common Stock, subject to certain adjustments set forth in Sections [\_] and [\_] of the Supplemental Indenture (as so adjusted, "Conversion Price")).

(b) In order to convert Preferred Securities into Common Stock, the Holder shall submit to the Conversion Agent at the office referred to above an irrevocable request to convert Preferred Securities on behalf of such Holder (the "Conversion Request"), together, if the Preferred Securities are in certificated form, with such Preferred Security Certificates. The Conversion Request shall (i) set forth the number of Preferred Securities to be converted and the name or names, if other than the Holder, in which the shares of Common Stock should be issued and (ii) direct the Conversion Agent (a) to exchange such Preferred Securities for a portion of the Debentures held by the Trust (at the rate of exchange specified in the preceding paragraph) and (b) to immediately convert such Debentures on behalf of such Holder into Common Stock, subject to certain adjustments set forth in the Supplemental Indenture (at the conversion rate specified in the preceding paragraph). The Conversion Agent shall notify the Trust of the Holder's election to exchange Preferred Securities for a portion of the Debentures held by the Trust and the Trust shall, upon receipt of such notice, deliver to the Conversion Agent the appropriate principal amount of Debentures for exchange in accordance with this Section. The Conversion Agent shall thereupon notify the Sponsor of the Holder's election to convert such Debentures into shares of Common Stock. If a Preferred Security is surrendered for conversion after the close of business on any regular record date for payment of a Distribution and before the opening of business on the corresponding Distribution payment date, then, notwithstanding such conversion, the Distribution payable on such Distribution payment date will be paid in cash to the person in whose name the Preferred Security is registered at the close of business on such record date, and (other than a Preferred Security or a portion of a Preferred Security called for redemption on a redemption date occurring after such record date and on or prior to such Distribution payment date) when so surrendered for conversion, the Preferred Security must be accompanied by payment of an amount equal to the Distribution payable on such Distribution payment date. Except as provided above, neither the Trust nor the Sponsor will make, or be required to make, any payment, allowance or adjustment upon any conversion on account of any accumulated and unpaid Distributions accumulated on the Preferred Securities surrendered for conversion, or on account of any accumulated and unpaid dividends on the shares of Common Stock issued upon such conversion, and the delivery of Common Stock upon conversion of the Preferred Securities shall be deemed to constitute full payment for all accumulated and unpaid Distributions on the Preferred Securities. Preferred Securities

shall be deemed to have been converted immediately prior to the close of business on the day on which a Notice of Conversion relating to such Preferred Securities is received by the Trust in accordance with the foregoing provision (the "Conversion Date"). The Person or Persons entitled to receive Common Stock issuable upon conversion of the Debentures shall be treated for all purposes as the record holder or holders of such Common Stock at such time. As promptly as practicable on or after the Conversion Date, the Sponsor shall issue and deliver at the office of the Conversion Agent a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion, together with the cash payment, if any, in lieu of any fraction of any share to the Person or Persons entitled to receive the same, unless otherwise directed by the Holder in the Notice of Conversion, and the Conversion Agent shall distribute such certificate or certificates, together with the applicable cash payment, if any, to such Person or Persons.

(c) Each Holder of a Preferred Security by his acceptance thereof appoints Wilmington Trust Company as the "Conversion Agent" for the purpose of effecting the conversion of Preferred Securities in accordance with this Section. In effecting the conversion and transactions described in this Section, the Conversion Agent shall be acting as agent of the Holders of Preferred Securities directing it to effect such conversion transactions. The Conversion Agent is hereby authorized (i) to exchange Preferred Securities from time to time for Debentures held by the Trust in connection with the conversion of such Preferred Securities in accordance with this Section and (ii) to convert all or a portion of the Debentures into Common Stock and thereupon to deliver such shares of Common Stock in accordance with the provisions of this Section and to deliver to the Trust a new Debenture or Debentures for any resulting unconverted principal amount.

(d) No fractional shares of Common Stock will be issued as a result of conversion, but in lieu thereof, such fractional interest will be paid by the Sponsor in cash (based upon the Closing Price (as defined in the Indenture) of Common Stock on the date such Preferred Securities are surrendered for conversion to the Trust) to the Conversion Agent, which in turn will make such payment to the Holder or Holders of Preferred Securities so converted, or, if such day is not a Trading Day (as defined in the Indenture), on the next Trading Day.

(e) The Sponsor shall at all times reserve and keep available out of its authorized and unissued Common Stock, solely for issuance upon the conversion of the Debentures, free from any preemptive or other similar rights, such number of shares of Common Stock as shall from time to time be issuable upon the conversion of all the Debentures then outstanding. Notwithstanding the foregoing, the Sponsor shall be entitled to deliver upon conversion of Debentures, shares of Common Stock reacquired and held in the treasury of the Sponsor (in lieu of the issuance of authorized and unissued shares of Common Stock), so long as any such treasury shares are free and clear of all liens, charges, security interests or encumbrances. Any shares of Common Stock issued upon conversion of the Debentures shall



be duly authorized, validly issued and fully paid and nonassessable. The Trust shall deliver the shares of Common Stock received upon conversion of the Debentures to the converting Holder of Preferred Securities free and clear of all liens, charges, security interests and encumbrances, except for United States withholding taxes. Each of the Sponsor and the

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Trust shall prepare and shall use its best efforts to obtain and keep in force such governmental or regulatory permits or other authorizations as may be required by law, and shall comply with all applicable requirements as to registration or qualification of Common Stock (and all requirements to list Common Stock issuable upon conversion of Debentures that are at the time applicable), in order to enable the Sponsor to lawfully issue Common Stock to the Trust upon conversion of the Debentures and the Trust to lawfully deliver Common Stock to each Holder of Preferred Securities upon conversion of the Preferred Securities.

(f) The Sponsor will pay any and all taxes that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Debentures and the delivery of the shares of Common Stock by the Trust upon conversion of the Preferred Securities. The Sponsor shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the Preferred Securities so converted were registered, and no such issue or delivery shall be made unless and until the Person requesting such issue has paid to the Trust the amount of any such tax, or has established to the satisfaction of the Trust that such tax has been paid.

(g) Nothing in the preceding paragraph (f) shall limit the requirement of the Trust to withhold taxes pursuant to the terms of the Preferred Securities or set forth in this Exhibit B to the Declaration or to the Declaration itself or otherwise require the Property Trustee or the Trust to pay any amounts on account of such withholdings.]

6. VOTING RIGHTS. (a) Except as provided under paragraph 6(b) below and as otherwise required by law and the Declaration, the Holders of the Preferred Securities will have no voting rights.

(b) If any proposed amendment to the Declaration provides for, or the Regular Trustees otherwise propose to effect, (i) any action that would adversely affect the powers, preferences or special rights of the Securities, whether by way of amendment to the Declaration, other than as described in Section 12.01(b) of the Declaration or section 3 of Exhibit B, or otherwise, or (ii) the dissolution, winding-up or termination of the Trust, other than as described in Section 8.01 of the Declaration, then the Holders of outstanding Securities will be entitled to vote on such amendment or proposal as a single class and such amendment or proposal shall not be effective except with the approval of the Holders of Securities of at least a Majority in liquidation amount of the Securities, voting together as a single class; PROVIDED, HOWEVER, that (A) if any amendment or proposal referred to in clause (i) above would adversely



affect only the Preferred Securities or the Common Securities, then only the affected class of Securities will be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of at least a Majority in liquidation amount of such class of Securities and (B) amendments to the Declaration shall be subject to such further requirements as are set forth in Sections 12.01 and 12.02 of the Declaration.

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In the event the consent of the Property Trustee, as the holder of the Debentures, is required under the Indenture with respect to any amendment, modification or termination of the Indenture or the Debentures, the Property Trustee shall request the written direction of the Holders of the Securities with respect to such amendment, modification or termination. The Property Trustee shall vote with respect to such amendment, modification or termination as directed by a Majority in liquidation amount of the Securities voting together as a single class; PROVIDED, HOWEVER, that where such amendment, modification or termination of the Indenture requires the consent or vote of (1) holders of Debentures representing a specified percentage greater than a majority in principal amount of the Debentures or (2) each holder of Debentures, the Property Trustee may only vote with respect to that amendment, modification or termination as directed by, in the case of clause (1) above, the vote of Holders of Securities representing such specified percentage of the aggregate liquidation amount of the Securities, or, in the case of clause (2) above, each Holder of Securities; and PROVIDED, FURTHER, that the Property Trustee shall be under no obligation to take any action in accordance with the directions of the Holders of Securities unless the Property Trustee shall have received, at the expense of the Sponsor, an Opinion of Counsel experienced in such matters to the effect that the Trust will not be classified for United States Federal income tax purposes as other than a grantor trust on account of such action.

So long as any Debentures are held by the Property Trustee, the Trustees shall not (i) direct the time, method and place of conducting any proceeding for any remedy available to the Trustee of the Indenture (the "Debenture Trustee"), or exercising any trust or power conferred on the Debenture Trustee with respect to the Debentures, (ii) waive any past default that is waivable under Section 6.06 of the Indenture or (iii) exercise any right to rescind or annul a declaration of acceleration of the maturity of the principal of the Debentures, without, in each case, obtaining the prior approval of the Holders of a Majority in liquidation amount of all outstanding Preferred Securities and Common Securities. The Trustees shall not revoke any action previously authorized or approved by a vote of the Holders of the Preferred Securities except by subsequent vote of such Holders. The Property Trustee shall notify each Holder of Preferred Securities of any notice of default with respect to the Debentures.

If an Event of Default has occurred and is continuing, then the Holders of a Majority in 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 Property Trustee or to direct the exercise of any trust or power conferred upon the Property Trustee under the Declaration,

including the right to direct the Property Trustee to exercise the remedies available to it as a holder of the Debentures. If the Property Trustee fails to enforce its rights under the Debentures, a Holder of Preferred Securities, to the extent permitted by applicable law, may, after a period of 30 days has elapsed since such Holder's written request to the Property Trustee to enforce such rights, institute a legal proceeding directly against the Sponsor to enforce the Property Trustee's rights under the Debentures without first instituting any legal proceeding against the Property Trustee or any other Person; PROVIDED FURTHER, that, if an Event of Default has occurred and is continuing and such event is attributed to the failure of the Sponsor to pay interest or principal on the Debentures on the date such interest or principal is otherwise payable (or in the case of redemption, on the redemption date), then a Holder of Preferred Securities may directly institute a proceeding for enforcement of payment to such Holder of the principal of or interest on the Debentures having a principal amount equal to

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the aggregate liquidation amount of the Preferred Securities of such Holder (a "Holder Direct Action") on or after the respective due date specified in the Debentures. In connection with such Holder Direct Action, the Sponsor will be subrogated to the rights of such Holder of Preferred Securities to the extent of any payment made by the Sponsor to such Holders of Preferred Securities in such Holder Direct Action. Except as provided in the preceding sentences, the Holders of Preferred Securities will not be able to exercise directly any other remedy available to the Holders of the Debentures.

A waiver of an Indenture Event of Default by the Property Trustee at the direction of the Holders of the Preferred Securities will constitute a waiver of the corresponding Event of Default under the Declaration in respect of the Securities.

Any required approval or direction of Holders of Preferred Securities may be given at a separate meeting of Holders of Preferred Securities convened for such purpose, at a meeting of all of the Holders of Securities 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 mailed to each Holder of record of Preferred Securities. Each such notice will include a statement setting forth (i) the date of such meeting, (ii) a description of any resolution proposed for adoption at such meeting on which such Holders are entitled to vote and (iii) instructions for the delivery of proxies.

No vote or consent of the Holders of Preferred Securities will be required for the Trust to redeem and cancel Preferred Securities or to distribute the Debentures in accordance with the Declaration.

Notwithstanding that Holders of Preferred Securities are entitled to vote or consent under any of the circumstances described above, any of the Preferred Securities at such time that are owned by Pogo or by any Affiliate of Pogo shall not be entitled to vote or consent and shall, for purposes of such vote or consent, be treated as if they were not outstanding.

Holders of the Preferred Securities have no rights to increase or decrease

the number of Trustees or to appoint, remove or replace a Trustee, which voting rights are vested exclusively in the Holders of the Common Securities.

7. PRO RATA TREATMENT. A reference in these terms of the Preferred Securities to any payment, Distribution or treatment as being "Pro Rata" shall mean pro rata to each Holder of Securities according to the aggregate liquidation amount of the Securities held by the relevant Holder in relation to the aggregate liquidation amount of all Securities outstanding unless, in relation to a payment, an Event of Default has occurred and is continuing, in which case any funds available to make such payment shall be paid first to each Holder of the Preferred Securities pro rata according to the aggregate liquidation amount of Preferred Securities held by the relevant Holder relative to the aggregate liquidation amount of all Preferred Securities outstanding, and only after satisfaction of all amounts owed to the Holders of the Preferred Securities, to each Holder of Common Securities pro rata according to the aggregate liquidation amount of Common Securities held by the relevant Holder relative to the aggregate liquidation amount of all Common Securities outstanding.

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8. RANKING. The Preferred Securities rank PARI PASSU and payment thereon will be made Pro Rata with the Common Securities, except that when an Event of Default occurs and is continuing, the rights of Holders of Preferred Securities to payment in respect of Distributions and payments upon liquidation, redemption or otherwise rank in priority to the rights of Holders of the Common Securities.

9. TRANSFER, EXCHANGE, METHOD OF PAYMENTS. Payment of Distributions and payments on redemption of the Preferred Securities will be payable, the transfer of the Preferred Securities will be registrable, and Preferred Securities will be exchangeable for Preferred Securities of other denominations of a like aggregate liquidation amount, at the corporate trust office of the Property Trustee in The City of New York; PROVIDED THAT payment of Distributions may be made at the option of the Regular Trustees on behalf of the Trust by check mailed to the address of the persons entitled thereto and that the payment on redemption of any Preferred Security will be made only upon surrender of such Preferred Security to the Property Trustee.

10. ACCEPTANCE OF INDENTURE AND PREFERRED SECURITIES GUARANTEE. Each Holder of Preferred Securities, by the acceptance thereof, agrees to the provisions of (i) the Preferred Securities Guarantee, including the subordination provisions therein, and (ii) the Indenture and the Debentures, including the subordination provisions of the Indenture.

11. NO PREEMPTIVE RIGHTS. The Holders of Preferred Securities shall have no preemptive or similar rights to subscribe to any additional Preferred Securities or Common Securities.

12. MISCELLANEOUS. These terms shall constitute a part of the Declaration. The Trust will provide a copy of the Declaration and the Indenture to a Holder of Preferred Securities without charge on written request to the Trust at its principal place of business.

## FORM OF PREFERRED SECURITY CERTIFICATE

[IF THE PREFERRED SECURITY IS TO BE A GLOBAL CERTIFICATE INSERT - THIS PREFERRED 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 PREFERRED SECURITY IS EXCHANGEABLE FOR PREFERRED 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 PREFERRED SECURITY (OTHER THAN A TRANSFER OF THIS PREFERRED SECURITY AS A WHOLE BY DTC TO A NOMINEE OF DTC OR BY A NOMINEE OF DTC TO DTC OR ANOTHER NOMINEE OF DTC) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS PREFERRED SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) TO POGO TRUST I OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY PREFERRED SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY AND ANY PAYMENT HEREON IS MADE TO CEDE & CO., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY A PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

Certificate Number  
[\_\_\_\_\_]

Number of Preferred Securities: [\_\_\_\_\_]

Aggregate Liquidation Amount: \$[\_\_\_\_\_]

CUSIP NO. [\_\_\_\_\_]

Certificate Evidencing Preferred Securities

of

Pogo Trust I

[\_\_\_\_\_] % [Convertible] Preferred Trust Securities, Series [\_\_\_\_]  
(liquidation amount \$[\_\_\_\_\_] per Preferred Security)

Pogo Trust I, a statutory business trust created under the laws of the State of Delaware (the "Trust"), hereby certifies that [\_\_\_\_\_] (the "Holder") is the registered owner of [\_\_\_\_\_] (\_\_\_\_\_) preferred securities of the Trust representing preferred undivided beneficial interests in

the assets of the Trust and designated the [\_\_\_\_\_] % [Convertible] Preferred Trust

Securities, Series [\_\_\_\_] (liquidation amount \$[\_\_\_\_\_] 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. 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 [\_\_\_\_\_, \_\_\_\_], as the same may be amended from time to time (the "Declaration") including the designation of the terms of Preferred Securities as set forth in Exhibit B thereto. The Preferred Securities and the Common Securities issued by the Trust pursuant to the Declaration represent undivided beneficial interests in the assets of the Trust, including the Debentures (as defined in the Declaration) issued by Pogo Producing Company, a Delaware corporation ("Pogo"), to the Trust pursuant to the Indenture referred to in the Declaration. The Holder is entitled to the benefits of the Guarantee Agreement of Pogo dated as of [\_\_\_\_\_, \_\_\_\_] (the "Guarantee") to the extent provided therein. The Trust will furnish a copy of the Declaration, the Guarantee and the Indenture to the Holder without charge upon written request to the Trust at its principal place of business or registered office.

The Holder of this Certificate, by accepting this Certificate, is deemed to have (i) agreed to the terms of the Indenture and the Debentures, including that the Debentures are subordinate and junior in right of payment to all Senior Debt (as defined in the Indenture or Supplemental Indenture thereto) as and to the extent provided in the Indenture or Supplemental Indenture thereto, and (ii) agreed to the terms of the Guarantee, including that the Guarantee is subordinate and junior in right of payment to all other liabilities of Pogo, including the Debentures, except those made PARI PASSU or subordinate by their terms, and senior to all capital stock (other than the most senior preferred stock issued, from time to time, if any, by Pogo, which preferred stock will rank PARI PASSU with the Guarantee) now or hereafter issued by Pogo and to any guarantee now or hereafter entered into by Pogo in respect of any of its capital stock (other than the most senior preferred stock issued, from time to time, if any, by Pogo).

Upon receipt of this Certificate, the Holder is bound by the Declaration and is entitled to the benefits thereunder.

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IN WITNESS WHEREOF, Trustees of the Trust have executed this Certificate.

POGO TRUST I

By:[\_\_\_\_\_] , as Regular Trustee  
Name:  
Title: Regular Trustee

By: [\_\_\_\_\_] , as Regular Trustee  
Name:  
Title: Regular Trustee

Dated:

Countersigned and Registered:

Transfer Agent and Registrar

By: \_\_\_\_\_  
Authorized Signatory

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[FORM OF REVERSE OF SECURITY]

Distributions payable on each Preferred Security will be fixed at a rate per annum of [\_\_\_\_] % (the "Coupon Rate") of the stated liquidation amount of \$[\_\_\_\_\_] per Preferred Security, such rate being the rate of interest payable on the Debentures to be held by the Property Trustee. Distributions in arrears for more than one quarter will accumulate additional distributions thereon at the Coupon Rate per annum (to the extent permitted by applicable law), compounded quarterly. The term "Distributions" as used herein means such periodic cash distributions and any such additional distributions payable unless otherwise stated. A Distribution is payable only to the extent that payments are made in respect of the Debentures held by the Property Trustee and to the extent the Trust has funds on hand legally available therefor. The amount of Distributions payable for any period will be computed for any full quarterly Distribution period on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full quarterly Distribution period for which Distributions are computed, Distributions will be computed on the basis of the actual number of days elapsed per 90-day quarter.

Distributions on the Preferred Securities will accumulate from [\_\_\_\_\_, \_\_\_\_], and will be payable quarterly in arrears, on [\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_] and [\_\_\_\_\_] of each year, commencing on [\_\_\_\_\_, \_\_\_\_], but only if and to the extent that interest payments are made in respect of the Debentures held by the Property Trustee. So long as Pogo shall not be in default in the payment of interest on the Debentures, Pogo has the right under the Indenture for the Debentures to defer payments of interest on the Debentures by extending the interest payment period at any time and from time to time on the Debentures for a period not exceeding 20 consecutive quarterly interest periods (each an "Extension Period"), during which Extension Period no interest shall be due and payable on the Debentures. As a consequence of such deferral, Distributions shall also be deferred. Despite such deferral, Distributions will continue to accumulate with additional distributions thereon (to the extent permitted by applicable law but not at a rate greater than the rate at which interest is then accruing on the Debentures) at the Coupon Rate compounded quarterly during any such Extension Period; PROVIDED THAT no Extension Period shall extend beyond the stated maturity of the Debentures. Prior to the termination of any such

Extension Period, Pogo may further extend such Extension Period; PROVIDED THAT such Extension Period together with all such previous and further extensions thereof may not exceed 20 consecutive quarterly interest periods. Upon the termination of any Extension Period and the payment of all amounts then due, Pogo may commence a new Extension Period, subject to the above requirements. On the Distribution payment date at the end of the Extension Period, payments of accumulated Distributions will be payable to Holders of Preferred Securities as they appear on the books and records of the Trust (regardless of who the Holders may have been on other dates during the Extension Period) on the record date for such Distribution payment date.

The Preferred Securities shall be redeemable as provided in the Declaration.

[The Preferred Securities shall be convertible into shares of Common Stock (as defined in the Declaration), through (i) the exchange of Preferred Securities for a portion of the Debentures and (ii) the immediate conversion of such Debentures into Common Stock, in the manner and according to the terms set forth in the Declaration.]

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[CONVERSION REQUEST

To: Wilmington Trust Company, as Property Trustee of Pogo Trust I

The undersigned owner of these Preferred Securities hereby irrevocably exercises the option to convert these Preferred Securities, or the portion below designated, into Common Stock (as that term is defined in the Amended and Restated Declaration of Trust, dated as of [\_\_\_\_\_, \_\_\_\_] (as amended from time to time, the "Declaration"), by [\_\_\_\_\_, \_\_\_\_\_] and [\_\_\_\_\_] as Regular Trustees, Wilmington Trust Company, as the Delaware Trustee, Wilmington Trust Company, as the Property Trustee, Pogo Producing Company, as Sponsor, and by the Holders, from time to time, of undivided beneficial interests in the assets of the Trust to be issued pursuant to the Declaration) in accordance with and subject to the terms and conditions of the Declaration. Pursuant to the aforementioned exercise of the option to convert these Preferred Securities, the undersigned hereby directs the Conversion Agent (as that term is defined in the Declaration) to (i) exchange such Preferred Securities for a portion of the Debentures (as that term is defined in the Declaration) held by Pogo Trust I (at the rate of exchange specified in the terms of the Preferred Securities set forth as Exhibit B to the Declaration) and (ii) immediately convert such Debentures on behalf of the undersigned into Common Stock (at the conversion rate specified in the terms of the Preferred Securities set forth as Exhibit B to the Declaration, subject to certain adjustments set forth in the Supplemental Indenture (as that term is defined in the Declaration)).

The undersigned does also hereby direct the Conversion Agent that the shares of Common Stock issuable and deliverable upon conversion, together with any check in payment for fractional shares, be issued in the name of and delivered to the undersigned, unless a different name has been indicated in the assignment below. If shares of Common Stock are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes



payable with respect thereto.

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Date: \_\_\_\_\_, \_\_\_\_\_

in whole \_\_\_\_

in part \_\_\_\_

Number of Preferred Securities to be converted:

\_\_\_\_\_

If a name or names other than the undersigned,  
please indicate in the spaces below the name or  
names in which the shares of Common Stock are to  
be issued, along with the address or addresses of  
such person or persons:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature (for conversion only)

Please Print or Type Name and Address, Including  
Zip Code, and Social Security or Other Identifying  
Number

\_\_\_\_\_

\_\_\_\_\_

Signature Guarantee:\*\* \_\_\_\_\_

\_\_\_\_\_  
\*\*(Signature must be guaranteed by an "eligible guarantor institution" that is,  
a bank, stockbroker, savings and loan association or credit union meeting the  
requirements of the Conversion Agent, which requirements include membership or  
participation in the Securities Transfer Agents Medallion Program ("STAMP") or  
such other "signature guarantee program" as may be determined by the Conversion  
Agent in addition to, or in substitution for, STAMP, all in accordance with the  
Securities Exchange Act of 1934, as amended.)]

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Preferred Security Certificate to:

\_\_\_\_\_  
\_\_\_\_\_

(Insert assignee's social security or tax identification number)

\_\_\_\_\_  
\_\_\_\_\_

(Insert address and zip code of assignee)

and irrevocably appoints

\_\_\_\_\_  
\_\_\_\_\_

agent to transfer this Preferred Security Certificate on the books of the Trust. The agent may substitute another to act for him or her.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

NOTICE: THE SIGNATURE(S) TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME(S) AS WRITTEN UPON THE FACE OF THIS PREFERRED SECURITY CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

EXHIBIT C

TERMS OF  
COMMON SECURITIES

Pursuant to Section 7.01(b) of the Amended and Restated Declaration of Trust of Pogo Trust I dated as of [\_\_\_\_\_, \_\_\_\_] (as amended from time to time, the "Declaration"), the designations, rights, privileges, restrictions,

preferences and other terms and provisions of the Common Securities are set forth below (each capitalized term used but not defined herein having the meaning set forth in the Declaration):

1. DESIGNATION AND NUMBER. [\_\_\_\_\_] (\_\_\_\_\_) Common Securities of the Trust with an aggregate liquidation amount at any time outstanding with respect to the assets of the Trust of [\_\_\_\_\_] Dollars (\$[\_\_\_\_\_] ), and each with a liquidation amount with respect to the assets of the Trust of \$[\_\_\_\_\_] per Common Security, are hereby designated as "[\_\_\_\_\_] % [Convertible] Common Trust Securities, Series [\_\_\_\_\_] ". The Common Security Certificates evidencing the Common Securities shall be substantially in the form attached hereto as Annex I, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice. The Common Securities are to be issued and sold to Pogo in consideration of \$[\_\_\_\_\_] in cash. In connection with the issuance and sale of the Preferred Securities and the Common Securities, the Trust will purchase as trust assets Debentures of Pogo having an aggregate principal amount equal to the aggregate liquidation amount of the Preferred Securities and the Common Securities so issued, and bearing interest at an annual rate equal to the annual Distribution rate on the Preferred Securities and the Common Securities and having payment and redemption provisions which correspond to the payment and redemption provisions of the Preferred Securities and the Common Securities.

2. DISTRIBUTIONS. (a) Distributions payable on each Common Security will be fixed at a rate per annum of [\_\_\_\_\_] % (the "Coupon Rate") of the stated liquidation amount of \$[\_\_\_\_\_] per Common Security, such rate being the rate of interest payable on the Debentures to be held by the Property Trustee. Distributions in arrears for more than one calendar quarter will accumulate additional distributions thereon at the Coupon Rate per annum (to the extent permitted by applicable law), compounded quarterly. The term "Distributions" as used herein means such periodic cash distributions and any such additional distributions payable unless otherwise stated. A Distribution will be made by the Property Trustee only to the extent that interest payments are made in respect of the Debentures held by the Property Trustee and to the extent the Trust has funds on hand legally available therefor. The amount of Distributions payable for any period will be computed for any full quarterly Distribution period on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full quarterly Distribution period for which Distributions are computed, Distributions will be computed on the basis of the actual number of days elapsed per 90-day quarter.

(b) Distributions on the Common Securities will accumulate from [\_\_\_\_\_, \_\_\_\_] and will be payable quarterly in arrears, on [\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_] and [\_\_\_\_\_] of

each year commencing on [\_\_\_\_\_, \_\_\_\_], except as otherwise described below, but only if and to the extent that interest payments are made in respect of the Debentures held by the Property Trustee. So long as Pogo shall not be in default in the payment of interest on the Debentures, Pogo has the right under the Indenture for the Debentures to defer payments of interest on the Debentures by extending the interest payment period at any time and from time to time on the Debentures for a period not exceeding 20 consecutive quarterly interest periods (each, an "Extension Period"),

during which Extension Period no interest shall be due and payable on the Debentures. As a consequence of such deferral, Distributions shall also be deferred. Despite such deferral, Distributions will continue to accumulate with additional distributions thereon (to the extent permitted by applicable law but not at a rate greater than the rate at which interest is then accruing on the Debentures) at the Coupon Rate compounded quarterly during any such Extension Period; PROVIDED THAT no Extension Period shall extend beyond the stated maturity of the Debentures. Prior to the termination of any such Extension Period, Pogo may further extend such Extension Period; PROVIDED THAT such Extension Period together with all such previous and further extensions thereof may not exceed 20 consecutive quarterly interest periods. Upon the termination of any Extension Period and the payment of all amounts then due, Pogo may commence a new Extension Period, subject to the above requirements. On the Distribution payment date at the end of the Extension Period, payments of accumulated Distributions will be payable to Holders of Common Securities as they appear on the books and records of the Trust (regardless of who the Holders may have been on other dates during the Extension Period) on the record date for such Distribution payment date.

(c) Distributions on the Common Securities will be payable promptly by the Property Trustee (or other Paying Agent) upon receipt of immediately available funds to the Holders thereof as they appear on the books and records of the Trust on the relevant record dates. While the Preferred Securities remain in book-entry only form, the relevant record dates for the Common Securities shall be one business day prior to the relevant Distribution date, and if the Preferred Securities are no longer in book-entry only form, the relevant record dates for the Common Securities will be the fifteenth (15th) day of the month prior to the relevant Distribution date, which record and payment dates correspond to the record and interest payment dates on the Debentures. Distributions payable on any Common Securities that are not punctually paid on any Distribution payment date as a result of Pogo's having failed to make the corresponding interest payment on the Debentures will forthwith cease to be payable to the person in whose name such Common Security is registered on the relevant record date, and such defaulted Distribution will instead be payable to the person in whose name such Common Security is registered on the special record date established by the Regular Trustees, which record date shall correspond to the special record date or other specified date determined in accordance with the Indenture; PROVIDED, HOWEVER, that Distributions shall not be considered payable on any Distribution payment date falling within an Extension Period unless Pogo has elected to make a full or partial payment of interest accrued on the Debentures on such Distribution payment date. Subject to any applicable laws and regulations and the provisions of the Declaration, each payment in respect of the Common Securities will be made as described in section 9 hereof. If any date on which Distributions are payable on the Common Securities is not a Business Day, then payment of

the Distribution payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in

respect of any such delay) except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on the date such payment was originally payable. Notwithstanding anything herein to the contrary, the record dates and payment dates for Distributions shall be the same as the record dates and payment dates for the Debentures.

(d) All Distributions paid with respect to the Common Securities and the Preferred Securities will be paid Pro Rata (as defined below) to the Holders thereof entitled thereto. If an Event of Default has occurred and is continuing, the Preferred Securities shall have a priority over the Common Securities with respect to Distributions.

(e) In the event that there is any money or other property held by or for the Trust that is not accounted for under the Declaration, such money or property shall be distributed Pro Rata among the Holders of the Preferred Securities and the Common Securities.

3. LIQUIDATION DISTRIBUTION UPON DISSOLUTION. (a) In the event of any voluntary or involuntary dissolution of the Trust, the Holders of the Preferred Securities and the Common Securities will be entitled to receive Pro Rata solely out of the assets of the Trust legally available for distribution to Holders of Preferred Securities and Common Securities after satisfaction of liabilities to the creditors of the Trust, an amount equal to the aggregate of the stated liquidation amount of \$[\_\_\_\_\_] per Preferred Security and Common Security plus accumulated and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"), unless, in connection with such dissolution, and after satisfaction of liabilities to the creditors of the Trust, Debentures in an aggregate principal amount equal to the aggregate stated liquidation amount of such Preferred Securities and the Common Securities and bearing accrued and unpaid interest in an amount equal to the accumulated and unpaid Distributions on, such Preferred Securities and the Common Securities, shall be distributed Pro Rata to the Holders of the Preferred Securities and the Common Securities in exchange for such Securities.

If, upon any such dissolution, the Liquidation Distribution can be paid only in part because the Trust has insufficient assets on hand legally available to pay in full the aggregate Liquidation Distribution, then the amounts payable directly by the Trust on the Preferred Securities and the Common Securities shall be paid, subject to the next paragraph, on a Pro Rata basis.

Holders of Common Securities will be entitled to receive Liquidation Distributions upon any such dissolution Pro Rata with Holders of Preferred Securities, except that if an Event of Default has occurred and is continuing, the Preferred Securities shall have a priority over the Common Securities with respect to such Liquidation Distribution.

(b) The Holder of the Common Securities shall have the right to direct the Property Trustee in writing at any time to dissolve the Trust and to distribute Debentures to Holders in exchange for Securities (which direction is optional and wholly within the discretion of the Holder of the Common Securities). Upon the receipt of any such written direction, the Property Trustee

shall promptly (i) distribute Debentures in an aggregate principal amount equal to the aggregate stated liquidation amount of the Preferred Securities and the Common Securities held by each Holder, which Debentures bear accrued and unpaid interest in an amount equal to the accumulated and unpaid Distributions on the Preferred Securities and the Common Securities of such Holder, in exchange for the Preferred Securities and Common Securities of such Holder and (ii) dissolve the Trust.

(c) On the date fixed for any distribution of Debentures, upon dissolution of the Trust, (i) the Common Securities will no longer be deemed to be outstanding and may be canceled by the Regular Trustees and (ii) Certificates representing Common Securities will be deemed to represent beneficial interests in the Debentures having an aggregate principal amount equal to the stated liquidation amount of, and bearing accrued and unpaid interest equal to accumulated and unpaid Distributions on, such Common Securities until such Certificates are presented to Pogo or its agent for transfer or reissuance.

4. REDEMPTION OF DEBENTURES. The Common Securities may be redeemed only if Debentures having an aggregate principal amount equal to the aggregate liquidation amount of the Preferred Securities and the Common Securities are repaid or redeemed as set forth below:

(a) Upon the repayment of the Debentures, in whole or in part, whether at maturity, upon redemption at any time or from time to time on or after [\_\_\_\_\_, \_\_\_\_], the proceeds of such repayment will be promptly applied to redeem Pro Rata Preferred Securities and Common Securities having an aggregate liquidation amount equal to the aggregate principal amount of the Debentures so repaid or redeemed, upon not less than 30 nor more than 60 days' notice, at a redemption price of \$[\_\_\_\_\_] per Preferred Security and Common Security plus an amount equal to accumulated and unpaid Distributions thereon to, but excluding, the date of redemption, payable in cash (the "Redemption Price"). The date of any such repayment or redemption of Preferred Securities and Common Securities shall be established to coincide with the repayment or redemption date of the Debentures.

(b) If fewer than all the outstanding Preferred Securities and Common Securities are to be so redeemed, the Preferred Securities and the Common Securities will be redeemed Pro Rata and the Common Securities will be redeemed as described in section 4(e)(ii) below. If a partial redemption would result in the delisting of the Preferred Securities by any national securities exchange or other organization on which the Preferred Securities are then listed or traded, Pogo pursuant to the Indenture will redeem Debentures only in whole and, as a result, the Trust may redeem the Common Securities only in whole.

(c) If, at any time, a Tax Event or an Investment Company Event (each as hereinafter defined, and each, a "Special Event") shall occur and be continuing, Pogo shall have the right at any time, upon not less than 30 nor more than 60 days' notice, to redeem the Debentures in whole or in part for cash at the Redemption Price within 90 days following the occurrence of such Special Event, and promptly following such redemption, Preferred

Securities and Common Securities with an aggregate liquidation amount equal to the aggregate principal amount of the Debentures so redeemed will be redeemed by the Trust at

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the Redemption Price on a Pro Rata basis. The Common Securities will be redeemed Pro Rata with the Preferred Securities, except that if an Event of Default has occurred and is continuing, the Preferred Securities will have a priority over the Common Securities with respect to payment of the Redemption Price.

"Tax Event" means that the Sponsor and the Regular Trustees shall have received an Opinion of Counsel experienced in such matters to the effect that on or after [\_\_\_\_\_, \_\_\_\_] as a result of (a) any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein, (b) any amendment to, or change in, an interpretation or application of any such laws or regulations by any legislative body, court, governmental agency or regulatory authority (including the enactment of any legislation and the publication of any judicial decision or regulatory determination), (c) any interpretation or pronouncement that provides for a position with respect to such laws or regulations that differs from the theretofore generally accepted position or (d) any action taken by any governmental agency or regulatory authority, which amendment or change is enacted, promulgated, issued or announced or which interpretation or pronouncement by any legislative body, court, governmental agency or regulatory authority is issued or announced or which action is taken, in each case on or after [\_\_\_\_\_, \_\_\_\_], there is more than an insubstantial risk that (i) the Trust is, or will be within 90 days of the date thereof, subject to United States federal income tax with respect to income accrued or received on the Debentures, (ii) the Trust is, or will be within 90 days of the date thereof, subject to more than a de minimis amount of taxes, duties or other governmental charges or (iii) interest payable by Pogo to the Trust on the Debentures is not, or within 90 days of the date thereof will not be, deductible by Pogo for United States Federal income tax purposes.

"Investment Company Event" means that the Sponsor and the Regular Trustees shall have received an Opinion of Counsel experienced in practice under the Investment Company Act that, as a result of the occurrence of a change in law or regulation or a change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority (a "Change in Investment Company Act Law"), there is more than an insubstantial risk that the Trust is or will be considered an Investment Company which is required to be registered under the Investment Company Act, which Change in Investment Company Act Law becomes effective on or after [\_\_\_\_\_, \_\_\_\_].

(d) The Trust may not redeem fewer than all the outstanding Common Securities unless all accumulated and unpaid Distributions have been paid on all Common Securities for all quarterly Distribution periods terminating on or prior to the date of redemption.

(e) (i) Notice of any redemption of, or notice of distribution of



Debentures in exchange for, the Preferred Securities and the Common Securities (a "Redemption/Distribution Notice") will be given by the Regular Trustees on behalf of the Trust by mail to each Holder of Preferred Securities and Common Securities to be redeemed or exchanged not less than 30 nor more than 60 days prior to the date fixed for redemption or exchange thereof. For purposes of the calculation of the date of redemption or exchange and the dates on which notices are given pursuant to this section 4(e) (i) a Redemption/Distribution Notice shall be deemed to be given on the day such notice is first

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mailed by first-class mail, postage prepaid, to Holders of Preferred Securities and Common Securities. Each Redemption/Distribution Notice shall be addressed to the Holders of Preferred Securities and Common Securities at the address of each such Holder appearing in the books and records of the Trust. No defect in the Redemption/Distribution Notice or in the mailing of either thereof with respect to any Holder shall affect the validity of the redemption or exchange proceedings with respect to any other Holder.

(ii) In the event that fewer than all the outstanding Common Securities are to be redeemed, the Common Securities to be redeemed will be redeemed Pro Rata from each Holder of Common Securities (subject to adjustment to eliminate fractional Common Securities).

(iii) If the Trust gives a Redemption/Distribution Notice in respect of a redemption of Common Securities as provided in this section 4 (which notice will be irrevocable), then immediately prior to the close of business on the redemption date, PROVIDED THAT Pogo has paid to the Property Trustee in immediately available funds a sufficient amount of cash in connection with the related redemption or maturity of the Debentures, Distributions will cease to accumulate on the Common Securities called for redemption, such Common Securities will no longer be deemed to be outstanding and all rights of Holders of such Common Securities so called for redemption will cease, except the right of the Holders of such Common Securities to receive the Redemption Price, but without interest on such Redemption Price. Neither the Trustees nor the Trust shall be required to register or cause to be registered the transfer of any Common Securities which have been so called for redemption. If any date fixed for redemption of Common Securities is not a Business Day, then payment of the 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 fixed for redemption. If payment of the Redemption Price in respect of Common Securities is improperly withheld or refused and not paid by the Property Trustee, Distributions on such Common Securities will continue to accumulate, from the original redemption date to the date of payment, in which case the actual payment date will be considered the date fixed for redemption for purposes of calculating the Redemption Price.

(iv) Redemption/Distribution Notices shall be sent by the Regular

[5. CONVERSION RIGHTS.

The Holders of Common Securities shall have the right at any time prior to the close of business on [\_\_\_\_\_, \_\_\_\_] or, in the case of Common Securities called for redemption, prior to the close of business on the Business Day prior to the redemption date, at their option, to cause

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the Conversion Agent to convert Common Securities, on behalf of the converting Holders, into shares of Common Stock in the manner described herein on and subject to the following terms and conditions:

(a) The Common Securities will be convertible at the office of the Conversion Agent into fully paid and nonassessable shares of Common Stock pursuant to the Holder's direction to the Conversion Agent to exchange such Common Securities for a portion of the Debentures theretofore held by the Trust on the basis of one Common Security per \$[\_\_\_\_\_] principal amount of Debentures, and immediately convert such amount of Debentures into fully paid and nonassessable shares of Common Stock at an initial rate of [\_] shares of Common Stock per \$[\_\_\_\_\_] principal amount of Debentures (which is equivalent to a conversion price of \$[\_\_\_] per share of Common Stock, subject to certain adjustments set forth in Sections [\_] and [\_] of the Supplemental Indenture (as so adjusted, "Conversion Price")).

(b) In order to convert Common Securities into Common Stock, the Holder shall submit to the Conversion Agent at the office referred to above an irrevocable request to convert Common Securities on behalf of such Holder (the "Conversion Request"), together, if the Common Securities are in certificated form, with such Common Security Certificates. The Conversion Request shall (i) set forth the number of Common Securities to be converted and the name or names, if other than the Holder, in which the shares of Common Stock should be issued and (ii) direct the Conversion Agent (a) to exchange such Common Securities for a portion of the Debentures held by the Trust (at the rate of exchange specified in the preceding paragraph) and (b) to immediately convert such Debentures on behalf of such Holder, into Common Stock, subject to certain adjustments set forth in the Supplemental Indenture (at the conversion rate specified in the preceding paragraph). The Conversion Agent shall notify the Trust of the Holder's election to exchange Common Securities for a portion of the Debentures held by the Trust, and the Trust shall, upon receipt of such notice, deliver to the Conversion Agent the appropriate principal amount of Debentures for exchange in accordance with this Section. The Conversion Agent shall thereupon notify the Sponsor of the Holder's election to convert such Debentures into shares of Common Stock. If a Common Security is surrendered for conversion after the close of business on any regular record date for payment of a Distribution and before the opening of business on the corresponding Distribution payment date, then, notwithstanding such conversion, the Distribution payable on such Distribution payment date will be paid in cash to the person in whose name the Common Security is registered at the close of business on such record

date, and (other than a Common Security or a portion of a Common Security called for redemption on a redemption date occurring after such record date and on or prior to such Distribution payment date) when so surrendered for conversion, the Common Security must be accompanied by payment of an amount equal to the Distribution payable on such Distribution payment date. Except as provided above, neither the Trust nor the Sponsor will make, or be required to make, any payment, allowance or adjustment upon any conversion on account of any accumulated and unpaid Distributions accumulated on the Common Securities surrendered for conversion, or on account of any accumulated and unpaid dividends on the shares of Common Stock issued upon such conversion, and the

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delivery of Common Stock upon conversion of the Common Securities shall be deemed to constitute full payment for all accumulated and unpaid Distributions on the Common Securities. Common Securities shall be deemed to have been converted immediately prior to the close of business on the day on which a Notice of Conversion relating to such Common Securities is received by the Trust in accordance with the foregoing provision (the "Conversion Date"). The Person or Persons entitled to receive Common Stock issuable upon conversion of the Debentures shall be treated for all purposes as the record holder or holders of such Common Stock at such time. As promptly as practicable on or after the Conversion Date, the Sponsor shall issue and deliver at the office of the Conversion Agent a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion, together with the cash payment, if any, in lieu of any fraction of any share to the Person or Persons entitled to receive the same, unless otherwise directed by the Holder in the Notice of Conversion, and the Conversion Agent shall distribute such certificate or certificates, together with the applicable cash payment, if any, to such Person or Persons.

(c) Each Holder of a Common Security by his acceptance thereof appoints Wilmington Trust Company as the "Conversion Agent" for the purpose of effecting the conversion of Common Securities in accordance with this Section. In effecting the conversion and transactions described in this Section, the Conversion Agent shall be acting as agent of the Holders of Common Securities directing it to effect such conversion transactions. The Conversion Agent is hereby authorized (i) to exchange Common Securities from time to time for Debentures held by the Trust in connection with the conversion of such Common Securities in accordance with this Section and (ii) to convert all or a portion of the Debentures into Common Stock and thereupon to deliver such shares of Common Stock in accordance with the provisions of this Section and to deliver to the Trust a new Debenture or Debentures for any resulting unconverted principal amount.

(d) No fractional shares of Common Stock will be issued as a result of conversion, but in lieu thereof, such fractional interest will be paid by the Sponsor in cash (based upon the Closing Price (as defined in the Indenture) of Common Stock on the date such Common Securities are surrendered for conversion to the Trust) to the Conversion Agent, which in turn will make such payment to the Holder or Holders of Common Securities

so converted, or, if such day is not a Trading Day (as defined in the Indenture), on the next Trading Day.

(e) The Sponsor shall at all times reserve and keep available out of its authorized and unissued Common Stock, solely for issuance upon the conversion of the Debentures, free from any preemptive or other similar rights, such number of shares of Common Stock as shall from time to time be issuable upon the conversion of all the Debentures then outstanding. Notwithstanding the foregoing, the Sponsor shall be entitled to deliver upon conversion of Debentures, shares of Common Stock reacquired and held in the treasury of the Sponsor (in lieu of the issuance of authorized and unissued shares of Common Stock), so long as any such treasury shares are free and clear of all liens, charges, security interests or encumbrances. Any shares of Common Stock issued upon conversion of the Debentures shall be duly authorized, validly issued and fully paid and nonassessable. The Trust shall deliver the shares of Common Stock received upon conversion of the Debentures to the

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converting Holder of Common Securities free and clear of all liens, charges, security interests and encumbrances, except for United States withholding taxes. Each of the Sponsor and the Trust shall prepare and shall use its best efforts to obtain and keep in force such governmental or regulatory permits or other authorizations as may be required by law, and shall comply with all applicable requirements as to registration or qualification of Common Stock (and all requirements to list Common Stock issuable upon conversion of Debentures that are at the time applicable), in order to enable the Sponsor to lawfully issue Common Stock to the Trust upon conversion of the Debentures and the Trust to lawfully deliver Common Stock to each Holder of Common Securities upon conversion of the Securities.

(f) The Sponsor will pay any and all taxes that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Debentures and the delivery of the shares of Common Stock by the Trust upon conversion of the Common Securities. The Sponsor shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the Common Securities so converted were registered, and no such issue or delivery shall be made unless and until the Person requesting such issue has paid to the Trust the amount of any such tax, or has established to the satisfaction of the Trust that such tax has been paid.

(g) Nothing in the preceding section 5(f) shall limit the requirement of the Trust to withhold taxes pursuant to the terms of the Common Securities or set forth in this Exhibit C to the Declaration or to the Declaration itself or otherwise require the Property Trustee or the Trust to pay any amounts on account of such withholdings.]

6. VOTING RIGHTS. (a) Except as provided under section 6(b) below and as otherwise required by law and the Declaration, the Holders of the Common

Securities will have no voting rights.

(b) Holders of Common Securities have the sole right under the Declaration to increase or decrease the number of Trustees, and to appoint, remove or replace a Trustee, any such increase, decrease, appointment, removal or replacement to be approved by Holders of Common Securities representing a Majority in liquidation amount of the Common Securities.

If any proposed amendment to the Declaration provides for, or the Regular Trustees otherwise propose to effect, (i) any action that would adversely affect the powers, preferences or special rights of the Securities, whether by way of amendment to the Declaration, other than as described in Section 12.01(b) of the Declaration, or otherwise, or (ii) the dissolution, winding-up or termination of the Trust, other than as described in Section 8.01 of the Declaration or section 3 of this Exhibit C, then the Holders of outstanding Securities will be entitled to vote on such amendment or proposal as a single class and such amendment or proposal shall not be effective except with the approval of the Holders of Securities of at least a Majority in liquidation amount of the Securities, voting together as a single class; PROVIDED, HOWEVER, that (A) if any amendment or proposal referred to in clause (i) above would adversely affect only the Preferred Securities or the Common Securities, then only the affected class of Securities will be entitled to vote on such amendment or proposal and

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such amendment or proposal shall not be effective except with the approval of at least a Majority in liquidation amount of such class of Securities, (B) the rights of Holders of Common Securities under Section 5.02 of the Declaration to increase or decrease the number of, and to appoint, replace or remove, Trustees shall not be amended without the consent of each Holder of Common Securities, and (C) amendments to the Declaration shall be subject to such further requirements as are set forth in Sections 12.01 and 12.02 of the Declaration.

In the event the consent of the Property Trustee, as the holder of the Debentures, is required under the Indenture with respect to any amendment, modification or termination of the Indenture or the Debentures, the Property Trustee shall request the written direction of the Holders of the Securities with respect to such amendment, modification or termination. The Property Trustee shall vote with respect to such amendment, modification or termination as directed by a Majority in liquidation amount of the Securities voting together as a single class; PROVIDED, HOWEVER, that where such amendment, modification or termination of the Indenture requires the consent or vote of (1) holders of Debentures representing a specified percentage greater than a majority in principal amount of the Debentures or (2) each holder of Debentures, the Property Trustee may only vote with respect to that amendment, modification or termination as directed by, in the case of clause (1) above, the vote of Holders of Securities representing such specified percentage of the aggregate liquidation amount of the Securities, or, in the case of clause (2) above, each Holder of Securities; and PROVIDED, FURTHER, that the Property Trustee shall be under no obligation to take any action in accordance with the directions of the Holders of Securities unless the Property Trustee shall have received, at the expense of the Sponsor, an Opinion of Counsel experienced in such matters to the effect that the Trust will not be classified for United States Federal income

tax purposes as other than a grantor trust on account of such action.

So long as any Debentures are held by the Property Trustee, the Trustees shall not (i) direct the time, method and place of conducting any proceeding for any remedy available to the Trustee of the Indenture (the "Debenture Trustee"), or exercising any trust or power conferred on such Debenture Trustee with respect to the Debentures, (ii) waive any past default that is waivable under Section 6.06 of the Indenture or (iii) exercise any right to rescind or annul a declaration of acceleration of the maturity of the principal of the Debentures, without, in each case, obtaining the prior approval of the Holders of a Majority in liquidation amount of all outstanding Common Securities and Preferred Securities. The Trustees shall not revoke any action previously authorized or approved by a vote of the Holders of the Common Securities except by subsequent vote of such Holders. The Property Trustee shall notify each Holder of Common Securities of any notice of default with respect to the Debentures.

Notwithstanding any other provision of these terms, each Holder of Common Securities will be deemed to have waived any Event of Default with respect to the Common Securities and its consequences until all Events of Default with respect to the Preferred Securities have been cured, waived by the Holders of Preferred Securities as provided in the Declaration or otherwise eliminated, and until all Events of Default with respect to the Preferred Securities have been so cured, waived by the Holders of Preferred Securities or otherwise eliminated, the Property Trustee will be deemed to be acting solely on behalf of the Holders of Preferred Securities and only the Holders of the Preferred Securities will have the right to direct the Property Trustee in accordance with the terms

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of the Declaration or of the Securities. In the event that any Event of Default with respect to the Preferred Securities is waived by the Holders of Preferred Securities as provided in the Declaration, the Holders of Common Securities agree that such waiver shall also constitute the waiver of such Event of Default with respect to the Common Securities for all purposes under the Declaration without any further act, vote or consent of the Holders of the Common Securities.

A waiver of an Indenture Event of Default by the Property Trustee at the direction of the Holders of the Preferred Securities will constitute a waiver of the corresponding Event of Default under the Declaration in respect of the Securities.

Any required approval or direction of Holders of Common Securities may be given at a separate meeting of Holders of Common Securities convened for such purpose, at a meeting of all of the Holders of Securities or pursuant to written consent. The Regular Trustees will cause a notice of any meeting at which Holders of Common Securities are entitled to vote to be mailed to each Holder of record of Common Securities. Each such notice will include a statement setting forth (i) the date of such meeting, (ii) a description of any resolution proposed for adoption at such meeting on which such Holders are entitled to vote and (iii) instructions for the delivery of proxies.

No vote or consent of the Holders of Common Securities will be required for



the Trust to redeem and cancel Common Securities or to distribute the Debentures in accordance with the Declaration.

7. PRO RATA TREATMENT. A reference in these terms of the Common Securities to any payment, Distribution or treatment as being "Pro Rata" shall mean pro rata to each Holder of Securities according to the aggregate liquidation amount of the Securities held by the relevant Holder in relation to the aggregate liquidation amount of all Securities outstanding unless, in relation to a payment, an Event of Default has occurred and is continuing, in which case any funds available to make such payment shall be paid first to each Holder of the Preferred Securities pro rata according to the aggregate liquidation amount of Preferred Securities held by the relevant Holder relative to the aggregate liquidation amount of all Preferred Securities outstanding, and only after satisfaction of all amounts owed to the Holders of the Preferred Securities, to each Holder of Common Securities pro rata according to the aggregate liquidation amount of Common Securities held by the relevant Holder relative to the aggregate liquidation amount of all Common Securities outstanding.

8. RANKING. The Common Securities rank PARI PASSU and payment thereon will be made Pro Rata with the Preferred Securities, except that when an Event of Default occurs and is continuing, the rights of Holders of Common Securities to payment in respect of Distributions and payments upon liquidation, redemption or otherwise are subordinate to the rights of Holders of the Preferred Securities.

9. TRANSFER, EXCHANGE, METHOD OF PAYMENTS. Payment of Distributions and payments on redemption of the Common Securities will be payable, the transfer of the Common Securities will be registrable, and Common Securities will be exchangeable for Common Securities of other denominations of a like aggregate liquidation amount, at the principal corporate trust office of the Property Trustee in [\_\_\_\_\_]; PROVIDED THAT payment of Distributions may be made

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at the option of the Regular Trustees on behalf of the Trust by check mailed to the address of the persons entitled thereto and that the payment on redemption of any Common Security will be made only upon surrender of such Common Security to the Property Trustee. Notwithstanding the foregoing, transfers of Common Securities are subject to conditions set forth in Section 9.01(c) of the Declaration.

10. ACCEPTANCE OF INDENTURE. Each Holder of Common Securities, by the acceptance thereof, agrees to the provisions of Indenture and the Debentures, including the subordination provisions of the Indenture.

11. NO PREEMPTIVE RIGHTS. The Holders of Common Securities shall have no preemptive or similar rights to subscribe to any additional Common Securities or Preferred Securities.

12. MISCELLANEOUS. These terms shall constitute a part of the Declaration. The Trust will provide a copy of the Declaration and the Indenture



to a Holder of Common Securities without charge on written request to the Trust at its principal place of business.

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Annex I

FORM OF COMMON SECURITY CERTIFICATE  
TRANSFER OF THIS CERTIFICATE  
IS SUBJECT TO THE CONDITIONS  
SET FORTH IN THE DECLARATION  
REFERRED TO BELOW

Certificate Number                      Number of Common Securities

\_\_\_\_\_

\_\_\_\_\_

Certificate Evidencing Common Securities

of

Pogo Trust I

[\_\_\_\_\_] % [Convertible] Common Trust Securities, Series [\_\_\_\_]  
(liquidation amount \$[\_\_\_\_\_] per Common Security)

Pogo Trust I, a statutory business trust created under the laws of the State of Delaware (the "Trust"), hereby certifies that \_\_\_\_\_ (the "Holder") is the registered owner of \_\_\_\_\_ (\_\_\_\_\_) common securities of the Trust representing common undivided beneficial interests in the assets of the Trust and designated the "[\_\_\_\_\_] % [Convertible] Common Trust Securities, Series [\_\_\_\_]" (liquidation amount \$[\_\_\_\_\_] per Common Security) (the "Common Securities"). The Common Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this Certificate duly endorsed and in proper form for transfer and satisfaction of the other conditions set forth in the Declaration (as defined below) including, without limitation, Section 9.01(c) thereof. 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 [\_\_\_\_\_, \_\_\_\_], as the same may be amended from time to time (the "Declaration") including the designation of the terms of Common Securities as set forth in Exhibit C thereto. The Common Securities and the Preferred Securities issued by the Trust pursuant to the Declaration represent undivided beneficial interests in the assets of the Trust, including the Debentures (as defined in the Declaration) issued by Pogo Producing Company, a Delaware corporation ("Pogo"), to the Trust pursuant to the Indenture referred to in the Declaration. The Trust will furnish a copy of the Declaration and the

to the Holder without charge upon written request to the Trust at its principal place of business or registered office.

The Holder of this Certificate, by accepting this Certificate, is deemed to have agreed to the terms of the Indenture and the Debentures, including that the Debentures are subordinate and junior in right of payment to all Senior Debt (as defined in the Indenture or the Supplemental Indenture) as and to the extent provided in the Indenture or the Supplemental Indenture.

Upon receipt of this Certificate, the Holder is bound by the Declaration and is entitled to the benefits thereunder.

IN WITNESS WHEREOF, the Trustees of the Trust have executed this Certificate this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

POGO TRUST I

By \_\_\_\_\_, as Regular Trustee

Name:

Title: Regular Trustee

By \_\_\_\_\_, as Regular Trustee

Name:

Title: Regular Trustee

[FORM OF REVERSE OF SECURITY]

Distributions payable on each Common Security will be fixed at a rate per annum of [\_\_\_\_]% (the "Coupon Rate") of the stated liquidation amount of \$[\_\_\_\_\_] per Common Security, such rate being the rate of interest payable on the Debentures to be held by the Property Trustee. Distributions in arrears for more than one calendar quarter will accumulate additional distributions thereon at the Coupon Rate per annum (to the extent permitted by applicable law) compounded quarterly. The term "Distributions" as used herein means such periodic cash distributions and any such additional distributions payable unless otherwise stated. A Distribution is payable only to the extent that payments are made in respect of the Debentures held by the Property Trustee and to the extent the Trust has funds on hand legally available therefor. The amount of

Distributions payable for any period will be computed for any full quarterly Distribution period on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full quarterly Distribution period for which Distributions are computed, Distributions will be computed on the basis of the actual number of days elapsed per 90-day quarter.

Distributions on the Common Securities will accumulate from [\_\_\_\_\_, \_\_\_\_] and will be payable quarterly in arrears, on [\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_] and [\_\_\_\_\_] of each year, commencing on [\_\_\_\_\_, \_\_\_\_], but only if and to the extent that interest payments are made in respect of the Debentures held by the Property Trustee. So long as Pogo shall not be in default in the payment of interest on the Debentures, Pogo has the right under the Indenture for the Debentures to defer payments of interest on the Debentures by extending the interest payment period at any time and from time to time on the Debentures for a period not exceeding 20 consecutive quarterly interest periods (each an "Extension Period"), during which Extension Period no interest shall be due and payable on the Debentures. As a consequence of such deferral, Distributions shall also be deferred. Despite such deferral, Distributions will continue to accumulate with additional distributions thereon (to the extent permitted by applicable law but not at a rate greater than the rate at which interest is then accruing on the Debentures) at the Coupon Rate compounded quarterly during any such Extension Period; PROVIDED THAT no Extension Period shall extend beyond the stated maturity of the Debentures. Prior to the termination of any such Extension Period, Pogo may further extend such Extension Period; PROVIDED THAT such Extension Period together with all such previous and further extensions thereof may not exceed 20 consecutive quarterly interest periods. Upon the termination of any Extension Period and the payment of all amounts then due, Pogo may commence a new Extension Period, subject to the above requirements. On the Distribution payment date at the end of the Extension Period, payments of accumulated Distributions will be payable to Holders of Common Securities as they appear on the books and records of the Trust (regardless of who the Holders may have been on other dates during the Extension Period) on the record date for such Distribution payment date.

The Common Securities shall be redeemable as provided in the Declaration.

[The Common Securities shall be convertible into shares of Common Stock (as defined in the Declaration), through (i) the exchange of Common Securities for a portion of the Debentures and (ii) the immediate conversion of such Debentures into Common Stock, in the manner and according to the terms set forth in the Declaration.]

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#### [CONVERSION REQUEST

To: Wilmington Trust Company,  
as Property Trustee of Pogo Trust I

The undersigned owner of these Common Securities hereby irrevocably exercises the option to convert these Common Securities, or the portion below designated, into Common Stock (as that term is defined in the Amended and Restated Declaration of Trust dated as of [\_\_\_\_\_, \_\_\_\_] (as amended from

time to time, the "Declaration"), by [\_\_\_\_\_, \_\_\_\_\_] and \_\_\_\_\_, as Regular Trustees, Wilmington Trust Company, as the Delaware Trustee, Wilmington Trust Company, as the Property Trustee, Pogo Producing Company, as Sponsor, and by the Holders, from time to time, of undivided beneficial interests in the assets of the Trust to be issued pursuant to the Declaration) in accordance with and subject to the terms and conditions of the Declaration. Pursuant to the aforementioned exercise of the option to convert these Common Securities, the undersigned hereby directs the Conversion Agent (as that term is defined in the Declaration) to (i) exchange such Common Securities for a portion of the Debentures (as that term is defined in the Declaration) held by Pogo Trust I (at the rate of exchange specified in the terms of the Common Securities set forth as Exhibit C to the Declaration) and (ii) immediately convert such Debentures on behalf of the undersigned, into Common Stock (at the conversion rate specified in the terms of the Common Securities set forth as Exhibit C to the Declaration), subject to certain adjustments set forth in the Supplemental Indenture (as that term is defined in the Declaration).

The undersigned does also hereby direct the Conversion Agent that the shares of Common Stock issuable and deliverable upon conversion, together with any check in payment for fractional shares, be issued in the name of and delivered to the undersigned, unless a different name has been indicated in the assignment below. If shares of Common Stock are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto.

Date: \_\_\_\_\_,  
in whole \_\_\_\_ in part \_\_\_\_

Number of Common Securities to be converted:

\_\_\_\_\_  
If a name or names other than the undersigned, please indicate in the spaces below the name or names in which the shares of Common Stock are to be issued, along with the address or addresses of such person or persons:

\_\_\_\_\_  
\_\_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature (for conversion only)

Please Print or Type Name and Address, Including Zip  
Code, and Social Security or Other Identifying Number

\_\_\_\_\_  
Signature Guarantee:\* \_\_\_\_\_

\_\_\_\_\_  
\*(Signature must be guaranteed by an "eligible guarantor institution" that is,  
a bank, stockbroker, savings and loan association or credit union meeting the  
requirements of the Conversion Agent, which requirements include membership or  
participation in the Securities Transfer Agents Medallion Program ("STAMP") or  
such other "signature guarantee program" as may be determined by the Conversion  
Agent in addition to, or in substitution for, STAMP, all in accordance with the  
Securities Exchange Act of 1934, as amended.)]

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#### ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Common Security  
Certificate to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Insert assignee's social security or tax identification number)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Insert address and zip code of assignee)

and irrevocably appoints

---

---

\_\_\_\_\_ agent to transfer this  
Common Security Certificate on the books of the Trust. The agent may substitute  
another to act for him or her.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
(Sign exactly as your name appears on the other side of this Common Security  
Certificate)

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CERTIFICATE OF TRUST  
OF  
POGO TRUST I

THIS CERTIFICATE OF TRUST of Pogo Trust I (the "TRUST"), dated as of March 17, 1999, is being duly executed and filed by the undersigned, as trustees, with the Secretary of State of the State of Delaware to form a business trust under the Delaware Business Trust Act (12 DEL. CODE Section 3801 ET SEQ.).

1. NAME. The name of the business trust being formed hereby is Pogo Trust I.

2. DELAWARE TRUSTEE. The name and business address of the trustee of the Trust with a principal place of business in the State of Delaware are Wilmington Trust Company, 1100 North Market Street, Wilmington, Delaware 19810.

3. EFFECTIVE DATE. This Certificate of Trust shall be effective at the time of its filing with the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the undersigned, being the sole trustees of the Trust at the time of filing this Certificate of Trust, have executed this Certificate of Trust as of the date first above written.

WILMINGTON TRUST COMPANY,  
as Delaware Trustee

By: /s/ Jill K. Morrison

-----  
Name: Jill K. Morrison  
Title: Administrative Account Manager

WILMINGTON TRUST COMPANY,  
as Property Trustee

By: /s/ Jill K. Morrison

-----  
Name: Jill K. Morrison  
Title: Administrative Account Manager



Gerald A. Morton,  
as Regular Trustee

By: /s/ Gerald A. Morton

-----

CERTIFICATE OF TRUST  
OF  
POGO TRUST II

THIS CERTIFICATE OF TRUST of Pogo Trust II (the "TRUST"), dated as of March 17, 1999, is being duly executed and filed by the undersigned, as trustees, with the Secretary of State of the State of Delaware to form a business trust under the Delaware Business Trust Act (12 DEL. CODE Section 3801 ET SEQ.).

4. NAME. The name of the business trust being formed hereby is Pogo Trust II.

5. DELAWARE TRUSTEE. The name and business address of the trustee of the Trust with a principal place of business in the State of Delaware are Wilmington Trust Company, 1100 North Market Street, Wilmington, Delaware 19810.

6. EFFECTIVE DATE. This Certificate of Trust shall be effective at the time of its filing with the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the undersigned, being the sole trustees of the Trust at the time of filing this Certificate of Trust, have executed this Certificate of Trust as of the date first above written.

WILMINGTON TRUST COMPANY,  
as Delaware Trustee

By: /s/ Jill K. Morrison

-----  
Name: Jill K. Morrison  
Title: Administrative Account Manager

WILMINGTON TRUST COMPANY,  
as Property Trustee

By: /s/ Jill K. Morrison

-----  
Name: Jill K. Morrison  
Title: Administrative Account Manager

Gerald A. Morton,  
as Regular Trustee

By: /s/ Gerald A. Morton

-----

FORM OF  
POGO PRODUCING COMPANY  
GUARANTEE AGREEMENT

POGO TRUST [\_\_]

Dated as of [\_\_\_\_\_, \_\_\_\_]

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GUARANTEE AGREEMENT

This GUARANTEE AGREEMENT, dated as of [\_\_\_\_\_, \_\_\_\_], is executed and delivered by POGO PRODUCING COMPANY, a Delaware corporation (the "Guarantor"), and Wilmington Trust Company, a Delaware banking corporation, as the initial Guarantee Trustee (as defined herein) for the benefit of the Holders (as defined herein) from time to time of the Preferred Securities (as defined herein) of Pogo Trust [\_\_\_], a Delaware statutory business trust (the "Issuer").

WHEREAS, pursuant to an Amended and Restated Declaration of Trust (the "Declaration"), dated as of [\_\_\_\_\_, \_\_\_\_] among the trustees of the Issuer named therein, POGO PRODUCING COMPANY, as Sponsor, and the Holders from time to time of preferred undivided beneficial interests in the assets of the Issuer, the Issuer may issue up to \_\_\_\_\_ aggregate liquidation amount of its \$[\_\_\_\_\_] [Convertible] Preferred Trust Securities, Series [\_\_\_] (the "Preferred Securities") representing preferred undivided beneficial interests in the assets of the Issuer and having the terms set forth in Exhibit B to the Declaration, of which \$\_\_\_\_\_ liquidation amount of Preferred Securities is being issued as of the date hereof. Up to the remaining \$[\_\_\_\_\_] liquidation amount of Preferred Securities may be issued by the Issuer if and to the extent that the over-allotment option granted by the Guarantor and the Issuer pursuant to the Underwriting Agreement (as defined in the Declaration) is exercised by the Underwriters named in the Underwriting Agreement; and

WHEREAS, as incentive for the Holders to purchase 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; and

NOW, THEREFORE, in consideration of the purchase by the initial purchasers thereof of Preferred Securities, which purchase the Guarantor hereby agrees shall benefit the Guarantor, the Guarantor executes and delivers this Guarantee Agreement for the benefit of the Holders from time to time.

ARTICLE 1  
DEFINITIONS

SECTION 1.01. DEFINITIONS. (a) Capitalized terms used in this Guarantee Agreement but not defined in the preamble above have the respective meanings assigned to them in this 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; and

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

"Affiliate" means, with respect to any specified Person, 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 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. For purposes of this definition, beneficial ownership of 10% or more of the voting common equity (on a fully diluted basis) or options or warrants to purchase such equity (but only if exercisable at the date of determination or within 60 days thereof) of a Person shall be deemed to constitute control of such Person. No Person shall be deemed an Affiliate of an oil and gas royalty trust solely by virtue of ownership of units of beneficial interest in such trust.

"Commission" means the Securities and Exchange Commission.

"Common Securities" means the securities representing common undivided beneficial interests in the assets of the Issuer, having the terms set forth in Exhibit C to the Declaration.

"Debentures" means the series of unsecured junior subordinated debentures issued by the Guarantor under the Indenture to the Property Trustee and entitled the "[\_\_\_\_\_] % Junior Subordinated Debentures due [\_\_\_\_\_]".

"Declaration" has the meaning set forth in the first WHEREAS clause above.

"Distributions" means the periodic distributions and other payments payable to Holders in accordance with the terms of the Preferred Securities set forth in



"Event of Default" means a default by the Guarantor on any of its payment or other obligations under this Guarantee Agreement; PROVIDED, HOWEVER, that, except with respect to a default in payment of any Guarantee Payment, any such default shall constitute an Event of Default only if the Guarantor shall have received notice of such default and shall not have cured such default within 60 days after receipt of such notice.

"Guarantee Payments" means the following payments or distributions, without duplication, with respect to the Preferred Securities, to the extent not paid or made by or on behalf of the Issuer: (i) any accumulated and unpaid Distributions and the Redemption Price, including all accumulated and unpaid Distributions to the date of redemption, with respect to the Preferred Securities called for redemption by the Issuer but only if and to the extent that in each case the Guarantor has made a payment to the Property Trustee of interest or principal or premium, if any, on the Debentures and (ii) upon a voluntary or involuntary dissolution, winding-up or termination of the Issuer (other than in connection with the distribution of Debentures to Holders in exchange for Preferred Securities or the redemption of all the Preferred Securities upon the maturity or redemption of the Debentures as

provided in the Declaration), the lesser of (a) the aggregate of the liquidation amount and all accumulated and unpaid Distributions on the Preferred Securities to the date of payment, to the extent the Issuer has funds on hand legally available therefor, and (b) the amount of assets of the Issuer remaining available for distribution to Holders in liquidation of the Issuer as required by applicable law (in either case, the "Liquidation Distribution").

"Guarantee Trustee" means Wilmington Trust Company, a Delaware banking corporation, until a Successor Guarantee Trustee has been appointed and has accepted such appointment pursuant to the terms of this Guarantee Agreement, and thereafter means each such Successor Guarantee Trustee.

"Holder" means any holder, as registered on the books and records of the Issuer, of any 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.

"Indemnified Person" means the Guarantee Trustee, any Affiliate of the Guarantee Trustee, and any officers, directors, shareholders, members, partners, employees, representatives or agents of the Guarantee Trustee.

"Indenture" means the Junior Subordinated Indenture dated as of [\_\_\_\_\_, \_\_\_\_] between the Guarantor and Wilmington Trust Company, as trustee, as supplemented by the [\_\_\_\_\_] Supplemental Indenture thereto dated as of [\_\_\_\_\_, \_\_\_\_] (the "Supplemental Indenture"), pursuant to which the Debentures are to be issued to the Property Trustee.

"Liquidation Distribution" has the meaning specified in the definition of

## Guarantee Payments.

"Majority in liquidation amount of the Preferred Securities" means, except as otherwise required by the Trust Indenture Act, Holder(s) of outstanding Preferred Securities voting together as a single class, who are the record owners of Preferred Securities whose liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accumulated and unpaid Distributions to the date upon which the voting percentages are determined) represents more than 50% of the liquidation amount of all outstanding Preferred Securities.

"Officers' Certificate" means, with respect to any Person, a certificate signed by the Chairman of the Board, the Chief Executive Officer, the President or a Vice President, and by the Treasurer, an Associate Treasurer, an Assistant Treasurer, the Controller, the Secretary or an Assistant Secretary, of such Person, and delivered to the Guarantee Trustee. One of the officers signing an Officers' Certificate given pursuant to Section 2.04 shall be the principal executive, financial or accounting officer of the Guarantor. Any Officers' Certificate delivered with respect to compliance with a condition or covenant provided for in this Guarantee Agreement shall include:

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

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

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

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

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

"Preferred Securities" has the meaning set forth in the first WHEREAS clause above.

"Property Trustee" means the Person acting as Property Trustee under the Declaration.

"Redemption Price" means the amount payable on redemption of the Preferred Securities in accordance with the terms of the Preferred Securities.

"Responsible Officer" means, when used with respect to the Guarantee

Trustee, any officer within the corporate trust department of the Guarantee Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Guarantee Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such Person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Guarantee Agreement.

"Successor Guarantee Trustee" means a successor Guarantee Trustee possessing the qualifications to act as a Guarantee Trustee under Section 4.01.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended.

## ARTICLE 2 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;

(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; and

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(c) the application of the Trust Indenture Act to this Guarantee Agreement shall not affect the nature of the Preferred Securities as equity securities representing preferred undivided beneficial interests in the assets of the Issuer.

SECTION 2.02. LISTS OF HOLDERS OF PREFERRED SECURITIES. (a) The Guarantor shall provide the Guarantee Trustee (unless the Guarantee Trustee is otherwise the registrar of the Preferred Securities) (i) within 14 days after each record date for payment of Distributions, a list, in such form as the Guarantee Trustee may reasonably require, of the names and addresses of the Holders ("List of Holders") as of such date, and (ii) at any other time within 30 days of receipt by the Guarantor of a written request for a List of Holders as of a date no more than 14 days before such List of Holders is given to the Guarantee Trustee; PROVIDED, that the Guarantor shall not be obligated to provide such List of Holders at any time that the List of Holders does not differ from the most recent List of Holders given to the Guarantee Trustee by the Guarantor. The Guarantee Trustee shall preserve, in as current a form as is reasonably practicable, all information contained in the List of Holders given to it; PROVIDED, that the Guarantee Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

(b) the Guarantee Trustee shall comply with its obligations under Sections 310(b), 311 and 312(b) of the Trust Indenture Act.

SECTION 2.03. REPORTS BY THE GUARANTEE TRUSTEE. Within 60 days after

May 15 of each year, commencing May 15, [\_\_\_\_], the Guarantee Trustee shall provide to the Holders such reports as are required by Section 313 of the Trust Indenture Act, if any, in the form, in the manner and at the times provided by Section 313 of the Trust Indenture Act. The Guarantee Trustee shall also comply with the other requirements of Section 313 of the Trust Indenture Act. A copy of each such report shall, at the time of such transmission to the Holders, be filed by the Guarantee Trustee with the Guarantor, with each stock exchange upon which any Preferred Securities are listed (if so listed) and also with the Commission. The Guarantor agrees to notify the Guarantee Trustee when any Preferred Securities become listed on any stock exchange and any delisting thereof.

SECTION 2.04. PERIODIC REPORTS TO THE GUARANTEE TRUSTEE. The Guarantor shall provide to the Guarantee Trustee, the Commission and the Holders, as applicable, such documents, reports and information as required by Section 314(a)(1)-(3) (if any) of the Trust Indenture Act and the compliance certificates required by Section 314(a)(4) and (c) of the Trust Indenture Act, any such certificates to be provided in the form, in the manner and at the times required by Section 314(a)(4) and (c) of the Trust Indenture Act (PROVIDED that any certificate to be provided pursuant to Section 314(a)(4) of the Trust Indenture Act shall be provided within 120 days of the end of each fiscal year of the Issuer).

SECTION 2.05. EVIDENCE OF COMPLIANCE WITH CONDITIONS PRECEDENT. The Guarantor shall provide to the Guarantee Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Guarantee Agreement which 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) may be given in the form of an Officers' Certificate.

SECTION 2.06. EVENTS OF DEFAULT; WAIVER. (a) The Holders of a Majority in liquidation amount of the Preferred Securities may, by vote, on behalf 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.

(b) The right of any Holder to receive payment of the Guarantee Payments in accordance with this Guarantee Agreement, or to institute suit for the enforcement of any such payment, shall not be impaired without the consent of each such Holder.

SECTION 2.07. DISCLOSURE OF INFORMATION. The disclosure of information as to the names and addresses of the Holders in accordance with Section 312 of the Trust Indenture Act, regardless of the source from which such information was derived, shall not be deemed to be a violation of any existing law, or any law hereafter enacted which does not specifically refer

to Section 312 of the Trust Indenture Act, nor shall the Guarantee Trustee be held accountable by reason of mailing any material pursuant to a request made under Section 312(b) of the Trust Indenture Act.

SECTION 2.08. CONFLICTING INTEREST. 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 3 POWERS, DUTIES AND RIGHTS OF THE GUARANTEE TRUSTEE

SECTION 3.01. POWERS AND DUTIES OF THE GUARANTEE TRUSTEE. (a) This Guarantee Agreement shall be held by the Guarantee Trustee in trust for the benefit of the Holders. The Guarantee Trustee shall not transfer its right, title and interest in this Guarantee Agreement to any Person except a Successor Guarantee Trustee on acceptance by such Successor Guarantee Trustee of its appointment to act as Guarantee Trustee or to a Holder exercising his or her rights pursuant to Section 5.04(iv). The right, title and interest of the Guarantee Trustee to this Guarantee Agreement shall vest automatically in each Person who may hereafter be appointed as Guarantee Trustee in accordance with Article 4. Such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered.

(b) If an Event of Default has occurred and is continuing, the Guarantee Trustee shall enforce this Guarantee Agreement for the benefit of the Holders.

(c) This Guarantee Agreement and all moneys received by the Property Trustee in respect of the Guarantee Payments will not be subject to any right, charge, security interest, lien or claim of any kind in favor of, or for the benefit of, the Guarantee Trustee or its agents or their creditors.

(d) The Guarantee Trustee shall, within 90 days after the occurrence of an Event of Default known to a Responsible Officer of the Guarantee Trustee, transmit by mail, first class postage prepaid, to the Holders, as their names and addresses appear upon the List of Holders, notice of all such Events of Default, unless such defaults shall have been cured before the giving of such notice; PROVIDED, that, the Guarantee Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or Responsible Officers, of the Guarantee Trustee in good faith determine that the withholding of such notice is in the interests of the Holders. The Guarantee Trustee shall not be deemed to have knowledge of any

Event of Default except any Event of Default as to which the Guarantee Trustee shall have received written notice or a Responsible Officer charged with the administration of this Guarantee Agreement shall have obtained written notice of such Event of Default.

(e) The Guarantee Trustee shall continue to serve as a trustee until a Successor Guarantee Trustee has been appointed and accepted that appointment in accordance with Article 4.

SECTION 3.02. CERTAIN RIGHTS AND DUTIES OF THE GUARANTEE TRUSTEE. (a) The Guarantee Trustee, before the occurrence of an 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 Guarantee Trustee. In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.06), the Guarantee Trustee shall exercise such of the rights and powers vested in it by this Guarantee Agreement, and use the same degree of care and skill in its exercise thereof, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

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

(i) prior to the occurrence of an Event of Default and after the curing or waiving of all such Events of Default that may have occurred:

(A) the duties and obligations of the Guarantee Trustee shall be determined solely by the express provisions of this Guarantee Agreement, and the Guarantee Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Guarantee Agreement, and no implied covenants or obligations shall be read into this Guarantee Agreement against the Guarantee Trustee; and

(B) in the absence of bad faith on the part of the Guarantee Trustee, the Guarantee Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Guarantee Trustee and conforming to the requirements of this Guarantee Agreement; but in the case of any such certificates or opinions that by any provision hereof or the Trust Indenture Act are specifically required to be furnished to the Guarantee Trustee, the Guarantee Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Guarantee Agreement or the Trust Indenture Act, as the case may be;

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

(iii) the Guarantee Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a Majority in liquidation amount of Preferred Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee, or exercising any trust or power conferred upon the Guarantee Trustee under

this Guarantee Agreement; and

(iv) no provision of this Guarantee Agreement shall require the Guarantee Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if it 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.

(c) Subject to the provisions of Section 3.02(a) and (b):

(i) whenever in the administration of this Guarantee Agreement, the Guarantee Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Guarantee Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and rely upon an Officers' Certificate, which, upon receipt of such request, shall be promptly delivered by the Guarantor;

(ii) the Guarantee Trustee (A) may consult with counsel (which may be counsel to the Guarantor or any of its Affiliates and may include any of its employees) selected by it in good faith and with due care and the written advice or opinion of such counsel with respect to legal matters 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 and in accordance with such advice and opinion and (B) shall have the right at any time to seek instructions concerning the administration of this Guarantee Agreement from any court of competent jurisdiction;

(iii) the Guarantee 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 Guarantee Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed by it in good faith and with due care;

(iv) the Guarantee Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Guarantee Agreement at the request or direction of any Holder, unless such Holder shall have offered to the Guarantee Trustee security and indemnity satisfactory to the Guarantee Trustee against the costs, expenses (including its attorneys' fees and expenses) and liabilities that might be incurred by it in complying with such request or direction; PROVIDED that nothing contained in this clause (iv) shall relieve the Guarantee Trustee of the obligation, upon the occurrence of an Event of Default (which has not been cured or waived) to exercise such of the rights and powers vested in it by this Guarantee Agreement, and to use the same degree of care and skill in this exercise as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs; and



(v) any action taken by the Guarantee Trustee or its agents hereunder shall bind the Holders and the signature of the Guarantee Trustee or its agents alone shall be sufficient and effective to perform any such action; and no third party shall be required to inquire as to the authority of the Guarantee Trustee to so act, or as to its compliance with any of the terms and provisions of this Guarantee Agreement, both of which shall be conclusively evidenced by the Guarantee Trustee's or its agent's taking such action.

SECTION 3.03. NOT RESPONSIBLE FOR RECITALS OR ISSUANCE OF GUARANTEE. The recitals contained in this Guarantee Agreement shall be taken as the statements of the Guarantor and the Guarantee Trustee does not assume any responsibility for their correctness. The Guarantee Trustee makes no representations as to the validity or sufficiency of this Guarantee Agreement.

SECTION 3.04. THE GUARANTEE TRUSTEE MAY OWN PREFERRED SECURITIES. The Guarantee Trustee, in its individual or any other capacity, may become the owner or pledgee of Preferred Securities and may otherwise deal with the Guarantor with the same rights it would have if it were not Guarantee Trustee.

SECTION 3.05. MONEYS RECEIVED BY THE GUARANTEE TRUSTEE TO BE HELD IN TRUST WITHOUT INTEREST. All moneys received by the Guarantee Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. The Guarantee Trustee shall be under no liability for interest on any moneys received by it hereunder except such as it may agree in writing to pay thereon.

#### ARTICLE 4 GUARANTEE TRUSTEE

SECTION 4.01. QUALIFICATIONS. There shall at all times be a Guarantee Trustee that shall:

(i) not be an Affiliate of the Guarantor; and

(ii) be a national banking association or corporation organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a corporation or Person permitted by the Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$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 clause (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.

If at any time the Guarantee Trustee shall cease to satisfy the requirements of clauses (i) and (ii) above, the Guarantee Trustee shall immediately resign in the manner and with the effect set out in Section 4.02. If the Guarantee Trustee has or shall acquire any "conflicting interest" within

meaning of Section 310(b) of the Trust Indenture Act, the Guarantee Trustee and the Guarantor shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

SECTION 4.02. APPOINTMENT, REMOVAL AND RESIGNATION OF THE GUARANTEE TRUSTEE. (a) Subject to Section 4.02(b), the Guarantee Trustee may be appointed or removed without cause at any time by the Guarantor.

(b) The Guarantee Trustee shall not be removed in accordance with Section 4.02(a) until a Successor Guarantee Trustee possessing the qualifications to act as Guarantee Trustee under Section 4.01 has been appointed and has accepted such appointment by written instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor and the Guarantee Trustee being removed.

(c) The Guarantee Trustee appointed to office shall hold office until his successor shall have been appointed or until its removal or resignation.

(d) The Guarantee Trustee may resign from office (without need for prior or subsequent accounting) by an instrument (a "Resignation Request") in writing signed by the Guarantee Trustee and delivered to the Guarantor, which resignation shall take effect upon such delivery or upon such later date as is specified therein; PROVIDED, HOWEVER, that no such resignation of the Guarantee Trustee shall be effective until a Successor Guarantee Trustee possessing the qualifications to act as Guarantee Trustee under Section 4.01 has been appointed and has accepted such appointment by instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor and the resigning Guarantee Trustee.

(e) If no Successor Guarantee Trustee shall have been appointed and accepted appointment as provided in this Section 4.02 within 60 days after delivery to the Guarantor of a Resignation Request, the resigning Guarantee Trustee may petition any court of competent jurisdiction for appointment of a Successor Guarantee Trustee. Such court may thereupon after such notice, if any, as it may deem proper and prescribe, appoint a Successor Guarantee Trustee.

## ARTICLE 5 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 the Issuer), as and when due, regardless of any defense, right of set-off or counterclaim which the Issuer may have or assert. The Guarantor's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the Issuer to pay such amounts to the Holders.

SECTION 5.02. WAIVER OF NOTICE. 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 Issuer 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. Notwithstanding anything to the contrary herein, the Guarantor retains all of its rights under the Indenture to extend the interest payment period on the

Debentures and the Guarantor shall not be obligated hereunder to make any Guarantee Payment during any Extended Interest Payment Period (as defined in the Supplemental Indenture) with respect to the Distributions on the Preferred Securities.

SECTION 5.03. OBLIGATIONS NOT AFFECTED. The obligations, covenants, agreements and duties of the Guarantor under this Guarantee Agreement shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

- (a) the release or waiver, by operation of law or otherwise, of the performance or observance by the Issuer of any express or implied agreement, covenant, term or condition relating to the Preferred Securities to be performed or observed by the Issuer;
- (b) the extension of time for the payment by the Issuer of all or any portion of the Distributions (other than an extension of time for payment of Distributions that result from any Extended Interest Payment Period), Redemption Price, Liquidation Distribution (as defined in the Declaration) 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 that result from any Extended Interest Payment Period);
- (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 Issuer 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 Issuer or any of the assets of the Issuer;
- (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 with respect to the Guarantee Payments 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. ENFORCEMENT OF GUARANTEE. The Guarantor and the Guarantee Trustee expressly acknowledge that (i) this Guarantee Agreement will be deposited with the Guarantee Trustee to be held for the benefit of the Holders; (ii) the Guarantee Trustee has the right to enforce this Guarantee Agreement on behalf of the Holders; (iii) Holders representing not less than a

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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 Guarantee Trustee in respect of this Guarantee Agreement or exercising any trust or other power conferred upon the Guarantee Trustee under this Guarantee Agreement; and (iv) if the Guarantee Trustee fails to enforce this Guarantee Agreement as provided in clauses (ii) and (iii) above, 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 the Issuer, the Guarantee Trustee or any other Person. Notwithstanding the foregoing, if the Guarantor has failed to make a Guarantee Payment, a Holder may directly institute a proceeding against the Guarantor for enforcement of this Guarantee Agreement for such payment without first instituting a legal proceeding against the Issuer, the Guarantee Trustee or any other Person.

SECTION 5.05. GUARANTEE OF PAYMENT. This Guarantee Agreement creates a guarantee of payment and not merely of collection. This Guarantee Agreement will not be discharged except by payment of the Guarantee Payments in full (without duplication of amounts theretofore paid by the Issuer) or upon the distribution of the Debentures to the Holders as provided in the Declaration.

SECTION 5.06. SUBROGATION. The Guarantor shall be subrogated to all (if any) rights of the Holders against the Issuer 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 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 Issuer 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 6  
LIMITATION OF TRANSACTIONS; SUBORDINATION

SECTION 6.01. LIMITATION OF TRANSACTIONS. So long as any Preferred Securities remain outstanding, the Guarantor will not declare or pay dividends on, or redeem, purchase, acquire or make a distribution or liquidation payment with respect to, any of its capital stock (other than (a) dividends or distributions in shares of, or options, warrants, rights to subscribe for or purchase shares of, common stock of the Guarantor, (b) any declaration of a dividend in connection with the implementation of a stockholders' rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto, (c) as a result of a reclassification of the Guarantor's capital stock or the exchange or the conversion of one class or series of the Guarantor's capital stock for another class or series of the Guarantor's capital stock, (d) the payment of accrued dividends and the purchase of fractional interests in shares of the Guarantor's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security

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being converted or exchanged, or (e) purchases of the Guarantor's common stock related to the issuance of the Guarantor's common stock or rights under any of the Guarantor's benefit plans for its directors, officers or employees, any of the Guarantor's dividend reinvestment plans or stock purchase plans, or any of the benefit plans of any of the Guarantor's Affiliates, for such Affiliate's directors, officers or employees) or make any guarantee payment with respect thereto, if at such time (i) the Guarantor shall be in default with respect to its Guarantee Payments or other payment obligations hereunder, (ii) there shall have occurred any event of default under the Declaration or (iii) the Guarantor shall have given notice of its election of an Extended Interest Payment Period and such period, or any extension thereof, is continuing. In addition, so long as any Preferred Securities remain outstanding, the Guarantor (i) will remain the sole direct or indirect owner of all of the outstanding Common Securities and shall not cause or permit the Common Securities to be transferred except to the extent such transfer is permitted under Section 9.01 of the Declaration; PROVIDED that any permitted successor of the Guarantor under the Indenture may succeed to the Guarantor's ownership of the Common Securities and (ii) will use reasonable efforts to cause the Issuer to continue to be treated as a grantor trust for United States federal income tax purposes except in connection with a distribution of Debentures as provided in the Declaration.

SECTION 6.02. 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 Debentures, except those made PARI PASSU or subordinate by their terms, and (ii) senior to all capital stock (other than the most senior preferred stock issued, from time to time, if any, by the Guarantor, which preferred stock will rank PARI PASSU with this Guarantee Agreement) now or hereafter issued by the Guarantor and to any guarantee now or hereafter entered into by the Guarantor in respect of any of its capital stock (other

than the most senior preferred stock issued, from time to time, if any, by the Guarantor). The Guarantor's obligations under this Guarantee Agreement will rank PARI PASSU with respect to obligations under other guarantee agreements which it may enter into from time to time to the extent that (i) such agreements shall be entered into in substantially the form hereof and provide for comparable guarantees by the Guarantor of payment on preferred securities issued by other trusts, partnerships or other entities affiliated with the Guarantor that are financing vehicles of the Guarantor and (ii) the debentures or other evidences of indebtedness of the Guarantor relating to such preferred securities are junior subordinated, unsecured indebtedness of the Guarantor.

## ARTICLE 7 TERMINATION

SECTION 7.01. TERMINATION. This Guarantee Agreement shall terminate and be of no further force and effect (i) upon full payment of the Redemption Price of all Preferred Securities, (ii) upon the distribution of Debentures to Holders and holders of Common Securities in exchange for all of the Preferred Securities and Common Securities or (iii) upon full payment of the amounts payable in accordance with the Declaration upon liquidation of the Issuer. 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 the Preferred Securities or under this Guarantee Agreement.

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## ARTICLE 8 LIMITATION OF LIABILITY; INDEMNIFICATION

SECTION 8.01. EXCULPATION. (a) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Guarantor or any Holder for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith in accordance with this Guarantee Agreement and in a manner such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Guarantee Agreement or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's negligence or willful misconduct with respect to such acts or omissions.

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

SECTION 8.02. INDEMNIFICATION. To the fullest extent permitted by

applicable law, the Guarantor shall indemnify and hold harmless each Indemnified Person from and against any loss, damage or claim incurred by such Indemnified Person by reason of any act or omission performed or omitted by such Indemnified Person in good faith in accordance with this Guarantee Agreement and in a manner such Indemnified Person reasonably believed to be within the scope of authority conferred on such Indemnified Person by this Guarantee Agreement, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Indemnified Person by reason of negligence or willful misconduct with respect to such acts or omissions.

SECTION 8.03. SURVIVE TERMINATION. The provisions of Sections 8.01 and 8.02 shall survive the termination of this Guarantee Agreement or the resignation or removal of the Guarantee Trustee.

## ARTICLE 9 MISCELLANEOUS

SECTION 9.01. SUCCESSORS AND ASSIGNS. All guarantees and agreements contained in this Guarantee Agreement shall bind the successors, assignees, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders then outstanding. Except in connection with a consolidation, merger or sale involving the Guarantor that is permitted under Article Ten of the Indenture, the Guarantor shall not assign its obligations hereunder.

SECTION 9.02. AMENDMENTS. Except with respect to any changes which do not adversely affect the rights of Holders in any material respect (in which case no consent of Holders will be required), this Guarantee Agreement may only be amended with the prior approval of the Guarantor and the Holders of not less than a Majority in liquidation amount of the Preferred Securities. The

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provisions of Section 12.02 of the Declaration concerning meetings of Holders shall apply to the giving of such approval.

SECTION 9.03. 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 Holders:

Pogo Producing Company  
5 Greenway Plaza  
Suite 2700  
Houston, Texas 77046  
Facsimile No.: (713) 297-5100  
Attention: Corporate Secretary

(b) if given to the Guarantee Trustee, to the address set forth below or such other address as the Guarantee Trustee may give notice of to the



Holders:

Wilmington Trust Company  
1100 North Market Street  
Wilmington, Delaware 19810  
Attention: Corporate Trust Administration  
Telecopy: (617) 664-5739

(c) if given to any Holder, at the address set forth on the books and records of the Issuer.

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 9.04. GENDERS. The masculine, feminine and neuter genders used herein shall include the masculine, feminine and neuter genders.

SECTION 9.05. 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 Preferred Securities.

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SECTION 9.06. GOVERNING LAW. THIS GUARANTEE AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS).

SECTION 9.07. COUNTERPARTS. This Guarantee Agreement may be executed in counterparts, each of which shall be an original; but such counterparts shall together constitute one and the same instrument.

SECTION 9.08. EXERCISE OF OVERALLOTMENT OPTION. If and to the extent that Preferred Securities are issued by the Issuer upon exercise of the over-allotment option referred to in the first WHEREAS clause, the Guarantor agrees to give prompt notice thereof to the Guarantee Trustee but the failure to give such notice shall not relieve the Guarantor of any of its obligations hereunder.

SECTION 9.09. LIMITED LIABILITY. The Holders, in their capacities as such, shall not be personally liable for any liabilities or obligations of the Guarantor arising out of this Guarantee Agreement, and the parties hereby agree that the Holders, in their capacities as such, shall be entitled to the same limitation of personal liability extended to the stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

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THIS GUARANTEE AGREEMENT is executed as of the day and year first above written.

POGO PRODUCING COMPANY

By:

-----

Name:

Title:

WILMINGTON TRUST COMPANY,  
As Guarantee Trustee

By:

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Name:

Title:

EXHIBIT 5.1

[Letterhead of Gerald A. Morton, Esq.]

March 26, 1999

Pogo Producing Company  
5 Greenway Plaza, Suite 2700  
Houston, TX 77046

Gentlemen:

I have acted as counsel for Pogo Producing Company, a Delaware corporation (the "Company"), in connection with the Registration Statement on Form S-3, as amended to date (the "Registration Statement"), filed by Pogo Trust I and Pogo Trust II, each a statutory business trust formed under the laws of the State of Delaware (each, a "Trust" and collectively, the "Trusts"), and the Company (the Company and the Trusts each being a "Registrant," and collectively, the "Registrants"), with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"), relating to (i) senior debt securities and subordinated debt securities of the Company (the "Debt Securities"), (ii) shares of preferred stock, par value \$1.00 per share, of the Company (the "Preferred Stock"), (iii) shares of common stock, par value \$1.00 per share, of the Company (the "Common Stock"), (iv) preferred trust securities of the Trusts (the "Trust Preferred Securities"), (v) junior subordinated debt securities of the Company for issuance directly to a Trust (the "Junior Subordinated Debt Securities") and (vi) the Company's guarantee with respect to the Trust Preferred Securities (each, a "Guarantee," and collectively, the "Guarantees"), to be issued and sold by the Registrants from time to time pursuant to Rule 415 under the Act for an aggregate initial offering price not to exceed \$250,000,000. The Debt Securities, the Preferred Stock, the Common Stock, the Trust Preferred Securities, the Junior Subordinated Debt Securities and the Guarantees are hereinafter referred to as the "Securities."

In my capacity as Vice President--Law and Corporate Secretary of the Company, I have examined (i) the Restated Certificate of Incorporation and Amended and Restated Bylaws of the Company, each as amended to date (together, the "Charter Documents"), (ii) the form of the Indenture to be filed as Exhibit 4.1 to the Registration Statement to be executed by the Company and the trustee thereunder (the "Senior Debt Indenture"), pursuant to which senior Debt Securities may be issued, (iii) the form of the Indenture to be filed as Exhibit 4.2 to the Registration Statement to be executed by the Company and the trustee thereunder (the "Subordinated Debt Indenture"), pursuant to which subordinated Debt Securities may be issued, (iv) the form of the Indenture to be

filed as Exhibit 4.3 to the Registration Statement to be executed by the Company and the trustee thereunder (the "Junior Subordinated Debt Indenture"), pursuant to which Junior Subordinated Debt Securities may be issued, (v) the form of the Amended and Restated Declaration of Trust for the Trusts to be filed as Exhibit 4.5 to the Registration Statement, (vi) the form of the Guarantees to be

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filed as Exhibit 4.10 to the Registration Statement (the "Guarantee Agreement") and (vii) the originals, or copies certified or otherwise identified, of corporate records of the Company, including minute books of the Company, certificates of public officials and of representatives of the Company and the Trusts, statutes and other instruments and documents as a basis for the opinions hereafter expressed.

In connection with this opinion, I have assumed, with your approval, that (i) the Registration Statement, and any amendments thereto (including post-effective amendments), will have become effective; (ii) a Prospectus Supplement will have been prepared and filed with the Commission describing the Securities offered thereby; (iii) all Securities will be issued and sold in compliance with applicable federal and state securities laws and in the manner stated in the Registration Statement and the appropriate Prospectus Supplement; (iv) a definitive purchase, underwriting or similar agreement with respect to any Securities offered will have been duly authorized and validly executed and delivered by the Company and the other parties thereto; (v) any securities issuable upon conversion, exchange, redemption or exercise of any Securities being offered will be duly authorized, created and, if appropriate, reserved for issuance upon such conversion, exchange, redemption or exercise, (vi) with respect to shares of Common Stock or Preferred Stock offered, there will be sufficient shares of Common Stock or Preferred Stock authorized under the Charter Documents and not otherwise reserved for issuance and (vii) the laws of the State of New York are identical to the laws of the State of Texas. No opinion is expressed herein as to any matter governed by any law other than the laws of the State of Texas as in effect on the date hereof.

Based upon and subject to the foregoing, I am of the opinion that:

1. The Company is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware.

2. With respect to shares of Common Stock, when (i) the Board of Directors of the Company or, to the extent permitted by the General Corporation Law of the State of Delaware and the Charter Documents, a duly constituted and acting committee thereof (such Board of Directors or committee being hereinafter referred to as the "Board") has taken all necessary corporate action to approve the issuance thereof and the terms of the offering of shares of Common Stock and related matters, and (ii) certificates representing the shares of Common Stock have been duly executed, countersigned, registered and delivered either (a) in

accordance with the applicable definitive purchase, underwriting or similar agreement approved by the Board upon payment of the consideration therefor (not less than the par value of the Common Stock) provided for therein, or (b) upon conversion, exchange, redemption or exercise of any other Security, in accordance with the terms of such Security or the instrument governing such Security providing for such conversion, exchange, redemption or exercise as approved by the Board, for the consideration approved by the

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Board (not less than the par value of the Common Stock), the shares of Common Stock will be duly authorized, validly issued, fully paid and non-assessable.

3. With respect to shares of Preferred Stock, when (i) the Board has taken all necessary corporate action to approve and establish the terms of the shares of Preferred Stock, to approve the issuance thereof and the terms of the offering thereof and related matters, including the adoption of a Certificate of Designations relating to such Preferred Stock (a "Certificate of Designations") and the filing of such Certificate of Designations with the Secretary of State of the State of Delaware, and (ii) certificates representing the shares of Preferred Stock have been duly executed, countersigned, registered and delivered either (a) in accordance with the applicable definitive purchase, underwriting or similar agreement approved by the Board upon payment of the consideration therefor (not less than the par value of the Preferred Stock) provided for therein, or (b) upon conversion, exchange, redemption or exercise of any other Security, in accordance with the terms of such Security or the instrument governing such Security providing for such conversion, exchange, redemption or exercise as approved by the Board, for the consideration approved by the Board (not less than the par value of the Preferred Stock), the shares of Preferred Stock will be duly authorized, validly issued, fully paid and non-assessable.

4. With respect to Debt Securities to be issued under the Senior Debt Indenture, when (i) the Senior Debt Indenture and any applicable Supplemental Indenture relating thereto have been duly authorized and validly executed and delivered by each of the parties thereto; (ii) the Senior Debt Indenture has been duly qualified under the Trust Indenture Act of 1939, as amended; (iii) the Board has taken all necessary corporate action to approve and establish the terms of such Debt Securities, to approve the issuance thereof and the terms of the offering thereof and related matters; and (iv) such Debt Securities have been duly executed, authenticated, issued and delivered in accordance with both the provisions of the Senior Debt Indenture and any applicable Supplemental Indenture relating thereto and either (a) the provisions of the applicable definitive purchase, underwriting or similar agreement approved by the Board upon payment of the consideration therefor provided for therein or (b) upon conversion, exchange, redemption or exercise of any other Security, in accordance with the terms of such Security or the instrument governing such Security providing for such conversion, exchange, redemption or exercise as approved by the Board, for the consideration approved by the Board,

such Debt Securities will constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforceability thereof is subject to the effect of (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other laws relating to or affecting creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

5. With respect to Debt Securities to be issued under the Subordinated Debt Indenture, when (i) the Subordinated Debt Indenture and any applicable Supplemental Indenture

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related thereto have been duly authorized and validly executed and delivered by each of the parties thereto; (ii) the Subordinated Debt Indenture has been duly qualified under the Trust Indenture Act of 1939, as amended; (iii) the Board has taken all necessary corporate action to approve and establish the terms of such Debt Securities, to approve the issuance thereof and the terms of the offering thereof and related matters; and (iv) such Debt Securities have been duly executed, authenticated, issued and delivered in accordance with both the provisions of the Subordinated Debt Indenture and any applicable Supplemental Indenture relating thereto and either (a) the provisions of the applicable definitive purchase, underwriting or similar agreement approved by the Board upon payment of the consideration therefor provided for therein or (b) upon conversion, exchange, redemption or exercise of any other Security, in accordance with the terms of such Security or the instrument governing such Security providing for such conversion, exchange, redemption or exercise as approved by the Board, for the consideration approved by the Board, such Debt Securities will constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforceability thereof is subject to the effect of (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other laws relating to or affecting creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

6. With respect to a series of Junior Subordinated Debt Securities to be issued under the Junior Subordinated Debt Indenture, when (i) the Junior Subordinated Debt Indenture and the Supplemental Indenture relating to such series of Junior Subordinated Debt Securities has been duly authorized and validly executed and delivered by each of the parties thereto; (ii) the Junior Subordinated Debt Indenture has been duly qualified under the Trust Indenture Act of 1939, as amended; (iii) the Board has taken all necessary corporate action to approve and establish the terms of such series of Junior Subordinated Debt Securities, to approve the issuance thereof and the terms of the offering thereof and related matters; and (iv) such Junior Subordinated Debt Securities have been duly executed, authenticated, issued and delivered in accordance with

the provisions of the Junior Subordinated Debt Indenture and the Supplemental Indenture relating to such series of Junior Subordinated Debt Securities and either (a) the provisions of the applicable definitive purchase, underwriting or similar agreement approved by the Board upon payment of the consideration therefor provided for therein or (b) upon conversion, exchange, redemption or exercise of any other Security, in accordance with the terms of such Security or the instrument governing such Security providing for such conversion, exchange, redemption or exercise as approved by the Board, for the consideration approved by the Board, such Junior Subordinated Debt Securities will constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforceability thereof is subject to the effect of (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other laws relating to or affecting creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

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7. With respect to a Guarantee to be issued pursuant to the applicable Guarantee Agreement, when (i) such Guarantee Agreement has been duly authorized, validly executed and delivered by each of the parties thereto, (ii) such Guarantee Agreement has been duly qualified under the Trust Indenture Act of 1939, as amended, and (iii) the Board has taken all necessary corporate action to approve the Guarantee and the issuance thereof and related matters, such Guarantee will constitute a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as the enforceability thereof is subject to the effect of (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other laws relating to or affecting creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

I hereby consent to the filing of this opinion of counsel as Exhibit 5.1 to the Registration Statement. I also consent to the reference to me under the caption "Legal Matters" in each of the Prospectuses forming a part of the Registration Statement. In giving this consent, I do not hereby admit that I am in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/S/ GERALD A. MORTON, ESQ.



March 26, 1999

Pogo Trust I  
c/o Pogo Producing Company  
5 Greenway Plaza, Suite 2700  
Houston, Texas 77046

Re: Pogo Trust I

Ladies and Gentlemen:

We have acted as special Delaware counsel for Pogo Producing Company, a Texas corporation (the "Sponsor"), and Pogo Trust I, a Delaware business 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 March 17, 1999 as filed with the office of the Secretary of State of the State of Delaware (the "Secretary of State") on March 18, 1999;

(b) The Declaration of Trust, dated as of March 17, 1999 among the Sponsor and the trustees of the Trust named therein;

(c) The Registration Statement (the "Registration Statement") on Form S-3, including a Prospectus with respect to the Trust (the "Prospectus"), relating to the Preferred Securities of the Trust representing undivided beneficial interests in the assets of the Trust (each, a

Pogo Trust I  
March 26, 1999  
Page 2

"Preferred Security" and collectively, the "Preferred Securities"), to be filed by the Company and the Trust with the Securities and Exchange Commission;

(c) A form of Amended and Restated Declaration of Trust, to be entered

into between the Sponsor and the trustees of the Trust named therein (the "Declaration"), attached as an exhibit to the Registration Statement; and

Initially 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 (c) above. In particular, we have not reviewed any document (other than the documents listed in paragraphs (a) through (c) 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 constitutes the entire agreement among the parties thereto with respect to the subject matter thereof, including with respect to the creation, operation and termination of the Trust, and that the Declaration and the Certificate of Trust are in full force and effect and have not been amended, (ii) except to the extent provided in paragraph 1 below, the 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 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 Security Certificate for such Preferred Security and the payment for such Preferred Security, 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 as a business trust under the Business 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. We hereby consent to the use of our name under the heading "Legal Matters" 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

GCK/wrm

[LETTERHEAD OF RICHARDS, LAYTON & FINGER]

March 26, 1999

Pogo Trust II  
c/o Pogo Producing Company  
5 Greenway Plaza, Suite 2700  
Houston, Texas 77046

Re: Pogo Trust II

Ladies and Gentlemen:

We have acted as special Delaware counsel for Pogo Producing Company, a Texas corporation (the "Sponsor"), and Pogo Trust II, a Delaware business 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 March 17, 1999 as filed with the office of the Secretary of State of the State of Delaware (the "Secretary of State") on March 18, 1999;

(b) The Declaration of Trust, dated as of March 17, 1999 among the Sponsor and the trustees of the Trust named therein;

(c) The Registration Statement (the "Registration Statement") on Form S-3, including a Prospectus with respect to the Trust (the "Prospectus"), relating to the Preferred Securities of the Trust representing undivided beneficial interests in the assets of the Trust (each, a

Pogo Trust I  
March 26, 1999  
Page 2

"Preferred Security" and collectively, the "Preferred Securities"), to be filed by the Company and the Trust with the Securities and Exchange Commission;

(c) A form of Amended and Restated Declaration of Trust, to be entered into between the Sponsor and the trustees of the Trust named therein (the "Declaration"), attached as an exhibit to the Registration Statement; and

Initially 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 (c) above. In particular, we have not reviewed any document (other than the documents listed in paragraphs (a) through (c) 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 constitutes the entire agreement among the parties thereto with respect to the subject matter thereof, including with respect to the creation, operation and termination of the Trust, and that the Declaration and the Certificate of Trust are in full force and effect and have not been amended, (ii) except to the extent provided in paragraph 1 below, the 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 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 Security Certificate for such Preferred Security and the payment for such Preferred Security, 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.

Pogo Trust I  
March 26, 1999  
Page 3

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 as a business trust under the Business 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. We hereby consent to the use of our name under the heading "Legal Matters" 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

GCK/wrm

## EXHIBIT 12.1

POGO PRODUCING COMPANY & SUBSIDIARIES  
 RATIO OF EARNINGS TO FIXED CHARGES  
 (DOLLARS IN THOUSANDS)

<TABLE>  
 <CAPTION>

	YEAR ENDED DECEMBER 31,				
	1994	1995	1996	1997	1998
	-----	-----	-----	-----	-----
<S>	<C>	<C>	<C>	<C>	<C>
EARNINGS:					
Income (loss) before taxes					
and extraordinary item	\$42,891	\$14,121	\$52,381	\$55,207	\$ (70,849)
Add--					
Fixed charges	10,377	11,454	13,554	22,361	25,197
Less--					
Capitalized interest	(739)	(1,834)	(4,244)	(6,175)	(9,381)
	-----	-----	-----	-----	-----
Total earnings	\$52,529	\$23,741	\$61,691	\$71,393	\$ (55,033)
	-----	-----	-----	-----	-----
FIXED CHARGES					
Interest expense	\$10,104	\$11,167	\$13,203	\$21,886	\$ 24,682
Portion of rental expense					
representing interest	273	287	351	475	515
	-----	-----	-----	-----	-----
Total fixed charges	\$10,377	\$11,454	\$13,554	\$22,361	\$ 25,197
	-----	-----	-----	-----	-----
RATIO OF EARNINGS TO FIXED CHARGES	5.1	2.1	4.6	3.2	(a)
	-----	-----	-----	-----	-----
	-----	-----	-----	-----	-----

</TABLE>

(a) Earnings are insufficient to cover fixed charges for 1998 by \$80,230,000



CONSENT OF INDEPENDENT PUBLIC ACCOUNTANTS

As independent public accountants, we hereby consent to the incorporation by reference into this Registration Statement on Form S-3 of our report dated February 19, 1999 included in Pogo Producing Company's Annual Report on Form 10-K for the year ended December 31, 1998 and to all references to our Firm included in this registration statement.

ARTHUR ANDERSEN LLP

Houston Texas  
March 25, 1999

[LETTERHEAD OF RYDER SCOTT COMPANY]

CONSENT OF INDEPENDENT PETROLEUM ENGINEERS

As independent petroleum engineers, we hereby consent to the incorporation by reference into this Registration Statement on Form S-3 our report and estimates, as of January 1, 1999, of Pogo Producing Company's reserves and the present value of future net reserves included in Pogo Producing Company's Annual Report on Form 10-K for the year ended December 31, 1998 and to all references to our Firm in this Registration Statement.

/s/ Ryder Scott Company  
Petroleum Engineers

RYDER SCOTT COMPANY  
PETROLEUM ENGINEERS

Houston Texas  
March 26, 1999

POWER OF ATTORNEY

WHEREAS, POGO PRODUCING COMPANY, a Delaware corporation (the "Company") intends to file with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"), a Registration Statement on Form S-3 (the "Registration Statement") in order to register certain securities pursuant to the Act as have been approved by the Board of Directors pursuant to resolutions adopted thereby, and also to file any and all exhibits and other documents relating to said Registration Statement that are necessary or advisable;

NOW, THEREFORE, I Jerry M. Armstrong, in my capacity as a director of the Company, do hereby appoint PAUL G. VAN WAGENEN, JOHN W. ELSENHANS and THOMAS E. HART, and each of them severally, my true and lawful attorney or attorneys with power to act with or without the others, and with full power of substitution and resubstitution, to execute in my name, place and stead in my capacity as a director of the Company, said Registration Statement, any and all amendments to said Registration Statement and all instruments as said attorneys or any of them shall deem necessary or incidental in connection therewith and to file the same with the Commission. Each of said attorneys shall have full power and authority to do and perform in my name and on my behalf in my capacity as a director any act whatsoever that is necessary or desirable to be done in the premises as fully and to all intents and purposes as I might or could do in person, and by my signature hereto, I hereby ratify and approve all of such acts of said attorneys and each of them.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this 1st day of December, 1998.

/s/ Jerry M. Armstrong

-----  
Jerry M. Armstrong

POWER OF ATTORNEY

WHEREAS, POGO PRODUCING COMPANY, a Delaware corporation (the "Company", intends to file with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"), a Registration Statement on Form S-3 (the "Registration Statement") in order to register certain securities pursuant to the Act as have been approved by the Board of Directors pursuant to resolutions adopted thereby, and also to file any and all exhibits and other documents relating to said Registration Statement that are necessary or advisable;

NOW, THEREFORE, I Tobin Armstrong,, in my capacity as a director of the Company, do hereby appoint PAUL G. VAN WAGENEN, JOHN W. ELSENHANS and THOMAS E. HART, and each of them severally, my true and lawful attorney or attorneys

with power to act with or without the others, and with full power of substitution and resubstitution, to execute in my name, place and stead in my capacity as a director of the Company, said Registration Statement, any and all amendments to said Registration Statement and all instruments as said attorneys or any of them shall deem necessary or incidental in connection therewith and to file the same with the Commission. Each of said attorneys shall have full power and authority to do and perform in my name and on my behalf in my capacity as a director any act whatsoever that is necessary or desirable to be done in the premises as fully and to all intents and purposes as I might or could do in person, and by my signature hereto, I hereby ratify and approve all of such acts of said attorneys and each of them.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this 27th day of October, 1998.

/s/ Tobin Armstrong

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Tobin Armstrong

#### POWER OF ATTORNEY

WHEREAS, POGO PRODUCING COMPANY, a Delaware corporation (the "Company"), intends to file with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"), a Registration Statement on Form S-3 (the "Registration Statement") in order to register certain securities pursuant to the Act as have been approved by the Board of Directors pursuant to resolutions adopted thereby, and also to file any and all exhibits and other documents relating to said Registration Statement that are necessary or advisable;

NOW, THEREFORE, I Jack S. Blanton, in my capacity as a director of the Company, do hereby appoint PAUL G. VAN WAGENEN, JOHN W. ELSENHANS, and THOMAS E. HART, and each of them severally, my true and lawful attorney or attorneys with power to act with or without the others, and with full power of substitution and resubstitution, to execute in my name, place and stead in my capacity as a director of the Company, said Registration Statement, any and all amendments to said Registration Statement and all instruments as said attorneys or any of them shall deem necessary or incidental in connection therewith and to file the same with the Commission. Each of said attorneys shall have full power and authority to do and perform in my name and on my behalf in my capacity as a director any act whatsoever that is necessary or desirable to be done in the premises as fully and to all intents and purposes as I might or could do in person, and by my signature hereto, I hereby ratify and approve all of such acts of said attorneys and each of them.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this 28th day of October, 1998.

/s/ Jack S. Blanton

POWER OF ATTORNEY

WHEREAS, POGO PRODUCING COMPANY, a Delaware corporation (the "Company"), intends to file with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"), a Registration Statement on Form S-3 (the "Registration Statement") in order to register certain securities pursuant to the Act as have been approved by the Board of Directors pursuant to resolutions adopted thereby, and also to file any and all exhibits and other documents relating to said Registration Statement that are necessary or advisable;

NOW, THEREFORE, I W. M. Brumley, Jr., in my capacity as a director of the Company, do hereby appoint PAUL G. VAN WAGENEN, JOHN W. ELSENHANS and THOMAS E. HART, and each of them severally, my true and lawful attorney or attorneys with power to act with or without the others, and with full power of substitution and resubstitution, to execute in my name, place and stead in my capacity as a director of the Company, said Registration Statement, any and all amendments to said Registration Statement and all instruments as said attorneys or any of them shall deem necessary or incidental in connection therewith and to file the same with the Commission. Each of said attorneys shall have full power and authority to do and perform in my name and on my behalf in my capacity as a director any act whatsoever that is necessary or desirable to be done in the premises as fully and to all intents and purposes as I might or could do in person, and by my signature hereto, I hereby ratify and approve all of such acts of said attorneys and each of them.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this 27th day of October, 1998.

/s/ W.M. Brumley, Jr.

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W.M. Brumley, Jr.

POWER OF ATTORNEY

WHEREAS, POGO PRODUCING COMPANY, a Delaware corporation (the "Company"), intends to file with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"), a Registration Statement on Form S-3 (the "Registration Statement") in order to register certain securities pursuant to the Act as have been approved by the Board of Directors pursuant to resolutions adopted thereby, and also to file any and all exhibits and other documents relating to said Registration Statement that are necessary or advisable;

NOW, THEREFORE, I John B. Carter, Jr., in my capacity as a director of the Company, do hereby appoint PAUL G. VAN WAGENEN, JOHN W. ELSENHANS and

THOMAS E. HART, and each of them severally, my true and lawful attorney or attorneys with power to act with or without the others, and with full power of substitution and resubstitution, to execute in my name, place and stead in my capacity as a director of the Company, said Registration Statement, any and all amendments to said Registration Statement and all instruments as said attorneys or any of them shall deem necessary or incidental in connection therewith and to file the same with the Commission. Each of said attorneys shall have full power and authority to do and perform in my name and on my behalf in my capacity as a director any act whatsoever that is necessary or desirable to be done in the premises as fully and to all intents and purposes as I might or could do in person, and by my signature hereto, I hereby ratify and approve all of such acts of said attorneys and each of them.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this 27th day of October, 1998.

/s/ John B. Carter, Jr.

-----  
John B. Carter, Jr.

#### POWER OF ATTORNEY

WHEREAS, POGO PRODUCING COMPANY, a Delaware corporation (the "Company"), intends to file with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"), a Registration Statement on Form S-3 (the "Registration Statement") in order to register certain securities pursuant to the Act as have been approved by the Board of Directors pursuant to resolutions adopted thereby, and also to file any and all exhibits and other documents relating to said Registration Statement that are necessary or advisable;

NOW, THEREFORE, I William L. Fisher, in my capacity as a director of the Company, do hereby appoint PAUL G. VAN WAGENEN, JOHN W. ELSENHANS and THOMAS E. HART, and each of them severally, my true and lawful attorney or attorneys with power to act with or without the others, and with full power of substitution and resubstitution, to execute in my name, place and stead in my capacity as a director of the Company, said Registration Statement, any and all amendments to said Registration Statement and all instruments as said attorneys or any of them shall deem necessary or incidental in connection therewith and to file the same with the Commission. Each of said attorneys shall have full power and authority to do and perform in my name and on my behalf in my capacity as a director any act whatsoever that is necessary or desirable to be done in the premises as fully and to all intents and purposes as I might or could do in person, and by my signature hereto, I hereby ratify and approve all of such acts of said attorneys and each of them.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this 27th day of October, 1998.

/s/ William L. Fisher

-----  
William L. Fisher

POWER OF ATTORNEY

WHEREAS, POGO PRODUCING COMPANY, a Delaware corporation (the "Company"), intends to file with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"), a Registration Statement on Form S-3 (the "Registration Statement") in order to register certain securities pursuant to the Act as have been approved by the Board of Directors pursuant to resolutions adopted thereby, and also to file any and all exhibits and other documents relating to said Registration Statement that are necessary or advisable;

NOW, THEREFORE, I Gerrit W. Gong, in my capacity as a director of the Company, do hereby appoint PAUL G. VAN WAGENEN, JOHN W. ELSENHANS and THOMAS E. HART, and each of them severally, my true and lawful attorney or attorneys with power to act with or without the others, and with full power of substitution and resubstitution, to execute in my name, place and stead in my capacity as a director of the Company, said Registration Statement, any and all amendments to said Registration Statement and all instruments as said attorneys or any of them shall deem necessary or incidental in connection therewith and to file the same with the Commission. Each of said attorneys shall have full power and authority to do and perform in my name and on my behalf in my capacity as a director any act whatsoever that is necessary or desirable to be done in the premises as fully and to all intents and purposes as I might or could do in person, and by my signature hereto, I hereby ratify and approve all of such acts of said attorneys and each of them.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this 27th day of October, 1998.

/s/ Gerrit W. Gong

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Gerrit W. Gong

POWER OF ATTORNEY

WHEREAS, POGO PRODUCING COMPANY, a Delaware corporation (the "Company"), intends to file with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"), a Registration Statement on Form S-3 (the "Registration Statement") in order to register certain securities pursuant to the Act as have been approved by the Board of Directors pursuant to resolutions adopted thereby, and also to file any and all exhibits and other documents relating to said Registration Statement that are necessary or advisable;



NOW, THEREFORE, I J. Stuart Hunt, in my capacity as a director of the Company, do hereby appoint PAUL G. VAN WAGENEN, JOHN W. ELSENHANS and THOMAS E. HART, and each of them severally, my true and lawful attorney or attorneys with power to act with or without the others, and with full power of substitution and resubstitution, to execute in my name, place and stead in my capacity as a director of the Company, said Registration Statement, any and all amendments to said Registration Statement and all instruments as said attorneys or any of them shall deem necessary or incidental in connection therewith and to file the same with the Commission. Each of said attorneys shall have full power and authority to do and perform in my name and on my behalf in my capacity as a director any act whatsoever that is necessary or desirable to be done in the premises as fully and to all intents and purposes as I might or could do in person, and by my signature hereto, I hereby ratify and approve all of such acts of said attorneys and each of them.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this 27th day of October, 1998.

/s/ J. Stuart Hunt

-----  
J. Stuart Hunt

#### POWER OF ATTORNEY

WHEREAS, POGO PRODUCING COMPANY, a Delaware corporation (the "Company"), intends to file with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"), a Registration Statement on Form S-3 (the "Registration Statement") in order to register certain securities pursuant to the Act as have been approved by the Board of Directors pursuant to resolutions adopted thereby, and also to file any and all exhibits and other documents relating to said Registration Statement that are necessary or advisable;

NOW, THEREFORE, I Frederick A. Klingenstein, in my capacity as a director of the Company, do hereby appoint PAUL G. VAN WAGENEN, JOHN W. ELSENHANS, and THOMAS E. HART, and each of them severally, my true and lawful attorney or attorneys with power to act with or without the others, and with full power of substitution and resubstitution, to execute in my name, place and stead in my capacity as a director of the Company, said Registration Statement, any and all amendments to said Registration Statement and all instruments as said attorneys or any of them shall deem necessary or incidental in connection therewith and to file the same with the Commission. Each of said attorneys shall have full power and authority to do and perform in my name and on my behalf in my capacity as a director any act whatsoever that is necessary or desirable to be done in the premises as fully and to all intents and purposes as I might or could do in person, and by my signature hereto, I hereby ratify and approve all of such acts of said attorneys and each of them.

IN WITNESS WHEREOF, the undersigned has executed this instrument on

this 27th day of October, 1998.

/s/ Frederick A. Klingenstein

-----  
Frederick A. Klingenstein

POWER OF ATTORNEY

WHEREAS, POGO PRODUCING COMPANY, a Delaware corporation (the "Company"), intends to file with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"), a Registration Statement on Form S-3 (the "Registration Statement") in order to register certain securities pursuant to the Act as have been approved by the Board of Directors pursuant to resolutions adopted thereby, and also to file any and all exhibits and other documents relating to said Registration Statement that are necessary or advisable;

NOW, THEREFORE, I Jack A. Vickers, in my capacity as a director of the Company, do hereby appoint PAUL G. VAN WAGENEN, JOHN W. ELSENHANS and THOMAS E. HART, and each of them severally, my true and lawful attorney or attorneys with power to act with or without the others, and with full power of substitution and resubstitution, to execute in my name, place and stead in my capacity as a director of the Company, said Registration Statement, any and all amendments to said Registration Statement and all instruments as said attorneys or any of them shall deem necessary or incidental in connection therewith and to file the same with the Commission. Each of said attorneys shall have full power and authority to do and perform in my name and on my behalf in my capacity as a director any act whatsoever that is necessary or desirable to be done in the premises as fully and to all intents and purposes as I might or could do in person, and by my signature hereto, I hereby ratify and approve all of such acts of said attorneys and each of them.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this 27th day of October, 1998.

/s/ Jack A. Vickers

-----  
Jack A. Vickers

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM T-1

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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)

STATE STREET BANK AND TRUST COMPANY  
(Exact name of trustee as specified in its charter)

Massachusetts (Jurisdiction of incorporation or organization if not a U.S. national bank)	04-1867445 (I.R.S. Employer Identification No.)
--	---

225 Franklin Street, Boston, Massachusetts 02110  
(Address of principal executive offices) (Zip Code)

Maureen Scannell Bateman, Esq. Executive Vice President and General Counsel  
225 Franklin Street, Boston, Massachusetts 02110  
(617) 654-3253  
(Name, address and telephone number of agent for service)

POGO PRODUCING COMPANY  
(Exact name of obligor as specified in its charter)

DELAWARE (State or other jurisdiction of incorporation or organization)	(74-1659398) (I.R.S. Employer Identification No.)
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(ADDRESS OF ISSUER)  
(Address of principal executive offices) (Zip Code)  
5 GREENWAY PLAZA, SUITE 2700 HOUSTON, TEXAS 77252-2504

(TYPE OF SECURITIES)  
DEBT SECURITIES

(Title of indenture securities)

GENERAL

Item 1. General Information.

Furnish the following information as to the trustee:

- (a) Name and address of each examining or supervisory authority to  
which it is subject.

Department of Banking and Insurance of The Commonwealth of  
Massachusetts, 100 Cambridge Street, Boston, Massachusetts.

Board of Governors of the Federal Reserve System, Washington,  
D.C., Federal Deposit Insurance Corporation, 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.

The obligor is not an affiliate of the trustee or of its  
parent, State Street Corporation.

(See note on page 2.)

Item 3. through Item 15. Not applicable.

Item 16. List of Exhibits.

List below all exhibits filed as part of this statement of  
eligibility.

1. A copy of the articles of association of the trustee as now in  
effect.

A copy of the Articles of Association of the trustee, as now  
in effect, is on file with the Securities and Exchange  
Commission as Exhibit 1 to Amendment No. 1 to the Statement of  
Eligibility and Qualification of Trustee (Form T-1) filed with  
the Registration Statement of Morse Shoe, Inc. (File No.  
22-17940) and is incorporated herein by reference thereto.

2. A copy of the certificate of authority of the trustee to commence  
business, if not contained in the articles of association.

A copy of a Statement from the Commissioner of Banks of  
Massachusetts that no certificate of authority for the trustee  
to commence business was necessary or issued is on file with  
the Securities and Exchange Commission as Exhibit 2 to  
Amendment No. 1 to the Statement of Eligibility and  
Qualification of Trustee (Form T-1) filed with the  
Registration Statement of Morse Shoe, Inc. (File No. 22-17940)  
and is incorporated herein by reference thereto.

3. A copy of the authorization of the trustee to exercise corporate  
trust powers, if such authorization is not contained in the  
documents specified in paragraph (1) or (2), above.

A copy of the authorization of the trustee to exercise  
corporate trust powers is on file with the Securities and  
Exchange Commission as Exhibit 3 to Amendment No. 1 to the  
Statement of Eligibility and Qualification of Trustee (Form  
T-1) filed with the Registration Statement of Morse Shoe, Inc.  
(File No. 22-17940) and is incorporated herein by reference  
thereto.

4. A copy of the existing by-laws of the trustee, or instruments corresponding thereto.

A copy of the by-laws of the trustee, as now in effect, is on file with the Securities and Exchange Commission as Exhibit 4 to the Statement of Eligibility and Qualification of Trustee (Form T-1) filed with the Registration Statement of Eastern Edison Company (File No. 33-37823) and is incorporated herein by reference thereto.

1

5. A copy of each indenture referred to in Item 4. if the obligor is in default.

Not applicable.

6. The consents of United States institutional trustees required by Section 321(b) of the Act.

The consent of the trustee required by Section 321(b) of the Act is annexed hereto as Exhibit 6 and made a part hereof.

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.

A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority is annexed hereto as Exhibit 7 and made a part hereof.

#### NOTES

In answering any item of this Statement of Eligibility which relates to matters peculiarly within the knowledge of the obligor or any underwriter for the obligor, the trustee has relied upon information furnished to it by the obligor and the underwriters, and the trustee disclaims responsibility for the accuracy or completeness of such information.

The answer furnished to Item 2. of this statement will be amended, if necessary, to reflect any facts which differ from those stated and which would have been required to be stated if known at the date hereof.

#### SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, State Street Bank and Trust Company, a corporation organized and existing under the laws of The Commonwealth of Massachusetts, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Boston and The Commonwealth of Massachusetts, on the March 22, 1999.

STATE STREET BANK AND TRUST COMPANY

By: /s/ PHILIP G. KANE, JR.

-----  
NAME PHILIP G. KANE, JR.  
TITLE VICE PRESIDENT

2

EXHIBIT 6

CONSENT OF THE TRUSTEE

Pursuant to the requirements of Section 321(b) of the Trust Indenture Act of 1939, as amended, in connection with the proposed issuance by POGO PRODUCING COMPANY of its DEBT SECURITIES, we hereby consent that reports of examination by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon request therefor.

STATE STREET BANK AND TRUST COMPANY

By: /s/ PHILIP G. KANE, JR.

-----  
NAME PHILIP G. KANE, JR.  
TITLE VICE PRESIDENT

Dated: MARCH 22, 1999

3

EXHIBIT 7

Consolidated Report of Condition of State Street Bank and Trust Company, Massachusetts and foreign and domestic subsidiaries, a state banking institution organized and operating under the banking laws of this commonwealth and a member of the Federal Reserve System, at the close of business DECEMBER 31, 1998, published in accordance with a call made by the Federal Reserve Bank of this District pursuant to the provisions of the Federal Reserve Act and in accordance with a call made by the Commissioner of Banks under General Laws, Chapter 172, Section 22(a).

<TABLE>

<CAPTION>

ASSETS

Thousands of  
Dollars

<S>

<C>

Cash and balances due from depository institutions:

Noninterest-bearing balances and currency and coin ..... 1,209,293

Interest-bearing balances .....	12,007,895
Securities.....	9,705,731
Federal funds sold and securities purchased	
under agreements to resell in domestic offices	
of the bank and its Edge subsidiary .....	9,734,476
Loans and lease financing receivables:	
Loans and leases, net of unearned income .....	6,973,125
Allowance for loan and lease losses .....	84,308
Allocated transfer risk reserve.....	0
Loans and leases, net of unearned income and allowances .....	6,888,817
Assets held in trading accounts.....	1,574,999
Premises and fixed assets.....	523,514
Other real estate owned.....	0
Investments in unconsolidated subsidiaries.....	612
Customers' liability to this bank on acceptances outstanding .....	47,334
Intangible assets.....	212,743
Other assets.....	1,279,224
	-----
Total assets.....	43,184,638
	-----
LIABILITIES	
Deposits:	
In domestic offices.....	10,852,862
Noninterest-bearing .....	8,331,830
Interest-bearing .....	2,521,032
In foreign offices and Edge subsidiary .....	16,761,573
Noninterest-bearing .....	83,010
Interest-bearing .....	16,678,563
Federal funds purchased and securities sold under	
agreements to repurchase in domestic offices of	
the bank and of its Edge subsidiary .....	10,041,324
Demand notes issued to the U.S. Treasury.....	108,420
Trading liabilities.....	1,240,938
Other borrowed money.....	322,331
Subordinated notes and debentures.....	0
Bank's liability on acceptances executed and outstanding .....	47,334
Other liabilities.....	1,126,058
Total liabilities.....	40,500,840
	-----
EQUITY CAPITAL	
Perpetual preferred stock and related surplus.....	0
Common stock.....	29,931
Surplus.....	468,511
Undivided profits and capital reserves/Net unrealized holding gains (losses)...	2,164,055
Net unrealized holding gains (losses) on available-for-sale securities....	21,638
Cumulative foreign currency translation adjustments .....	(337)
Total equity capital.....	2,683,798
	-----
Total liabilities and equity capital.....	43,184,638
	-----

</TABLE>



I, Rex S. Schuette, Senior Vice President and Comptroller of the above named bank do hereby declare that this Report of Condition has been prepared in conformance with the instructions issued by the Board of Governors of the Federal Reserve System and is true to the best of my knowledge and belief.

Rex S. Schuette

We, the undersigned directors, attest to the correctness of this Report of Condition and declare that it has been examined by us and to the best of our knowledge and belief has been prepared in conformance with the instructions issued by the Board of Governors of the Federal Reserve System and is true and correct.

David A. Spina  
Marshall N. Carter  
Truman S. Casner

5

5. A copy of each indenture referred to in Item 4. if the obligor is in default.

Not applicable.

6. The consents of United States institutional trustees required by Section 321(b) of the Act.

The consent of the trustee required by Section 321(b) of the Act is annexed hereto as Exhibit 6 and made a part hereof.

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.

A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority is annexed hereto as Exhibit 7 and made a part hereof.

#### NOTES

In answering any item of this Statement of Eligibility which relates to matters peculiarly within the knowledge of the obligor or any underwriter of the obligor, the trustee has relied upon the information furnished to it by the obligor and the underwriters, and the trustee disclaims responsibility for the accuracy or completeness of such information.

The answer to Item 2. of this statement will be amended, if necessary, to reflect any facts which differ from those stated and which would have been required to be stated if known at the date hereof.

#### SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, State Street Bank and Trust Company, a corporation duly organized and existing under the laws of The Commonwealth of Massachusetts, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Boston and The Commonwealth of Massachusetts, on the MARCH 22, 1999.

STATE STREET BANK AND TRUST COMPANY

By: /s/ PHILIP G. KANE, JR.

-----  
NAME PHILIP G. KANE, JR.  
TITLE VICE PRESIDENT

2

EXHIBIT 6

CONSENT OF THE TRUSTEE

Pursuant to the requirements of Section 321(b) of the Trust Indenture Act of 1939, as amended, in connection with the proposed issuance by POGO PRODUCING COMPANY . of its DEBT SECURITIES, we hereby consent that reports of examination by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon request therefor.

STATE STREET BANK AND TRUST COMPANY

By: /s/ PHILIP G. KANE, JR.

-----  
NAME PHILIP G. KANE, JR.  
TITLE VICE PRESIDENT

Dated: MARCH 22, 1999

3

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)

STATE STREET BANK AND TRUST COMPANY  
(Exact name of trustee as specified in its charter)

Massachusetts  
(Jurisdiction of incorporation or  
organization if not a U.S. national  
bank)

04-1867445  
(I.R.S. Employer  
Identification No.)

225 Franklin Street, Boston, Massachusetts 02110  
(Address of principal executive offices) (Zip Code)

Maureen Scannell Bateman, Esq. Executive Vice President and General Counsel  
225 Franklin Street, Boston, Massachusetts 02110  
(617) 654-3253  
(Name, address and telephone number of agent for service)

POGO PRODUCING COMPANY  
(Exact name of obligor as specified in its charter)

DELAWARE  
(State or other jurisdiction of  
incorporation or organization)

(74-1659398)  
(I.R.S. Employer  
Identification No.)

(ADDRESS OF ISSUER)  
(Address of principal executive offices) (Zip Code)  
5 GREENWAY PLAZA, SUITE 2700 HOUSTON, TEXAS 77252-2504

(TYPE OF SECURITIES)  
SUBORDINATED DEBT SECURITIES

(Title of indenture securities)

GENERAL

Item 1. General Information.

Furnish the following information as to the trustee:

- (a) Name and address of each examining or supervisory authority to which it is subject.

Department of Banking and Insurance of The Commonwealth of  
Massachusetts, 100 Cambridge Street, Boston, Massachusetts.

Board of Governors of the Federal Reserve System, Washington,  
D.C., Federal Deposit Insurance Corporation, 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.

The obligor is not an affiliate of the trustee or of its parent, State Street Corporation.

(See note on page 2.)

Item 3. through Item 15. Not applicable.

Item 16. List of Exhibits.

List below all exhibits filed as part of this statement of eligibility.

1. A copy of the articles of association of the trustee as now in effect.

A copy of the Articles of Association of the trustee, as now in effect, is on file with the Securities and Exchange Commission as Exhibit 1 to Amendment No. 1 to the Statement of Eligibility and Qualification of Trustee (Form T-1) filed with the Registration Statement of Morse Shoe, Inc. (File No. 22-17940) and is incorporated herein by reference thereto.

2. A copy of the certificate of authority of the trustee to commence business, if not contained in the articles of association.

A copy of a Statement from the Commissioner of Banks of Massachusetts that no certificate of authority for the trustee to commence business was necessary or issued is on file with the Securities and Exchange Commission as Exhibit 2 to Amendment No. 1 to the Statement of Eligibility and Qualification of Trustee (Form T-1) filed with the Registration Statement of Morse Shoe, Inc. (File No. 22-17940) and is incorporated herein by reference thereto.

3. A copy of the authorization of the trustee to exercise corporate trust powers, if such authorization is not contained in the documents specified in paragraph (1) or (2), above.

A copy of the authorization of the trustee to exercise corporate trust powers is on file with the Securities and Exchange Commission as Exhibit 3 to Amendment No. 1 to the Statement of Eligibility and Qualification of Trustee (Form T-1) filed with the Registration Statement of Morse Shoe, Inc. (File No. 22-17940) and is incorporated herein by reference thereto.

4. A copy of the existing by-laws of the trustee, or instruments corresponding thereto.

A copy of the by-laws of the trustee, as now in effect, is on file with the Securities and Exchange Commission as Exhibit 4 to the Statement of Eligibility and Qualification of Trustee (Form T-1) filed with the Registration Statement of Eastern Edison Company (File No. 33-37823) and is incorporated herein by reference thereto.

5. A copy of each indenture referred to in Item 4. if the obligor is

in default.

Not applicable.

6. The consents of United States institutional trustees required by Section 321(b) of the Act.

The consent of the trustee required by Section 321(b) of the Act is annexed hereto as Exhibit 6 and made a part hereof.

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.

A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority is annexed hereto as Exhibit 7 and made a part hereof.

#### NOTES

In answering any item of this Statement of Eligibility which relates to matters peculiarly within the knowledge of the obligor or any underwriter for the obligor, the trustee has relied upon information furnished to it by the obligor and the underwriters, and the trustee disclaims responsibility for the accuracy or completeness of such information.

The answer furnished to Item 2. of this statement will be amended, if necessary, to reflect any facts which differ from those stated and which would have been required to be stated if known at the date hereof.

#### SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, State Street Bank and Trust Company, a corporation organized and existing under the laws of The Commonwealth of Massachusetts, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Boston and The Commonwealth of Massachusetts, on the MARCH 22, 1999.

STATE STREET BANK AND TRUST COMPANY

By: /s/ PHILIP G. KANE, JR.

-----  
NAME PHILIP G. KANE, JR.

TITLE VICE PRESIDENT

2

#### EXHIBIT 6

#### CONSENT OF THE TRUSTEE

Pursuant to the requirements of Section 321(b) of the Trust Indenture Act of 1939, as amended, in connection with the proposed issuance by POGO PRODUCING COMPANY of its SUBORDINATED DEBT SECURITIES, we hereby consent that reports of examination by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon request therefor.



Federal funds purchased and securities sold under agreements to repurchase in domestic offices of the bank and of its Edge subsidiary .....	10,041,324
Demand notes issued to the U.S. Treasury.....	108,420
Trading liabilities.....	1,240,938
Other borrowed money.....	322,331
Subordinated notes and debentures.....	0
Bank's liability on acceptances executed and outstanding .....	47,334
Other liabilities.....	1,126,058
Total liabilities.....	40,500,840
-----	
EQUITY CAPITAL	
Perpetual preferred stock and related surplus.....	0
Common stock.....	29,931
Surplus.....	468,511
Undivided profits and capital reserves/Net unrealized holding gains (losses).....	2,164,055
Net unrealized holding gains (losses) on available-for-sale securities.....	21,638
Cumulative foreign currency translation adjustments .....	(337)
Total equity capital.....	2,683,798
-----	
Total liabilities and equity capital.....	43,184,638
-----	
</TABLE>	

4

I, Rex S. Schuette, Senior Vice President and Comptroller of the above named bank do hereby declare that this Report of Condition has been prepared in conformance with the instructions issued by the Board of Governors of the Federal Reserve System and is true to the best of my knowledge and belief.

Rex S. Schuette

We, the undersigned directors, attest to the correctness of this Report of Condition and declare that it has been examined by us and to the best of our knowledge and belief has been prepared in conformance with the instructions issued by the Board of Governors of the Federal Reserve System and is true and correct.

David A. Spina  
Marshall N. Carter  
Truman S. Casner

5

5. A copy of each indenture referred to in Item 4. if the obligor is in default.

Not applicable.

6. The consents of United States institutional trustees required by Section 321(b) of the Act.

The consent of the trustee required by Section 321(b) of the Act is annexed hereto as Exhibit 6 and made a part hereof.

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.



A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority is annexed hereto as Exhibit 7 and made a part hereof.

#### NOTES

In answering any item of this Statement of Eligibility which relates to matters peculiarly within the knowledge of the obligor or any underwriter of the obligor, the trustee has relied upon the information furnished to it by the obligor and the underwriters, and the trustee disclaims responsibility for the accuracy or completeness of such information.

The answer to Item 2. of this statement will be amended, if necessary, to reflect any facts which differ from those stated and which would have been required to be stated if known at the date hereof.

#### SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, State Street Bank and Trust Company, a corporation duly organized and existing under the laws of The Commonwealth of Massachusetts, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Boston and The Commonwealth of Massachusetts, on the MARCH 22, 1999.

STATE STREET BANK AND TRUST COMPANY

By: /s/ PHILIP G. KANE, JR.

-----  
NAME PHILIP G. KANE, JR.

TITLE VICE PRESIDENT

2

#### EXHIBIT 6

#### CONSENT OF THE TRUSTEE

Pursuant to the requirements of Section 321(b) of the Trust Indenture Act of 1939, as amended, in connection with the proposed issuance by POGO PRODUCING COMPANY. of its SUBORDINATED DEBT SECURITIES, we hereby consent that reports of examination by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon request therefor.

STATE STREET BANK AND TRUST COMPANY

By: /s/ PHILIP G. KANE, JR.

-----  
NAME PHILIP G. KANE, JR.

TITLE VICE PRESIDENT

Dated: MARCH 22, 1999

3



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) ☒ |X|

WILMINGTON TRUST COMPANY  
(Exact name of trustee as specified in its charter)

Delaware  
(State of incorporation)

51-0055023  
(I.R.S. employer identification no.)

Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890  
(Address of principal executive offices)

Cynthia L. Corliss  
Vice President and Trust Counsel  
Wilmington Trust Company  
Rodney Square North  
Wilmington, Delaware 19890  
(302) 651-8516  
(Name, address and telephone number of agent for service)

POGO PRODUCING COMPANY  
(Exact name of obligor as specified in its charter)

Delaware  
(State of incorporation)

74-1659398  
(I.R.S. employer identification no.)

5 Greenway Plaza  
Suite 2700  
Houston, Texas  
(Address of principal executive offices)

77046  
(Zip Code)

Junior Subordinated Debt Securities of Pogo Producing Company  
for issuance directly to Pogo Trust I and Pogo Trust II  
(Title of the indenture securities)

=====

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.

Federal Deposit Insurance Co.	State Bank Commissioner
Five Penn Center	Dover, Delaware
Suite #2901	
Philadelphia, PA	

(b) Whether it is authorized to exercise corporate trust powers.

The trustee is authorized to exercise corporate trust powers.

ITEM 2. AFFILIATIONS WITH THE OBLIGOR.

If the obligor is an affiliate of the trustee, describe each affiliation:

Based upon an examination of the books and records of the trustee and upon information furnished by the obligor, the obligor is not an affiliate of the trustee.

ITEM 3. LIST OF EXHIBITS.

List below all exhibits filed as part of this Statement of Eligibility and Qualification.

- A. Copy of the Charter of Wilmington Trust Company, which includes the certificate of authority of Wilmington Trust Company to commence business and the authorization of Wilmington Trust Company to exercise corporate trust powers.
- B. Copy of By-Laws of Wilmington Trust Company.
- C. Consent of Wilmington Trust Company required by Section 321(b) of Trust Indenture Act.
- D. Copy of most recent Report of Condition of Wilmington Trust Company.

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Wilmington Trust Company, a corporation organized and existing under the laws of Delaware, has duly caused this Statement of Eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Wilmington and State of Delaware on the 23rd day of March, 1999.

WILMINGTON TRUST COMPANY

[SEAL]

Attest: /s/ Patricia A. Evans

-----

Assistant Secretary

By: /s/ Norma P. Closs

-----

Name: Norma P. Closs

Title: Vice President

2

EXHIBIT A

AMENDED CHARTER

Wilmington Trust Company

Wilmington, Delaware

As existing on May 9, 1987

Amended Charter

or

Act of Incorporation

of

Wilmington Trust Company

Wilmington Trust Company, originally incorporated by an Act of the General Assembly of the State of Delaware, entitled "An Act to Incorporate the Delaware Guarantee and Trust Company", approved March 2, A.D. 1901, and the name of which company was changed to "Wilmington Trust Company" by an amendment filed in the Office of the Secretary of State on March 18, A.D. 1903, and the Charter or Act of Incorporation of which company has been from time to time amended and changed by merger agreements pursuant to the corporation law for state banks and trust companies of the State of Delaware, does hereby alter and amend its Charter or Act of Incorporation so that the same as so altered and amended shall in its entirety read as follows:

First: - The name of this corporation is Wilmington Trust Company.

Second: - The location of its principal office in the State of Delaware is at Rodney Square North, in the City of Wilmington, County of New Castle; the name of its resident agent is Wilmington Trust Company whose address is Rodney Square North, in said City. In addition to such principal office, the said corporation maintains and operates branch offices in the City of Newark, New Castle County, Delaware, the Town of Newport, New Castle County, Delaware, at Claymont, New Castle County, Delaware, at Greenville, New Castle County Delaware, and at Milford Cross Roads, New Castle County, Delaware, and shall be empowered to open, maintain and operate branch offices at Ninth and Shipley Streets, 418 Delaware Avenue, 2120 Market Street, and 3605 Market Street, all in the City of Wilmington, New Castle County, Delaware, and such other branch offices or places of business as may be authorized from time to time by the agency or agencies of the government of the State of Delaware empowered to confer such authority.

Third: - (a) The nature of the business and the objects and purposes proposed to be transacted, promoted or carried on by this Corporation are to do any or all of the things herein mentioned as fully and to the same extent as natural persons might or could do and in any part of the world, viz.:

(1) To sue and be sued, complain and defend in any Court of law or equity and to make and use a common seal, and alter the seal at pleasure, to hold,

purchase, convey, mortgage or otherwise deal in real and personal estate and property, and to appoint such officers and agents as the business of the Corporation shall require, to make by-laws not inconsistent with the Constitution or laws of the United States or of this State, to discount bills, notes or other evidences of debt, to receive deposits of money, or securities for money, to buy gold and silver bullion and foreign coins, to buy and sell bills of exchange, and generally to use, exercise and enjoy all the powers, rights, privileges and franchises incident to a corporation which are proper or necessary for the transaction of the business of the Corporation hereby created.

(2) To insure titles to real and personal property, or any estate or interests therein, and to guarantee the holder of such property, real or personal, against any claim or claims, adverse to his interest therein, and to prepare and give certificates of title for any lands or premises in the State of Delaware, or elsewhere.

(3) To act as factor, agent, broker or attorney in the receipt, collection, custody, investment and management of funds, and the purchase, sale, management and disposal of property of all descriptions, and to prepare and execute all papers which may be necessary or proper in such business.

(4) To prepare and draw agreements, contracts, deeds, leases, conveyances, mortgages, bonds and legal papers of every description, and to carry on the business of conveyancing in all its branches.

(5) To receive upon deposit for safekeeping money, jewelry, plate, deeds, bonds and any and all other personal property of every sort and kind, from executors, administrators, guardians, public officers, courts, receivers, assignees, trustees, and from all fiduciaries, and from all other persons and individuals, and from all corporations whether state, municipal, corporate or private, and to rent boxes, safes, vaults and other receptacles for such property.

(6) To act as agent or otherwise for the purpose of registering, issuing, certificating, countersigning, transferring or underwriting the stock, bonds or other obligations of any corporation, association, state or municipality, and may receive and manage any sinking fund therefor on such terms as may be agreed

upon between the two parties, and in like manner may act as Treasurer of any corporation or municipality.

(7) To act as Trustee under any deed of trust, mortgage, bond or other

2

instrument issued by any state, municipality, body politic, corporation, association or person, either alone or in conjunction with any other person or persons, corporation or corporations.

(8) To guarantee the validity, performance or effect of any contract or agreement, and the fidelity of persons holding places of responsibility or trust; to become surety for any person, or persons, for the faithful performance of any trust, office, duty, contract or agreement, either by itself or in conjunction with any other person, or persons, corporation, or corporations, or in like manner become surety upon any bond, recognizance, obligation, judgment, suit, order, or decree to be entered in any court of record within the State of Delaware or elsewhere, or which may now or hereafter be required by any law, judge, officer or court in the State of Delaware or elsewhere.

(9) To act by any and every method of appointment as trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian, bailee, or in any other trust capacity in the receiving, holding, managing, and disposing of any and all estates and property, real, personal or mixed, and to be appointed as such trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian or bailee by any persons, corporations, court, officer, or authority, in the State of Delaware or elsewhere; and whenever this Corporation is so appointed by any person, corporation, court, officer or authority such trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian, bailee, or in any other trust capacity, it shall not be required to give bond with surety, but its capital stock shall be taken and held as security for the performance of the duties devolving upon it by such appointment.

(10) And for its care, management and trouble, and the exercise of any of its powers hereby given, or for the performance of any of the duties which it may undertake or be called upon to perform, or for the assumption of any responsibility the said Corporation may be entitled to receive a proper compensation.

(11) To purchase, receive, hold and own bonds, mortgages, debentures, shares of capital stock, and other securities, obligations, contracts and evidences of indebtedness, of any private, public or municipal corporation within and without the State of Delaware, or of the Government of the United States, or of any state, territory, colony, or possession thereof, or of any foreign government or country; to receive, collect, receipt for,

interest, dividends and income upon and from any of the bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property held and owned by it, and to exercise in respect of all such bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property, any and all the rights, powers and privileges of individual owners thereof, including the right to vote thereon; to invest and deal in and with any of the moneys of the Corporation upon such securities and in such manner as it may think fit and proper, and from time to time to vary or realize such investments; to issue bonds and secure the same by pledges or deeds of trust or mortgages of or upon the whole or any part of the property held or owned by the Corporation, and to sell and pledge such bonds, as and when the Board of Directors shall determine, and in the promotion of its said corporate business of investment and to the extent authorized by law, to lease, purchase, hold, sell, assign, transfer, pledge, mortgage and convey real and personal property of any name and nature and any estate or interest therein.

(b) In furtherance of, and not in limitation, of the powers conferred by the laws of the State of Delaware, it is hereby expressly provided that the said Corporation shall also have the following powers:

(1) To do any or all of the things herein set forth, to the same extent as natural persons might or could do, and in any part of the world.

(2) To acquire the good will, rights, property and franchises and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock of this Corporation, bonds or otherwise; to hold or in any manner to dispose of the whole or any part of the property so purchased; to conduct in any lawful manner the whole or any part of any business so acquired, and to exercise all the powers necessary or convenient in and about the conduct and management of such business.

(3) To take, hold, own, deal in, mortgage or otherwise lien, and to lease, sell, exchange, transfer, or in any manner whatever dispose of property, real, personal or mixed, wherever situated.

(4) To enter into, make, perform and carry out contracts of every kind with any person, firm, association or corporation, and, without limit as to amount, to draw, make, accept, endorse, discount, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures, and other



negotiable or transferable instruments.

(5) To have one or more offices, to carry on all or any of its operations and businesses, without restriction to the same extent as natural persons might or could do, to purchase or otherwise acquire, to hold, own, to mortgage, sell, convey or otherwise dispose of, real and personal property, of every class and description, in any State, District, Territory or Colony of the United States, and in any foreign country or place.

(6) It is the intention that the objects, purposes and powers specified and clauses contained in this paragraph shall (except where otherwise expressed in said paragraph) be nowise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in this charter, but that the objects, purposes and powers specified in each of the clauses of this paragraph shall be regarded as independent objects, purposes and powers.

Fourth: - (a) The total number of shares of all classes of stock which the Corporation shall have authority to issue is forty-one million (41,000,000) shares, consisting of:

(1) One million (1,000,000) shares of Preferred stock, par value \$10.00 per share (hereinafter referred to as "Preferred Stock"); and

(2) Forty million (40,000,000) shares of Common Stock, par value \$1.00 per share (hereinafter referred to as "Common Stock").

(b) Shares of Preferred Stock may be issued from time to time in one or more series as may from time to time be determined by the Board of Directors each of said series to be distinctly designated. All shares of any one series of Preferred Stock shall be alike in every particular, except that there may be different dates from which dividends, if any, thereon shall be cumulative, if made cumulative. The voting powers and the preferences and relative, participating, optional and other special rights of each such series, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding; and, subject to the provisions of subparagraph 1 of Paragraph (c) of this Article Fourth, the Board of Directors of the Corporation is hereby expressly granted authority to fix by resolution or resolutions adopted prior to the issuance of any shares of a particular series of Preferred Stock, the voting powers and the designations, preferences and relative, optional and other special rights, and the qualifications, limitations and restrictions of such series, including, but without limiting the generality of the foregoing, the following:

(1) The distinctive designation of, and the number of shares of Preferred Stock which shall constitute such series, which number

may be increased (except where otherwise provided by the Board of Directors) or decreased (but not below the number of shares thereof then outstanding) from time to time by like action of the Board of Directors;

(2) The rate and times at which, and the terms and conditions on which, dividends, if any, on Preferred Stock of such series shall be paid, the extent of the preference or relation, if any, of such dividends to the dividends payable on any other class or classes, or series of the same or other class of stock and whether such dividends shall be cumulative or non-cumulative;

(3) The right, if any, of the holders of Preferred Stock of such series to convert the same into or exchange the same for, shares of any other class or classes or of any series of the same or any other class or classes of stock of the Corporation and the terms and conditions of such conversion or exchange;

(4) Whether or not Preferred Stock of such series shall be subject to redemption, and the redemption price or prices and the time or times at which, and the terms and conditions on which, Preferred Stock of such series may be redeemed.

(5) The rights, if any, of the holders of Preferred Stock of such series upon the voluntary or involuntary liquidation, merger, consolidation, distribution or sale of assets, dissolution or winding-up, of the Corporation.

(6) The terms of the sinking fund or redemption or purchase account, if any, to be provided for the Preferred Stock of such series; and

(7) The voting powers, if any, of the holders of such series of Preferred Stock which may, without limiting the generality of the foregoing include the right, voting as a series or by itself or together with other series of Preferred Stock or all series of Preferred Stock as a class, to elect one or more directors of the Corporation if there shall have been a default in the payment of dividends on any one or more series of Preferred Stock or under such circumstances and on such conditions as the Board of Directors may determine.

(c) (1) After the requirements with respect to preferential dividends on the Preferred Stock (fixed in accordance with the provisions of section (b) of this Article Fourth), if any, shall have been met and after the Corporation shall have complied with all the requirements, if any, with respect to the setting aside of sums

as sinking funds or redemption or purchase accounts (fixed in accordance with the provisions of section (b) of this Article Fourth), and subject further to any conditions which may be fixed in accordance with the provisions of section (b) of this Article Fourth, then and not otherwise

the holders of Common Stock shall be entitled to receive such dividends as may be declared from time to time by the Board of Directors.

(2) After distribution in full of the preferential amount, if any, (fixed in accordance with the provisions of section (b) of this Article Fourth), to be distributed to the holders of Preferred Stock in the event of voluntary or involuntary liquidation, distribution or sale of assets, dissolution or winding-up, of the Corporation, the holders of the Common Stock shall be entitled to receive all of the remaining assets of the Corporation, tangible and intangible, of whatever kind available for distribution to stockholders ratably in proportion to the number of shares of Common Stock held by them respectively.

(3) Except as may otherwise be required by law or by the provisions of such resolution or resolutions as may be adopted by the Board of Directors pursuant to section (b) of this Article Fourth, each holder of Common Stock shall have one vote in respect of each share of Common Stock held on all matters voted upon by the stockholders.

(d) No holder of any of the shares of any class or series of stock or of options, warrants or other rights to purchase shares of any class or series of stock or of other securities of the Corporation shall have any preemptive right to purchase or subscribe for any unissued stock of any class or series or any additional shares of any class or series to be issued by reason of any increase of the authorized capital stock of the Corporation of any class or series, or bonds, certificates of indebtedness, debentures or other securities convertible into or exchangeable for stock of the Corporation of any class or series, or carrying any right to purchase stock of any class or series, but any such unissued stock, additional authorized issue of shares of any class or series of stock or securities convertible into or exchangeable for stock, or carrying any right to purchase stock, may be issued and disposed of pursuant to resolution of the Board of Directors to such persons, firms, corporations or associations, whether such holders or others, and upon such terms as may be deemed advisable by the Board of Directors in the exercise of its sole discretion.

(e) The relative powers, preferences and rights of each series of Preferred Stock in relation to the relative powers, preferences and rights of each other series of Preferred Stock shall, in each case, be as fixed from time to time by the Board of

Directors in the resolution or resolutions adopted pursuant to authority granted in section (b) of this Article Fourth and the consent, by class or series vote or otherwise, of the holders of such of the series of Preferred Stock as are from time to time outstanding shall not be required for the issuance by the Board of Directors of any other series of Preferred Stock whether or not the powers, preferences and rights of such other series shall be fixed by the Board of Directors as senior to, or on a parity with, the powers, preferences and rights of such outstanding series, or any of them; provided, however, that the Board of

Directors may provide in the resolution or resolutions as to any series of Preferred Stock adopted pursuant to section (b) of this Article Fourth that the consent of the holders of a majority (or such greater proportion as shall be therein fixed) of the outstanding shares of such series voting thereon shall be required for the issuance of any or all other series of Preferred Stock.

(f) Subject to the provisions of section (e), shares of any series of Preferred Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

(g) Shares of Common Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

(h) The authorized amount of shares of Common Stock and of Preferred Stock may, without a class or series vote, be increased or decreased from time to time by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote thereon.

Fifth: - (a) The business and affairs of the Corporation shall be conducted and managed by a Board of Directors. The number of directors constituting the entire Board shall be not less than five nor more than twenty-five as fixed from time to time by vote of a majority of the whole Board, provided, however, that the number of directors shall not be reduced so as to shorten the term of any director at the time in office, and provided further, that the number of directors constituting the whole Board shall be twenty-four until otherwise fixed by a majority of the whole Board.

(b) The Board of Directors shall be divided into three classes, as nearly equal in number as the then total number of directors constituting the whole Board permits, with the term of office of one class expiring each year. At the annual meeting of stockholders in 1982, directors of the first class shall be elected to hold office for a term expiring at the next succeeding annual meeting, directors of the second class

shall be elected to hold office for a term expiring at the second succeeding annual meeting and directors of the third class shall be elected to hold office for a term expiring at the third succeeding annual meeting. Any vacancies in the Board of Directors for any reason, and any newly created directorships resulting from any increase in the directors, may be filled by the Board of Directors, acting by a majority of the directors then in office, although less than a quorum, and any directors so chosen shall hold office until the next annual election of directors. At such election, the stockholders shall elect a successor to such director to hold office until the next election of the class for which such director shall have been chosen and until his successor shall be elected and qualified. No decrease in the number of directors shall shorten the term of any incumbent director.

(c) Notwithstanding any other provisions of this Charter or Act of Incorporation or the By-Laws of the Corporation (and notwithstanding the fact that some lesser percentage may be specified by law, this Charter or Act of Incorporation or the ByLaws of the Corporation), any director or the entire Board of Directors of the Corporation may be removed at any time without cause, but only by the affirmative vote of the holders of two-thirds or more of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) cast at a meeting of the stockholders called for that purpose.

(d) Nominations for the election of directors may be made by the Board of Directors or by any stockholder entitled to vote for the election of directors. Such nominations shall be made by notice in writing, delivered or mailed by first class United States mail, postage prepaid, to the Secretary of the Corporation not less than 14 days nor more than 50 days prior to any meeting of the stockholders called for the election of directors; provided, however, that if less than 21 days' notice of the meeting is given to stockholders, such written notice shall be delivered or mailed, as prescribed, to the Secretary of the Corporation not later than the close of the seventh day following the day on which notice of the meeting was mailed to stockholders. Notice of nominations which are proposed by the Board of Directors shall be given by the Chairman on behalf of the Board.

(e) Each notice under subsection (d) shall set forth (i) the name, age, business address and, if known, residence address of each nominee proposed in such notice, (ii) the principal occupation or employment of such nominee and (iii) the number of shares of stock of the Corporation which are beneficially owned by each such nominee.

(f) The Chairman of the meeting may, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the foregoing

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procedure, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

(g) No action required to be taken or which may be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, and the power of stockholders to consent in writing, without a meeting, to the taking of any action is specifically denied.

Sixth: - The Directors shall choose such officers, agent and servants as may be provided in the By-Laws as they may from time to time find necessary or proper.

Seventh: - The Corporation hereby created is hereby given the same powers, rights and privileges as may be conferred upon corporations organized under the Act entitled "An Act Providing a General Corporation Law", approved March 10, 1899, as from time to time amended.

Eighth: - This Act shall be deemed and taken to be a private Act.

Ninth: - This Corporation is to have perpetual existence.

Tenth: - The Board of Directors, by resolution passed by a majority of the whole Board, may designate any of their number to constitute an Executive Committee, which Committee, to the extent provided in said resolution, or in the By-Laws of the Company, shall have and may exercise all of the powers of the Board of Directors in the management of the business and affairs of the Corporation, and shall have power to authorize the seal of the Corporation to be affixed to all papers which may require it.

Eleventh: - The private property of the stockholders shall not be liable for the payment of corporate debts to any extent whatever.

Twelfth: - The Corporation may transact business in any part of the world.

Thirteenth: - The Board of Directors of the Corporation is expressly authorized to make, alter or repeal the By-Laws of the Corporation by a vote of the majority of the entire Board. The stockholders may make, alter or repeal any By-Law whether or not adopted by them, provided however, that any such additional By-Laws, alterations or repeal may be adopted only by the affirmative vote of the holders of two-thirds or more of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class).

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Fourteenth: - Meetings of the Directors may be held outside of the State of Delaware at such places as may be from time to time designated by the Board, and the Directors may keep the books of the Company outside of the State of Delaware at such places as may be from time to time designated by them.

Fifteenth: - (a) In addition to any affirmative vote required by law, and except as otherwise expressly provided in sections (b) and (c) of this Article Fifteenth:

(A) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with or into (i) any Interested Stockholder (as hereinafter defined) or (ii) any other corporation (whether or not itself an Interested Stockholder), which, after such merger or consolidation, would be an Affiliate (as hereinafter defined) of an Interested Stockholder, or

(B) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of related transactions) to or with any Interested Stockholder or any Affiliate of any Interested Stockholder of any assets of the

Corporation or any Subsidiary having an aggregate fair market value of \$1,000,000 or more, or

(C) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of related transactions) of any securities of the Corporation or any Subsidiary to any Interested Stockholder or any Affiliate of any Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate fair market value of \$1,000,000 or more, or

(D) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation, or

(E) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any similar transaction (whether or not with or into or otherwise involving an Interested Stockholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which is directly or indirectly owned by any Interested Stockholder, or any Affiliate of any Interested Stockholder,

shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, considered for the purpose of this Article Fifteenth as one class ("Voting Shares").

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Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that some lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise.

(2) The term "business combination" as used in this Article Fifteenth shall mean any transaction which is referred to any one or more of clauses (A) through (E) of paragraph 1 of the section (a).

(b) The provisions of section (a) of this Article Fifteenth shall not be applicable to any particular business combination and such business combination shall require only such affirmative vote as is required by law and any other provisions of the Charter or Act of Incorporation of By-Laws if such business combination has been approved by a majority of the whole Board.

(c) For the purposes of this Article Fifteenth:

(1) A "person" shall mean any individual firm, corporation or other entity.

(2) "Interested Stockholder" shall mean, in respect of any business



combination, any person (other than the Corporation or any Subsidiary) who or which as of the record date for the determination of stockholders entitled to notice of and to vote on such business combination, or immediately prior to the consummation of any such transaction:

(A) is the beneficial owner, directly or indirectly, of more than 10% of the Voting Shares, or

(B) is an Affiliate of the Corporation and at any time within two years prior thereto was the beneficial owner, directly or indirectly, of not less than 10% of the then outstanding voting Shares, or

(C) is an assignee of or has otherwise succeeded in any share of capital stock of the Corporation which were at any time within two years prior thereto beneficially owned by any Interested Stockholder, and such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933.

(3) A person shall be the "beneficial owner" of any Voting Shares:

(A) which such person or any of its Affiliates and Associates (as hereafter

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defined) beneficially own, directly or indirectly, or

(B) which such person or any of its Affiliates or Associates has (i) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (ii) the right to vote pursuant to any agreement, arrangement or understanding, or

(C) which are beneficially owned, directly or indirectly, by any other person with which such first mentioned person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of capital stock of the Corporation.

(4) The outstanding Voting Shares shall include shares deemed owned through application of paragraph (3) above but shall not include any other Voting Shares which may be issuable pursuant to any agreement, or upon exercise of conversion rights, warrants or options or otherwise.

(5) "Affiliate" and "Associate" shall have the respective meanings given those terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on December 31, 1981.

(6) "Subsidiary" shall mean any corporation of which a majority of any



class of equity security (as defined in Rule 3a11-1 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect in December 31, 1981) is owned, directly or indirectly, by the Corporation; provided, however, that for the purposes of the definition of Investment Stockholder set forth in paragraph (2) of this section (c), the term "Subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the Corporation.

(d) majority of the directors shall have the power and duty to determine for the purposes of this Article Fifteenth on the basis of information known to them, (1) the number of Voting Shares beneficially owned by any person (2) whether a person is an Affiliate or Associate of another, (3) whether a person has an agreement, arrangement or understanding with another as to the matters referred to in paragraph (3) of section (c), or (4) whether the assets subject to any business combination or the consideration received for the issuance or transfer of securities by the Corporation, or any Subsidiary has an aggregate fair market value of \$1,000,000 or more.

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(e) Nothing contained in this Article Fifteenth shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

Sixteenth: Notwithstanding any other provision of this Charter or Act of Incorporation or the By-Laws of the Corporation (and in addition to any other vote that may be required by law, this Charter or Act of Incorporation by the By-Laws), the affirmative vote of the holders of at least two-thirds of the outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) shall be required to amend, alter or repeal any provision of Articles Fifth, Thirteenth, Fifteenth or Sixteenth of this Charter or Act of Incorporation.

Seventeenth: (a) a Director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except to the extent such exemption from liability or limitation thereof is not permitted under the Delaware General Corporation Laws as the same exists or may hereafter be amended.

(b) Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a Director of the Corporation existing hereunder with respect to any act or omission occurring prior to the time of such repeal or modification."

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EXHIBIT B

BY-LAWS

WILMINGTON TRUST COMPANY

WILMINGTON, DELAWARE

As existing on January 16, 1997

BY-LAWS OF WILMINGTON TRUST COMPANY

ARTICLE I

Stockholders' Meetings

Section 1. The Annual Meeting of Stockholders shall be held on the third Thursday in April each year at the principal office at the Company or at such other date, time, or place as may be designated by resolution by the Board of Directors.

Section 2. Special meetings of all stockholders may be called at any time by the Board of Directors, the Chairman of the Board or the President.

Section 3. Notice of all meetings of the stockholders shall be given by mailing to each stockholder at least ten (10) days before said meeting, at his last known address, a written or printed notice fixing the time and place of such meeting.

Section 4. A majority in the amount of the capital stock of the Company issued and outstanding on the record date, as herein determined, shall constitute a quorum at all meetings of stockholders for the transaction of any business, but the holders of a small number of shares may adjourn, from time to time, without further notice, until a quorum is secured. At each annual or special meeting of stockholders, each stockholder shall be entitled to one vote, either in person or by proxy, for each shares of stock registered in the stockholder's name on the books of the Company on the record date for any such meeting as determined herein.

ARTICLE II

Directors

Section 1. The number and classification of the Board of Directors shall be as set forth in the Charter of the Bank.

Section 2. No person who has attained the age of seventy-two (72) years shall be nominated for election to the Board of Directors of the Company, provided, however, that this limitation shall not apply to any person who was serving as director of the Company on September 16, 1971.

Section 3. The class of Directors so elected shall hold office for three

years or until their successors are elected and qualified.

Section 4. The affairs and business of the Company shall be managed and conducted by the Board of Directors.

Section 5. The Board of Directors shall meet at the principal office of the Company or elsewhere in its discretion at such times to be determined by a majority of its members, or at the call of the Chairman of the Board of Directors or the President.

Section 6. Special meetings of the Board of Directors may be called at any time by the Chairman of the Board of Directors or by the President, and shall be called upon the written request of a majority of the directors.

Section 7. A majority of the directors elected and qualified shall be necessary to constitute a quorum for the transaction of business at any meeting of the Board of Directors.

Section 8. Written notice shall be sent by mail to each director of any special meeting of the Board of Directors, and of any change in the time or place of any regular meeting, stating the time and place of such meeting, which shall be mailed not less than two days before the time of holding such meeting.

Section 9. In the event of the death, resignation, removal, inability to act, or disqualification of any director, the Board of Directors, although less than a quorum, shall have the right to elect the successor who shall hold office for the remainder of the full term of the class of directors in which the vacancy occurred, and until such director's successor shall have been duly elected and qualified.

Section 10. The Board of Directors at its first meeting after its election by the stockholders shall appoint an Executive Committee, a Trust Committee, an Audit Committee and a Compensation Committee, and shall elect from its own members a Chairman of the Board of Directors and a President who may be the same person. The Board of Directors shall also elect at such meeting a Secretary and a Treasurer, who may be the same person, may appoint at any time such other committees and elect or appoint such other officers as it may deem advisable. The Board of Directors may also elect at such meeting one or more Associate Directors.

Section 11. The Board of Directors may at any time remove, with or without cause, any member of any Committee appointed by it or any associate director or officer elected by it and may appoint or elect his successor.

Section 12. The Board of Directors may designate an officer to be in charge of such of the departments or division of the Company as it may deem advisable.

ARTICLE III  
Committees

Section 1. Executive Committee

(A) The Executive Committee shall be composed of not more than nine members who shall be selected by the Board of Directors from its own members and who shall hold office during the pleasure of the Board.

(B) The Executive Committee shall have all the powers of the Board of Directors when it is not in session to transact all business for and in behalf of the Company that may be brought before it.

(C) The Executive Committee shall meet at the principal office of the Company or elsewhere in its discretion at such times to be determined by a majority of its members, or at the call of the Chairman of the Executive Committee or at the call of the Chairman of the Board of Directors. The majority of its members shall be necessary to constitute a quorum for the transaction of business. Special meetings of the Executive Committee may be held at any time when a quorum is present.

(D) Minutes of each meeting of the Executive Committee shall be kept and submitted to the Board of Directors at its next meeting.

(E) The Executive Committee shall advise and superintend all investments that may be made of the funds of the Company, and shall direct the disposal of the same, in accordance with such rules and regulations as the Board of Directors from time to time make.

(F) In the event of a state of disaster of sufficient severity to prevent the conduct and management of the affairs and business of the Company by its directors and officers as contemplated by these By-Laws any two available members of the Executive Committee as constituted immediately prior to such disaster shall constitute a quorum of that Committee for the full conduct and management of the affairs and business of the Company in accordance with the provisions of Article III of these By-Laws; and if less than three members of the Trust Committee is constituted immediately prior to such disaster shall be available for the transaction of its business, such Executive Committee shall also be empowered to exercise all of the powers reserved to the Trust Committee under Article III Section 2 hereof. In the event of the unavailability, at such time, of a minimum of two members of such Executive Committee, any three available directors shall constitute the Executive Committee for the full conduct and management of the affairs and business of the Company in accordance with the foregoing provisions of this Section. This By-Law shall be subject to implementation by Resolutions of the Board of Directors presently existing or

hereafter passed from time to time for that purpose, and any provisions of these By-Laws (other than this Section) and any resolutions which are contrary to the provisions of this Section or to the provisions of any such implementary Resolutions shall be suspended during such a disaster period until it shall be determined by any interim Executive Committee acting under this section that it

shall be to the advantage of the Company to resume the conduct and management of its affairs and business under all of the other provisions of these By-Laws.

## Section 2. Trust Committee

(A) The Trust Committee shall be composed of not more than thirteen members who shall be selected by the Board of Directors, a majority of whom shall be members of the Board of Directors and who shall hold office during the pleasure of the Board.

(B) The Trust Committee shall have general supervision over the Trust Department and the investment of trust funds, in all matters, however, being subject to the approval of the Board of Directors.

(C) The Trust Committee shall meet at the principal office of the Company or elsewhere in its discretion at such times to be determined by a majority of its members or at the call of its chairman. A majority of its members shall be necessary to constitute a quorum for the transaction of business.

(D) Minutes of each meeting of the Trust Committee shall be kept and promptly submitted to the Board of Directors.

(E) The Trust Committee shall have the power to appoint Committees and/or designate officers or employees of the Company to whom supervision over the investment of trust funds may be delegated when the Trust Committee is not in session.

## Section 3. Audit Committee

(A) The Audit Committee shall be composed of five members who shall be selected by the Board of Directors from its own members, none of whom shall be an officer of the Company, and shall hold office at the pleasure of the Board.

(B) The Audit Committee shall have general supervision over the Audit Division in all matters however subject to the approval of the Board of Directors; it shall consider all matters brought to its attention by the officer in charge of the Audit Division, review all reports of examination of the Company made by any governmental agency or such independent auditor employed for that purpose, and make such recommendations to the Board of Directors with respect thereto or with respect to any other matters pertaining to

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auditing the Company as it shall deem desirable.

(C) The Audit Committee shall meet whenever and wherever the majority of its members shall deem it to be proper for the transaction of its business, and a majority of its Committee shall constitute a quorum.

## Section 4. Compensation Committee

(A) The Compensation Committee shall be composed of not more

than five (5) members who shall be selected by the Board of Directors from its own members who are not officers of the Company and who shall hold office during the pleasure of the Board.

(B) The Compensation Committee shall in general advise upon all matters of policy concerning the Company brought to its attention by the management and from time to time review the management of the Company, major organizational matters, including salaries and employee benefits and specifically shall administer the Executive Incentive Compensation Plan.

(C) Meetings of the Compensation Committee may be called at any time by the Chairman of the Compensation Committee, the Chairman of the Board of Directors, or the President of the Company.

#### Section 5. Associate Directors

(A) Any person who has served as a director may be elected by the Board of Directors as an associate director, to serve during the pleasure of the Board.

(B) An associate director shall be entitled to attend all directors meetings and participate in the discussion of all matters brought to the Board, with the exception that he would have no right to vote. An associate director will be eligible for appointment to Committees of the Company, with the exception of the Executive Committee, Audit Committee and Compensation Committee, which must be comprised solely of active directors.

#### Section 6. Absence or Disqualification of Any Member of a Committee

(A) In the absence or disqualification of any member of any Committee created under Article III of the By-Laws of this Company, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absence or disqualified member.

### ARTICLE IV Officers

Section 1. The Chairman of the Board of Directors shall preside at all meetings of the Board and shall have such further authority and powers and shall perform such duties as the Board of Directors may from time to time confer and direct. He shall also exercise such powers and perform such duties as may from time to time be agreed upon between himself and the President of the Company.

Section 2. The Vice Chairman of the Board. The Vice Chairman of the Board of Directors shall preside at all meetings of the Board of Directors at which the Chairman of the Board shall not be present and shall have such further authority and powers and shall perform such duties as the Board of Directors or the Chairman of the Board may from time to time confer and direct.

Section 3. The President shall have the powers and duties pertaining to the office of the President conferred or imposed upon him by statute or assigned to him by the Board of Directors in the absence of the Chairman of the Board the President shall have the powers and duties of the Chairman of the Board.

Section 4. The Chairman of the Board of Directors or the President as designated by the Board of Directors, shall carry into effect all legal directions of the Executive Committee and of the Board of Directors, and shall at all times exercise general supervision over the interest, affairs and operations of the Company and perform all duties incident to his office.

Section 5. There may be one or more Vice Presidents, however denominated by the Board of Directors, who may at any time perform all the duties of the Chairman of the Board of Directors and/or the President and such other powers and duties as may from time to time be assigned to them by the Board of Directors, the Executive Committee, the Chairman of the Board or the President and by the officer in charge of the department or division to which they are assigned.

Section 6. The Secretary shall attend to the giving of notice of meetings of the stockholders and the Board of Directors, as well as the Committees thereof, to the keeping of accurate minutes of all such meetings and to recording the same in the minute books of the Company. In addition to the other notice requirements of these By-Laws and as may be practicable under the circumstances, all such notices shall be in writing and mailed well in advance of the scheduled date of any other meeting. He shall have custody of the corporate seal and shall affix the same to any documents requiring such corporate seal and to attest the same.

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Section 7. The Treasurer shall have general supervision over all assets and liabilities of the Company. He shall be custodian of and responsible for all monies, funds and valuables of the Company and for the keeping of proper records of the evidence of property or indebtedness and of all the transactions of the Company. He shall have general supervision of the expenditures of the Company and shall report to the Board of Directors at each regular meeting of the condition of the Company, and perform such other duties as may be assigned to him from time to time by the Board of Directors of the Executive Committee.

Section 8. There may be a Controller who shall exercise general supervision over the internal operations of the Company, including accounting, and shall render to the Board of Directors at appropriate times a report relating to the general condition and internal operations of the Company.

There may be one or more subordinate accounting or controller officers however denominated, who may perform the duties of the Controller and such duties as may be prescribed by the Controller.

Section 9. The officer designated by the Board of Directors to be in charge of the Audit Division of the Company with such title as the Board of Directors shall prescribe, shall report to and be directly responsible only to the Board of Directors.

There shall be an Auditor and there may be one or more Audit Officers, however denominated, who may perform all the duties of the Auditor and such duties as may be prescribed by the officer in charge of the Audit Division.

Section 10. There may be one or more officers, subordinate in rank to all Vice Presidents with such functional titles as shall be determined from time to time by the Board of Directors, who shall ex officio hold the office Assistant Secretary of this Company and who may perform such duties as may be prescribed by the officer in charge of the department or division to whom they are assigned.

Section 11. The powers and duties of all other officers of the Company shall be those usually pertaining to their respective offices, subject to the direction of the Board of Directors, the Executive Committee, Chairman of the Board of Directors or the President and the officer in charge of the department or division to which they are assigned.

## ARTICLE V

### Stock and Stock Certificates

Section 1. Shares of stock shall be transferrable on the books of the Company and a transfer book shall be kept in which all transfers of stock shall be recorded.

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Section 2. Certificate of stock shall bear the signature of the President or any Vice President, however denominated by the Board of Directors and countersigned by the Secretary or Treasurer or an Assistant Secretary, and the seal of the corporation shall be engraved thereon. Each certificate shall recite that the stock represented thereby is transferrable only upon the books of the Company by the holder thereof or his attorney, upon surrender of the certificate properly endorsed. Any certificate of stock surrendered to the Company shall be cancelled at the time of transfer, and before a new certificate or certificates shall be issued in lieu thereof. Duplicate certificates of stock shall be issued only upon giving such security as may be satisfactory to the Board of Directors or the Executive Committee.

Section 3. The Board of Directors of the Company is authorized to fix in advance a record date for the determination of the stockholders entitled to notice of, and to vote at, any meeting of stockholders and any adjournment thereof, or entitled to receive payment of any dividend, or to any allotment or rights, or to exercise any rights in respect of any change, conversion or exchange of capital stock, or in connection with obtaining the consent of stockholders for any purpose, which record date shall not be more than 60 nor less than 10 days proceeding the date of any meeting of stockholders or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining such consent.

## ARTICLE VI



Section 1. The corporate seal of the Company shall be in the following form:

Between two concentric circles the words "Wilmington Trust Company" within the inner circle the words "Wilmington, Delaware."

ARTICLE VII  
Fiscal Year

Section 1. The fiscal year of the Company shall be the calendar year.

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ARTICLE VIII  
Execution of Instruments of the Company

Section 1. The Chairman of the Board, the President or any Vice President, however denominated by the Board of Directors, shall have full power and authority to enter into, make, sign, execute, acknowledge and/or deliver and the Secretary or any Assistant Secretary shall have full power and authority to attest and affix the corporate seal of the Company to any and all deeds, conveyances, assignments, releases, contracts, agreements, bonds, notes, mortgages and all other instruments incident to the business of this Company or in acting as executor, administrator, guardian, trustee, agent or in any other fiduciary or representative capacity by any and every method of appointment or by whatever person, corporation, court officer or authority in the State of Delaware, or elsewhere, without any specific authority, ratification, approval or confirmation by the Board of Directors or the Executive Committee, and any and all such instruments shall have the same force and validity as though expressly authorized by the Board of Directors and/or the Executive Committee.

ARTICLE IX  
Compensation of Directors and Members of Committees

Section 1. Directors and associate directors of the Company, other than salaried officers of the Company, shall be paid such reasonable honoraria or fees for attending meetings of the Board of Directors as the Board of Directors may from time to time determine. Directors and associate directors who serve as members of committees, other than salaried employees of the Company, shall be paid such reasonable honoraria or fees for services as members of committees as the Board of Directors shall from time to time determine and directors and associate directors may be employed by the Company for such special services as the Board of Directors may from time to time determine and shall be paid for such special services so performed reasonable compensation as may be determined by the Board of Directors.

ARTICLE X  
Indemnification

Section 1. (A) The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding") by reason of the fact that he, or a person for whom he is the legal representative, is or was a director, officer, employee or agent of the Corporation or is or

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was serving at the request of the Corporation as a director, officer, employee, fiduciary or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person. The Corporation shall indemnify a person in connection with a proceeding initiated by such person only if the proceeding was authorized by the Board of Directors of the Corporation.

(B) The Corporation shall pay the expenses incurred in defending any proceeding in advance of its final disposition, provided, however, that the payment of expenses incurred by a Director officer in his capacity as a Director or officer in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Director or officer to repay all amounts advanced if it should be ultimately determined that the Director or officer is not entitled to be indemnified under this Article or otherwise.

(C) If a claim for indemnification or payment of expenses, under this Article X is not paid in full within ninety days after a written claim therefor has been received by the Corporation the claimant may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the claimant was not entitled to the requested indemnification of payment of expenses under applicable law.

(D) The rights conferred on any person by this Article X shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Charter or Act of Incorporation, these By-Laws, agreement, vote of stockholders or disinterested Directors or otherwise.

(E) Any repeal or modification of the foregoing provisions of this Article X shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

ARTICLE XI  
Amendments to the By-Laws

Section 1. These By-Laws may be altered, amended or repealed, in whole

or in part, and any new By-Law or By-Laws adopted at any regular or special meeting of the Board of Directors by a vote of the majority of all the members of the Board of Directors then in office.

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EXHIBIT C

Section 321(b) Consent

Pursuant to Section 321(b) of the Trust Indenture Act of 1939, as amended, Wilmington Trust Company hereby consents that reports of examinations by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon requests therefor.

WILMINGTON TRUST COMPANY

Dated: March 23, 1999

By: /s/ Norma P. Closs

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Name: Norma P. Closs

Title: Vice President

EXHIBIT D

NOTICE

This form is intended to assist state nonmember banks and savings banks with state publication requirements. It has not been approved by any state banking authorities. Refer to your appropriate state banking authorities for your state publication requirements.

R E P O R T   O F   C O N D I T I O N

Consolidating domestic subsidiaries of the

-----  
WILMINGTON TRUST COMPANY

of

WILMINGTON  
-----

Name of Bank

City

in the State of DELAWARE, at the close of business on December 31, 1998.

<TABLE>

<CAPTION>

ASSETS

Thousands of dollars

<S>

<C>

Cash and balances due from depository institutions:

Noninterest-bearing balances and currency and coins.....	194,839
--	---------

Interest-bearing balances.....	0
--------------------------------	---

Held-to-maturity securities.....	73,911
----------------------------------	--------

Available-for-sale securities.....	1,228,194
------------------------------------	-----------

Federal funds sold and securities purchased under agreements to resell.....	203,500
---	---------

Loans and lease financing receivables:

Loans and leases, net of unearned income.....	4,167,235
---	-----------

LESS: Allowance for loan and lease losses.....	66,897
--	--------

LESS: Allocated transfer risk reserve.....	0
--	---

Loans and leases, net of unearned income, allowance, and reserve...	4,100,338
---	-----------

Assets held in trading accounts.....	0
--------------------------------------	---

Premises and fixed assets (including capitalized leases).....	139,079
---	---------

Other real estate owned.....	1,532
------------------------------	-------

Investments in unconsolidated subsidiaries and associated companies.....	1,052
--	-------

Customers' liability to this bank on acceptances outstanding.....	0
---	---

Intangible assets.....	3,047
------------------------	-------

Other assets.....	98,867
-------------------	--------

Total assets.....	6,044,359
-------------------	-----------

</TABLE>

CONTINUED ON NEXT PAGE

<TABLE>

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<C>

LIABILITIES

Deposits:

In domestic offices.....	4,474,659
--------------------------	-----------

Noninterest-bearing .....	1,037,549
---------------------------	-----------

Interest-bearing.....	3,437,110
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Federal funds purchased and Securities sold under agreements to repurchase.	390,060
---	---------

Demand notes issued to the U.S. Treasury.....	18,944
---	--------

Trading liabilities (from Schedule RC-D).....	0
---	---

Other borrowed money:.....	////////
----------------------------	----------

With original maturity of one year or less.....	555,000
---	---------

With original maturity of more than one year.....	43,000
---	--------

Bank's liability on acceptances executed and outstanding.....	0
---	---

Subordinated notes and debentures.....	0
--	---

Other liabilities (from Schedule RC-G).....	90,951
---	--------

Total liabilities.....	5,572,614
------------------------	-----------

## EQUITY CAPITAL

Perpetual preferred stock and related surplus.....	0
Common Stock.....	500
Surplus (exclude all surplus related to preferred stock).....	62,118
Undivided profits and capital reserves.....	403,264
Net unrealized holding gains (losses) on available-for-sale securities.....	5,863
Total equity capital.....	471,745
Total liabilities, limited-life preferred stock, and equity capital.....	6,044,359

</TABLE>

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) ☒ |X|

WILMINGTON TRUST COMPANY  
(Exact name of trustee as specified in its charter)

Delaware  
(State of incorporation)

51-0055023  
(I.R.S. employer identification no.)

Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890  
(Address of principal executive offices)

Cynthia L. Corliss  
Vice President and Trust Counsel  
Wilmington Trust Company  
Rodney Square North  
Wilmington, Delaware 19890  
(302) 651-8516  
(Name, address and telephone number of agent for service)

POGO PRODUCING COMPANY  
POGO TRUST I  
(Exact name of obligor as specified in its charter)

Delaware  
Delaware  
(State of incorporation)

74-1659398  
Applied For  
(I.R.S. employer identification no.)

5 Greenway Plaza  
Suite 2700  
Houston, Texas  
(Address of principal executive offices)

77046  
(Zip Code)

Preferred Trust Securities of Pogo Trust I

=====

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.

Federal Deposit Insurance Co.	State Bank Commissioner
Five Penn Center	Dover, Delaware
Suite #2901	
Philadelphia, PA	

(b) Whether it is authorized to exercise corporate trust powers.

The trustee is authorized to exercise corporate trust powers.

ITEM 2. AFFILIATIONS WITH THE OBLIGOR.

If the obligor is an affiliate of the trustee, describe each affiliation:

Based upon an examination of the books and records of the trustee and upon information furnished by the obligor, the obligor is not an affiliate of the trustee.

ITEM 3. LIST OF EXHIBITS.

List below all exhibits filed as part of this Statement of Eligibility and Qualification.

- A. Copy of the Charter of Wilmington Trust Company, which includes the certificate of authority of Wilmington Trust Company to commence business and the authorization of Wilmington Trust Company to exercise corporate trust powers.
- B. Copy of By-Laws of Wilmington Trust Company.
- C. Consent of Wilmington Trust Company required by Section 321(b) of Trust Indenture Act.
- D. Copy of most recent Report of Condition of Wilmington Trust Company.

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Wilmington Trust Company, a corporation organized and existing under the laws of Delaware, has duly caused this Statement of Eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Wilmington and State of Delaware on the 23rd day of March, 1999.

[SEAL]

Attest: /s/ Patricia A. Evans  
-----  
Assistant Secretary

By: /s/ Norma P. Closs  
-----  
Name: Norma P. Closs  
Title: Vice President

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EXHIBIT A

AMENDED CHARTER

Wilmington Trust Company

Wilmington, Delaware

As existing on May 9, 1987

Amended Charter  
or  
Act of Incorporation  
of  
Wilmington Trust Company

Wilmington Trust Company, originally incorporated by an Act of the General Assembly of the State of Delaware, entitled "An Act to Incorporate the Delaware Guarantee and Trust Company", approved March 2, A.D. 1901, and the name of which company was changed to "Wilmington Trust Company" by an amendment filed in the Office of the Secretary of State on March 18, A.D. 1903, and the Charter or Act of Incorporation of which company has been from time to time amended and changed by merger agreements pursuant to the corporation law for state banks and trust companies of the State of Delaware, does hereby alter and amend its Charter or Act of Incorporation so that the same as so altered and amended shall in its entirety read as follows:

First: - The name of this corporation is Wilmington Trust Company.

Second: - The location of its principal office in the State of Delaware is at Rodney Square North, in the City of Wilmington, County of New Castle; the name of its resident agent is Wilmington Trust Company whose address is Rodney Square North, in said City. In addition to such principal office, the said corporation maintains and operates branch offices in the City of Newark, New Castle County, Delaware, the Town of Newport, New Castle County, Delaware, at Claymont, New Castle County, Delaware, at Greenville, New Castle County Delaware, and at Milford Cross Roads, New Castle County, Delaware, and shall be empowered to open, maintain and operate branch offices at Ninth and Shipley Streets, 418 Delaware Avenue, 2120 Market Street, and 3605 Market Street, all in the City of Wilmington, New Castle County, Delaware, and such other branch offices or places of business as may be authorized from time to time by the agency or agencies of the government of the State of



Delaware empowered to confer such authority.

Third: - (a) The nature of the business and the objects and purposes proposed to be transacted, promoted or carried on by this Corporation are to do any or all of the things herein mentioned as fully and to the same extent as natural persons might or could do and in any part of the world, viz.:

(1) To sue and be sued, complain and defend in any Court of law or equity and to make and use a common seal, and alter the seal at pleasure, to hold,

purchase, convey, mortgage or otherwise deal in real and personal estate and property, and to appoint such officers and agents as the business of the Corporation shall require, to make by-laws not inconsistent with the Constitution or laws of the United States or of this State, to discount bills, notes or other evidences of debt, to receive deposits of money, or securities for money, to buy gold and silver bullion and foreign coins, to buy and sell bills of exchange, and generally to use, exercise and enjoy all the powers, rights, privileges and franchises incident to a corporation which are proper or necessary for the transaction of the business of the Corporation hereby created.

(2) To insure titles to real and personal property, or any estate or interests therein, and to guarantee the holder of such property, real or personal, against any claim or claims, adverse to his interest therein, and to prepare and give certificates of title for any lands or premises in the State of Delaware, or elsewhere.

(3) To act as factor, agent, broker or attorney in the receipt, collection, custody, investment and management of funds, and the purchase, sale, management and disposal of property of all descriptions, and to prepare and execute all papers which may be necessary or proper in such business.

(4) To prepare and draw agreements, contracts, deeds, leases, conveyances, mortgages, bonds and legal papers of every description, and to carry on the business of conveyancing in all its branches.

(5) To receive upon deposit for safekeeping money, jewelry, plate, deeds, bonds and any and all other personal property of every sort and kind, from executors, administrators, guardians, public officers, courts, receivers, assignees, trustees, and from all fiduciaries, and from all other persons and individuals, and from all corporations whether state, municipal, corporate or private, and to rent boxes, safes, vaults and other receptacles for such property.

(6) To act as agent or otherwise for the purpose of registering, issuing, certificating, countersigning, transferring or underwriting the stock, bonds or other obligations of any corporation, association, state or municipality, and may receive

and manage any sinking fund therefor on such terms as may be agreed upon between the two parties, and in like manner may act as Treasurer of any corporation or municipality.

(7) To act as Trustee under any deed of trust, mortgage, bond or other

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instrument issued by any state, municipality, body politic, corporation, association or person, either alone or in conjunction with any other person or persons, corporation or corporations.

(8) To guarantee the validity, performance or effect of any contract or agreement, and the fidelity of persons holding places of responsibility or trust; to become surety for any person, or persons, for the faithful performance of any trust, office, duty, contract or agreement, either by itself or in conjunction with any other person, or persons, corporation, or corporations, or in like manner become surety upon any bond, recognizance, obligation, judgment, suit, order, or decree to be entered in any court of record within the State of Delaware or elsewhere, or which may now or hereafter be required by any law, judge, officer or court in the State of Delaware or elsewhere.

(9) To act by any and every method of appointment as trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian, bailee, or in any other trust capacity in the receiving, holding, managing, and disposing of any and all estates and property, real, personal or mixed, and to be appointed as such trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian or bailee by any persons, corporations, court, officer, or authority, in the State of Delaware or elsewhere; and whenever this Corporation is so appointed by any person, corporation, court, officer or authority such trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian, bailee, or in any other trust capacity, it shall not be required to give bond with surety, but its capital stock shall be taken and held as security for the performance of the duties devolving upon it by such appointment.

(10) And for its care, management and trouble, and the exercise of any of its powers hereby given, or for the performance of any of the duties which it may undertake or be called upon to perform, or for the assumption of any responsibility the said Corporation may be entitled to receive a proper compensation.

(11) To purchase, receive, hold and own bonds, mortgages, debentures, shares of capital stock, and other securities, obligations, contracts and evidences of indebtedness, of any private, public or municipal corporation within and without the State of Delaware, or of the Government of the United States, or of any state, territory, colony, or possession thereof, or of any

foreign government or country; to receive, collect, receipt for, and dispose of

interest, dividends and income upon and from any of the bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property held and owned by it, and to exercise in respect of all such bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property, any and all the rights, powers and privileges of individual owners thereof, including the right to vote thereon; to invest and deal in and with any of the moneys of the Corporation upon such securities and in such manner as it may think fit and proper, and from time to time to vary or realize such investments; to issue bonds and secure the same by pledges or deeds of trust or mortgages of or upon the whole or any part of the property held or owned by the Corporation, and to sell and pledge such bonds, as and when the Board of Directors shall determine, and in the promotion of its said corporate business of investment and to the extent authorized by law, to lease, purchase, hold, sell, assign, transfer, pledge, mortgage and convey real and personal property of any name and nature and any estate or interest therein.

(b) In furtherance of, and not in limitation, of the powers conferred by the laws of the State of Delaware, it is hereby expressly provided that the said Corporation shall also have the following powers:

(1) To do any or all of the things herein set forth, to the same extent as natural persons might or could do, and in any part of the world.

(2) To acquire the good will, rights, property and franchises and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock of this Corporation, bonds or otherwise; to hold or in any manner to dispose of the whole or any part of the property so purchased; to conduct in any lawful manner the whole or any part of any business so acquired, and to exercise all the powers necessary or convenient in and about the conduct and management of such business.

(3) To take, hold, own, deal in, mortgage or otherwise lien, and to lease, sell, exchange, transfer, or in any manner whatever dispose of property, real, personal or mixed, wherever situated.

(4) To enter into, make, perform and carry out contracts of every kind with any person, firm, association or corporation, and, without limit as to amount, to draw, make, accept, endorse, discount, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures, and other

negotiable or transferable instruments.

(5) To have one or more offices, to carry on all or any of its operations and businesses, without restriction to the same extent as natural persons might or could do, to purchase or otherwise acquire, to hold, own, to mortgage, sell, convey or otherwise dispose of, real and personal property, of every class and description, in any State, District, Territory or Colony of the United States, and in any foreign country or place.

(6) It is the intention that the objects, purposes and powers specified and clauses contained in this paragraph shall (except where otherwise expressed in said paragraph) be nowise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in this charter, but that the objects, purposes and powers specified in each of the clauses of this paragraph shall be regarded as independent objects, purposes and powers.

Fourth: - (a) The total number of shares of all classes of stock which the Corporation shall have authority to issue is forty-one million (41,000,000) shares, consisting of:

(1) One million (1,000,000) shares of Preferred stock, par value \$10.00 per share (hereinafter referred to as "Preferred Stock"); and

(2) Forty million (40,000,000) shares of Common Stock, par value \$1.00 per share (hereinafter referred to as "Common Stock").

(b) Shares of Preferred Stock may be issued from time to time in one or more series as may from time to time be determined by the Board of Directors each of said series to be distinctly designated. All shares of any one series of Preferred Stock shall be alike in every particular, except that there may be different dates from which dividends, if any, thereon shall be cumulative, if made cumulative. The voting powers and the preferences and relative, participating, optional and other special rights of each such series, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding; and, subject to the provisions of subparagraph 1 of Paragraph (c) of this Article Fourth, the Board of Directors of the Corporation is hereby expressly granted authority to fix by resolution or resolutions adopted prior to the issuance of any shares of a particular series of Preferred Stock, the voting powers and the designations, preferences and relative, optional and other special rights, and the qualifications, limitations and restrictions of such series, including, but without limiting the generality of the foregoing, the following:

(1) The distinctive designation of, and the number of shares of Preferred Stock which shall constitute such series, which number

may be increased (except where otherwise provided by the Board of Directors) or decreased (but not below the number of shares thereof then outstanding) from time to time by like action of the Board of Directors;

(2) The rate and times at which, and the terms and conditions on which, dividends, if any, on Preferred Stock of such series shall be paid, the extent of the preference or relation, if any, of such dividends to the dividends payable on any other class or classes, or series of the same or other class of stock and whether such dividends shall be cumulative or non-cumulative;

(3) The right, if any, of the holders of Preferred Stock of such series to convert the same into or exchange the same for, shares of any other class or classes or of any series of the same or any other class or classes of stock of the Corporation and the terms and conditions of such conversion or exchange;

(4) Whether or not Preferred Stock of such series shall be subject to redemption, and the redemption price or prices and the time or times at which, and the terms and conditions on which, Preferred Stock of such series may be redeemed.

(5) The rights, if any, of the holders of Preferred Stock of such series upon the voluntary or involuntary liquidation, merger, consolidation, distribution or sale of assets, dissolution or winding-up, of the Corporation.

(6) The terms of the sinking fund or redemption or purchase account, if any, to be provided for the Preferred Stock of such series; and

(7) The voting powers, if any, of the holders of such series of Preferred Stock which may, without limiting the generality of the foregoing include the right, voting as a series or by itself or together with other series of Preferred Stock or all series of Preferred Stock as a class, to elect one or more directors of the Corporation if there shall have been a default in the payment of dividends on any one or more series of Preferred Stock or under such circumstances and on such conditions as the Board of Directors may determine.

(c) (1) After the requirements with respect to preferential dividends on the Preferred Stock (fixed in accordance with the provisions of section (b) of this Article Fourth), if any, shall have been met and after the Corporation shall have complied with all the requirements, if any, with respect to the setting aside of sums

as sinking funds or redemption or purchase accounts (fixed in accordance with the provisions of section (b) of this Article Fourth), and subject further to any conditions which may be fixed in accordance with the provisions of section (b) of this Article Fourth, then and not otherwise

the holders of Common Stock shall be entitled to receive such dividends as may be declared from time to time by the Board of Directors.

(2) After distribution in full of the preferential amount, if any, (fixed in accordance with the provisions of section (b) of this Article Fourth), to be distributed to the holders of Preferred Stock in the event of voluntary or involuntary liquidation, distribution or sale of assets, dissolution or winding-up, of the Corporation, the holders of the Common Stock shall be entitled to receive all of the remaining assets of the Corporation, tangible and intangible, of whatever kind available for distribution to stockholders ratably in proportion to the number of shares of Common Stock held by them respectively.

(3) Except as may otherwise be required by law or by the provisions of such resolution or resolutions as may be adopted by the Board of Directors pursuant to section (b) of this Article Fourth, each holder of Common Stock shall have one vote in respect of each share of Common Stock held on all matters voted upon by the stockholders.

(d) No holder of any of the shares of any class or series of stock or of options, warrants or other rights to purchase shares of any class or series of stock or of other securities of the Corporation shall have any preemptive right to purchase or subscribe for any unissued stock of any class or series or any additional shares of any class or series to be issued by reason of any increase of the authorized capital stock of the Corporation of any class or series, or bonds, certificates of indebtedness, debentures or other securities convertible into or exchangeable for stock of the Corporation of any class or series, or carrying any right to purchase stock of any class or series, but any such unissued stock, additional authorized issue of shares of any class or series of stock or securities convertible into or exchangeable for stock, or carrying any right to purchase stock, may be issued and disposed of pursuant to resolution of the Board of Directors to such persons, firms, corporations or associations, whether such holders or others, and upon such terms as may be deemed advisable by the Board of Directors in the exercise of its sole discretion.

(e) The relative powers, preferences and rights of each series of Preferred Stock in relation to the relative powers, preferences and rights of each other series of Preferred Stock shall, in each case, be as fixed from time to time by the Board of

Directors in the resolution or resolutions adopted pursuant to authority granted in section (b) of this Article Fourth and the consent, by class or series vote or otherwise, of the holders of such of the series of Preferred Stock as are from time to time outstanding shall not be required for the issuance by the Board of Directors of any other series of Preferred Stock whether or not the powers, preferences and rights of such other series shall be fixed by the Board of Directors as senior to, or on a parity with, the powers, preferences and rights of such outstanding series, or any of them; provided, however, that the Board of

Directors may provide in the resolution or resolutions as to any series of Preferred Stock adopted pursuant to section (b) of this Article Fourth that the consent of the holders of a majority (or such greater proportion as shall be therein fixed) of the outstanding shares of such series voting thereon shall be required for the issuance of any or all other series of Preferred Stock.

(f) Subject to the provisions of section (e), shares of any series of Preferred Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

(g) Shares of Common Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

(h) The authorized amount of shares of Common Stock and of Preferred Stock may, without a class or series vote, be increased or decreased from time to time by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote thereon.

Fifth: - (a) The business and affairs of the Corporation shall be conducted and managed by a Board of Directors. The number of directors constituting the entire Board shall be not less than five nor more than twenty-five as fixed from time to time by vote of a majority of the whole Board, provided, however, that the number of directors shall not be reduced so as to shorten the term of any director at the time in office, and provided further, that the number of directors constituting the whole Board shall be twenty-four until otherwise fixed by a majority of the whole Board.

(b) The Board of Directors shall be divided into three classes, as nearly equal in number as the then total number of directors constituting the whole Board permits, with the term of office of one class expiring each year. At the annual meeting of stockholders in 1982, directors of the first class shall be elected to hold office for a term expiring at the next succeeding annual meeting, directors of the second class

shall be elected to hold office for a term expiring at the second succeeding annual meeting and directors of the third class shall be elected to hold office for a term expiring at the third succeeding annual meeting. Any vacancies in the Board of Directors for any reason, and any newly created directorships resulting from any increase in the directors, may be filled by the Board of Directors, acting by a majority of the directors then in office, although less than a quorum, and any directors so chosen shall hold office until the next annual election of directors. At such election, the stockholders shall elect a successor to such director to hold office until the next election of the class for which such director shall have been chosen and until his successor shall be elected and qualified. No decrease in the number of directors shall shorten the term of any incumbent director.



(c) Notwithstanding any other provisions of this Charter or Act of Incorporation or the By-Laws of the Corporation (and notwithstanding the fact that some lesser percentage may be specified by law, this Charter or Act of Incorporation or the ByLaws of the Corporation), any director or the entire Board of Directors of the Corporation may be removed at any time without cause, but only by the affirmative vote of the holders of two-thirds or more of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) cast at a meeting of the stockholders called for that purpose.

(d) Nominations for the election of directors may be made by the Board of Directors or by any stockholder entitled to vote for the election of directors. Such nominations shall be made by notice in writing, delivered or mailed by first class United States mail, postage prepaid, to the Secretary of the Corporation not less than 14 days nor more than 50 days prior to any meeting of the stockholders called for the election of directors; provided, however, that if less than 21 days' notice of the meeting is given to stockholders, such written notice shall be delivered or mailed, as prescribed, to the Secretary of the Corporation not later than the close of the seventh day following the day on which notice of the meeting was mailed to stockholders. Notice of nominations which are proposed by the Board of Directors shall be given by the Chairman on behalf of the Board.

(e) Each notice under subsection (d) shall set forth (i) the name, age, business address and, if known, residence address of each nominee proposed in such notice, (ii) the principal occupation or employment of such nominee and (iii) the number of shares of stock of the Corporation which are beneficially owned by each such nominee.

(f) The Chairman of the meeting may, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the foregoing

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procedure, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

(g) No action required to be taken or which may be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, and the power of stockholders to consent in writing, without a meeting, to the taking of any action is specifically denied.

Sixth: - The Directors shall choose such officers, agent and servants as may be provided in the By-Laws as they may from time to time find necessary or proper.

Seventh: - The Corporation hereby created is hereby given the same powers, rights and privileges as may be conferred upon corporations organized under the Act entitled "An Act Providing a General Corporation Law", approved March 10, 1899, as from time to time amended.



Eighth: - This Act shall be deemed and taken to be a private Act.

Ninth: - This Corporation is to have perpetual existence.

Tenth: - The Board of Directors, by resolution passed by a majority of the whole Board, may designate any of their number to constitute an Executive Committee, which Committee, to the extent provided in said resolution, or in the By-Laws of the Company, shall have and may exercise all of the powers of the Board of Directors in the management of the business and affairs of the Corporation, and shall have power to authorize the seal of the Corporation to be affixed to all papers which may require it.

Eleventh: - The private property of the stockholders shall not be liable for the payment of corporate debts to any extent whatever.

Twelfth: - The Corporation may transact business in any part of the world.

Thirteenth: - The Board of Directors of the Corporation is expressly authorized to make, alter or repeal the By-Laws of the Corporation by a vote of the majority of the entire Board. The stockholders may make, alter or repeal any By-Law whether or not adopted by them, provided however, that any such additional By-Laws, alterations or repeal may be adopted only by the affirmative vote of the holders of two-thirds or more of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class).

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Fourteenth: - Meetings of the Directors may be held outside of the State of Delaware at such places as may be from time to time designated by the Board, and the Directors may keep the books of the Company outside of the State of Delaware at such places as may be from time to time designated by them.

Fifteenth: - (a) In addition to any affirmative vote required by law, and except as otherwise expressly provided in sections (b) and (c) of this Article Fifteenth:

(A) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with or into (i) any Interested Stockholder (as hereinafter defined) or (ii) any other corporation (whether or not itself an Interested Stockholder), which, after such merger or consolidation, would be an Affiliate (as hereinafter defined) of an Interested Stockholder, or

(B) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of related transactions) to or with any Interested Stockholder or any Affiliate of any Interested Stockholder of any assets of the

Corporation or any Subsidiary having an aggregate fair market value of \$1,000,000 or more, or

(C) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of related transactions) of any securities of the Corporation or any Subsidiary to any Interested Stockholder or any Affiliate of any Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate fair market value of \$1,000,000 or more, or

(D) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation, or

(E) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any similar transaction (whether or not with or into or otherwise involving an Interested Stockholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which is directly or indirectly owned by any Interested Stockholder, or any Affiliate of any Interested Stockholder,

shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, considered for the purpose of this Article Fifteenth as one class ("Voting Shares").

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Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that some lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise.

(2) The term "business combination" as used in this Article Fifteenth shall mean any transaction which is referred to any one or more of clauses (A) through (E) of paragraph 1 of the section (a).

(b) The provisions of section (a) of this Article Fifteenth shall not be applicable to any particular business combination and such business combination shall require only such affirmative vote as is required by law and any other provisions of the Charter or Act of Incorporation of By-Laws if such business combination has been approved by a majority of the whole Board.

(c) For the purposes of this Article Fifteenth:

(1) A "person" shall mean any individual firm, corporation or other entity.

(2) "Interested Stockholder" shall mean, in respect of any business

combination, any person (other than the Corporation or any Subsidiary) who or which as of the record date for the determination of stockholders entitled to notice of and to vote on such business combination, or immediately prior to the consummation of any such transaction:

(A) is the beneficial owner, directly or indirectly, of more than 10% of the Voting Shares, or

(B) is an Affiliate of the Corporation and at any time within two years prior thereto was the beneficial owner, directly or indirectly, of not less than 10% of the then outstanding voting Shares, or

(C) is an assignee of or has otherwise succeeded in any share of capital stock of the Corporation which were at any time within two years prior thereto beneficially owned by any Interested Stockholder, and such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933.

(3) A person shall be the "beneficial owner" of any Voting Shares:

(A) which such person or any of its Affiliates and Associates (as hereafter

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defined) beneficially own, directly or indirectly, or

(B) which such person or any of its Affiliates or Associates has (i) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (ii) the right to vote pursuant to any agreement, arrangement or understanding, or

(C) which are beneficially owned, directly or indirectly, by any other person with which such first mentioned person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of capital stock of the Corporation.

(4) The outstanding Voting Shares shall include shares deemed owned through application of paragraph (3) above but shall not include any other Voting Shares which may be issuable pursuant to any agreement, or upon exercise of conversion rights, warrants or options or otherwise.

(5) "Affiliate" and "Associate" shall have the respective meanings given those terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on December 31, 1981.

(6) "Subsidiary" shall mean any corporation of which a majority of any

class of equity security (as defined in Rule 3a11-1 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect in December 31, 1981) is owned, directly or indirectly, by the Corporation; provided, however, that for the purposes of the definition of Investment Stockholder set forth in paragraph (2) of this section (c), the term "Subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the Corporation.

(d) majority of the directors shall have the power and duty to determine for the purposes of this Article Fifteenth on the basis of information known to them, (1) the number of Voting Shares beneficially owned by any person (2) whether a person is an Affiliate or Associate of another, (3) whether a person has an agreement, arrangement or understanding with another as to the matters referred to in paragraph (3) of section (c), or (4) whether the assets subject to any business combination or the consideration received for the issuance or transfer of securities by the Corporation, or any Subsidiary has an aggregate fair market value of \$1,000,000 or more.

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(e) Nothing contained in this Article Fifteenth shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

Sixteenth: Notwithstanding any other provision of this Charter or Act of Incorporation or the By-Laws of the Corporation (and in addition to any other vote that may be required by law, this Charter or Act of Incorporation by the By-Laws), the affirmative vote of the holders of at least two-thirds of the outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) shall be required to amend, alter or repeal any provision of Articles Fifth, Thirteenth, Fifteenth or Sixteenth of this Charter or Act of Incorporation.

Seventeenth: (a) a Director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except to the extent such exemption from liability or limitation thereof is not permitted under the Delaware General Corporation Laws as the same exists or may hereafter be amended.

(b) Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a Director of the Corporation existing hereunder with respect to any act or omission occurring prior to the time of such repeal or modification."

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EXHIBIT B

BY-LAWS

WILMINGTON TRUST COMPANY

WILMINGTON, DELAWARE

As existing on January 16, 1997

BY-LAWS OF WILMINGTON TRUST COMPANY

ARTICLE I

Stockholders' Meetings

Section 1. The Annual Meeting of Stockholders shall be held on the third Thursday in April each year at the principal office at the Company or at such other date, time, or place as may be designated by resolution by the Board of Directors.

Section 2. Special meetings of all stockholders may be called at any time by the Board of Directors, the Chairman of the Board or the President.

Section 3. Notice of all meetings of the stockholders shall be given by mailing to each stockholder at least ten (10) days before said meeting, at his last known address, a written or printed notice fixing the time and place of such meeting.

Section 4. A majority in the amount of the capital stock of the Company issued and outstanding on the record date, as herein determined, shall constitute a quorum at all meetings of stockholders for the transaction of any business, but the holders of a small number of shares may adjourn, from time to time, without further notice, until a quorum is secured. At each annual or special meeting of stockholders, each stockholder shall be entitled to one vote, either in person or by proxy, for each shares of stock registered in the stockholder's name on the books of the Company on the record date for any such meeting as determined herein.

ARTICLE II

Directors

Section 1. The number and classification of the Board of Directors shall be as set forth in the Charter of the Bank.

Section 2. No person who has attained the age of seventy-two (72) years shall be nominated for election to the Board of Directors of the Company, provided, however, that this limitation shall not apply to any person who was serving as director of the Company on September 16, 1971.

Section 3. The class of Directors so elected shall hold office for three

years or until their successors are elected and qualified.

Section 4. The affairs and business of the Company shall be managed and conducted by the Board of Directors.

Section 5. The Board of Directors shall meet at the principal office of the Company or elsewhere in its discretion at such times to be determined by a majority of its members, or at the call of the Chairman of the Board of Directors or the President.

Section 6. Special meetings of the Board of Directors may be called at any time by the Chairman of the Board of Directors or by the President, and shall be called upon the written request of a majority of the directors.

Section 7. A majority of the directors elected and qualified shall be necessary to constitute a quorum for the transaction of business at any meeting of the Board of Directors.

Section 8. Written notice shall be sent by mail to each director of any special meeting of the Board of Directors, and of any change in the time or place of any regular meeting, stating the time and place of such meeting, which shall be mailed not less than two days before the time of holding such meeting.

Section 9. In the event of the death, resignation, removal, inability to act, or disqualification of any director, the Board of Directors, although less than a quorum, shall have the right to elect the successor who shall hold office for the remainder of the full term of the class of directors in which the vacancy occurred, and until such director's successor shall have been duly elected and qualified.

Section 10. The Board of Directors at its first meeting after its election by the stockholders shall appoint an Executive Committee, a Trust Committee, an Audit Committee and a Compensation Committee, and shall elect from its own members a Chairman of the Board of Directors and a President who may be the same person. The Board of Directors shall also elect at such meeting a Secretary and a Treasurer, who may be the same person, may appoint at any time such other committees and elect or appoint such other officers as it may deem advisable. The Board of Directors may also elect at such meeting one or more Associate Directors.

Section 11. The Board of Directors may at any time remove, with or without cause, any member of any Committee appointed by it or any associate director or officer elected by it and may appoint or elect his successor.

Section 12. The Board of Directors may designate an officer to be in charge of such of the departments or division of the Company as it may deem advisable.

ARTICLE III  
Committees

Section 1. Executive Committee

(A) The Executive Committee shall be composed of not more than nine members who shall be selected by the Board of Directors from its own members and who shall hold office during the pleasure of the Board.

(B) The Executive Committee shall have all the powers of the Board of Directors when it is not in session to transact all business for and in behalf of the Company that may be brought before it.

(C) The Executive Committee shall meet at the principal office of the Company or elsewhere in its discretion at such times to be determined by a majority of its members, or at the call of the Chairman of the Executive Committee or at the call of the Chairman of the Board of Directors. The majority of its members shall be necessary to constitute a quorum for the transaction of business. Special meetings of the Executive Committee may be held at any time when a quorum is present.

(D) Minutes of each meeting of the Executive Committee shall be kept and submitted to the Board of Directors at its next meeting.

(E) The Executive Committee shall advise and superintend all investments that may be made of the funds of the Company, and shall direct the disposal of the same, in accordance with such rules and regulations as the Board of Directors from time to time make.

(F) In the event of a state of disaster of sufficient severity to prevent the conduct and management of the affairs and business of the Company by its directors and officers as contemplated by these By-Laws any two available members of the Executive Committee as constituted immediately prior to such disaster shall constitute a quorum of that Committee for the full conduct and management of the affairs and business of the Company in accordance with the provisions of Article III of these By-Laws; and if less than three members of the Trust Committee is constituted immediately prior to such disaster shall be available for the transaction of its business, such Executive Committee shall also be empowered to exercise all of the powers reserved to the Trust Committee under Article III Section 2 hereof. In the event of the unavailability, at such time, of a minimum of two members of such Executive Committee, any three available directors shall constitute the Executive Committee for the full conduct and management of the affairs and business of the Company in accordance with the foregoing provisions of this Section. This By-Law shall be subject to implementation by Resolutions of the Board of Directors presently existing or

hereafter passed from time to time for that purpose, and any provisions of these By-Laws (other than this Section) and any resolutions which are contrary to the provisions of this Section or to the provisions of any such implementary Resolutions shall be suspended during such a disaster period until it shall be determined by any interim Executive Committee acting under this section that it

shall be to the advantage of the Company to resume the conduct and management of its affairs and business under all of the other provisions of these By-Laws.

## Section 2. Trust Committee

(A) The Trust Committee shall be composed of not more than thirteen members who shall be selected by the Board of Directors, a majority of whom shall be members of the Board of Directors and who shall hold office during the pleasure of the Board.

(B) The Trust Committee shall have general supervision over the Trust Department and the investment of trust funds, in all matters, however, being subject to the approval of the Board of Directors.

(C) The Trust Committee shall meet at the principal office of the Company or elsewhere in its discretion at such times to be determined by a majority of its members or at the call of its chairman. A majority of its members shall be necessary to constitute a quorum for the transaction of business.

(D) Minutes of each meeting of the Trust Committee shall be kept and promptly submitted to the Board of Directors.

(E) The Trust Committee shall have the power to appoint Committees and/or designate officers or employees of the Company to whom supervision over the investment of trust funds may be delegated when the Trust Committee is not in session.

## Section 3. Audit Committee

(A) The Audit Committee shall be composed of five members who shall be selected by the Board of Directors from its own members, none of whom shall be an officer of the Company, and shall hold office at the pleasure of the Board.

(B) The Audit Committee shall have general supervision over the Audit Division in all matters however subject to the approval of the Board of Directors; it shall consider all matters brought to its attention by the officer in charge of the Audit Division, review all reports of examination of the Company made by any governmental agency or such independent auditor employed for that purpose, and make such recommendations to the Board of Directors with respect thereto or with respect to any other matters pertaining to

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auditing the Company as it shall deem desirable.

(C) The Audit Committee shall meet whenever and wherever the majority of its members shall deem it to be proper for the transaction of its business, and a majority of its Committee shall constitute a quorum.

## Section 4. Compensation Committee

(A) The Compensation Committee shall be composed of not more



than five (5) members who shall be selected by the Board of Directors from its own members who are not officers of the Company and who shall hold office during the pleasure of the Board.

(B) The Compensation Committee shall in general advise upon all matters of policy concerning the Company brought to its attention by the management and from time to time review the management of the Company, major organizational matters, including salaries and employee benefits and specifically shall administer the Executive Incentive Compensation Plan.

(C) Meetings of the Compensation Committee may be called at any time by the Chairman of the Compensation Committee, the Chairman of the Board of Directors, or the President of the Company.

#### Section 5. Associate Directors

(A) Any person who has served as a director may be elected by the Board of Directors as an associate director, to serve during the pleasure of the Board.

(B) An associate director shall be entitled to attend all directors meetings and participate in the discussion of all matters brought to the Board, with the exception that he would have no right to vote. An associate director will be eligible for appointment to Committees of the Company, with the exception of the Executive Committee, Audit Committee and Compensation Committee, which must be comprised solely of active directors.

#### Section 6. Absence or Disqualification of Any Member of a Committee

(A) In the absence or disqualification of any member of any Committee created under Article III of the By-Laws of this Company, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absence or disqualified member.

### ARTICLE IV Officers

Section 1. The Chairman of the Board of Directors shall preside at all meetings of the Board and shall have such further authority and powers and shall perform such duties as the Board of Directors may from time to time confer and direct. He shall also exercise such powers and perform such duties as may from time to time be agreed upon between himself and the President of the Company.

Section 2. The Vice Chairman of the Board. The Vice Chairman of the Board of Directors shall preside at all meetings of the Board of Directors at which the Chairman of the Board shall not be present and shall have such further authority and powers and shall perform such duties as the Board of Directors or the Chairman of the Board may from time to time confer and direct.

Section 3. The President shall have the powers and duties pertaining to the office of the President conferred or imposed upon him by statute or assigned to him by the Board of Directors in the absence of the Chairman of the Board the President shall have the powers and duties of the Chairman of the Board.

Section 4. The Chairman of the Board of Directors or the President as designated by the Board of Directors, shall carry into effect all legal directions of the Executive Committee and of the Board of Directors, and shall at all times exercise general supervision over the interest, affairs and operations of the Company and perform all duties incident to his office.

Section 5. There may be one or more Vice Presidents, however denominated by the Board of Directors, who may at any time perform all the duties of the Chairman of the Board of Directors and/or the President and such other powers and duties as may from time to time be assigned to them by the Board of Directors, the Executive Committee, the Chairman of the Board or the President and by the officer in charge of the department or division to which they are assigned.

Section 6. The Secretary shall attend to the giving of notice of meetings of the stockholders and the Board of Directors, as well as the Committees thereof, to the keeping of accurate minutes of all such meetings and to recording the same in the minute books of the Company. In addition to the other notice requirements of these By-Laws and as may be practicable under the circumstances, all such notices shall be in writing and mailed well in advance of the scheduled date of any other meeting. He shall have custody of the corporate seal and shall affix the same to any documents requiring such corporate seal and to attest the same.

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Section 7. The Treasurer shall have general supervision over all assets and liabilities of the Company. He shall be custodian of and responsible for all monies, funds and valuables of the Company and for the keeping of proper records of the evidence of property or indebtedness and of all the transactions of the Company. He shall have general supervision of the expenditures of the Company and shall report to the Board of Directors at each regular meeting of the condition of the Company, and perform such other duties as may be assigned to him from time to time by the Board of Directors of the Executive Committee.

Section 8. There may be a Controller who shall exercise general supervision over the internal operations of the Company, including accounting, and shall render to the Board of Directors at appropriate times a report relating to the general condition and internal operations of the Company.

There may be one or more subordinate accounting or controller officers however denominated, who may perform the duties of the Controller and such duties as may be prescribed by the Controller.

Section 9. The officer designated by the Board of Directors to be in charge of the Audit Division of the Company with such title as the Board of Directors shall prescribe, shall report to and be directly responsible only to the Board of Directors.

There shall be an Auditor and there may be one or more Audit Officers, however denominated, who may perform all the duties of the Auditor and such duties as may be prescribed by the officer in charge of the Audit Division.

Section 10. There may be one or more officers, subordinate in rank to all Vice Presidents with such functional titles as shall be determined from time to time by the Board of Directors, who shall ex officio hold the office Assistant Secretary of this Company and who may perform such duties as may be prescribed by the officer in charge of the department or division to whom they are assigned.

Section 11. The powers and duties of all other officers of the Company shall be those usually pertaining to their respective offices, subject to the direction of the Board of Directors, the Executive Committee, Chairman of the Board of Directors or the President and the officer in charge of the department or division to which they are assigned.

## ARTICLE V

### Stock and Stock Certificates

Section 1. Shares of stock shall be transferrable on the books of the Company and a transfer book shall be kept in which all transfers of stock shall be recorded.

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Section 2. Certificate of stock shall bear the signature of the President or any Vice President, however denominated by the Board of Directors and countersigned by the Secretary or Treasurer or an Assistant Secretary, and the seal of the corporation shall be engraved thereon. Each certificate shall recite that the stock represented thereby is transferrable only upon the books of the Company by the holder thereof or his attorney, upon surrender of the certificate properly endorsed. Any certificate of stock surrendered to the Company shall be cancelled at the time of transfer, and before a new certificate or certificates shall be issued in lieu thereof. Duplicate certificates of stock shall be issued only upon giving such security as may be satisfactory to the Board of Directors or the Executive Committee.

Section 3. The Board of Directors of the Company is authorized to fix in advance a record date for the determination of the stockholders entitled to notice of, and to vote at, any meeting of stockholders and any adjournment thereof, or entitled to receive payment of any dividend, or to any allotment or rights, or to exercise any rights in respect of any change, conversion or exchange of capital stock, or in connection with obtaining the consent of stockholders for any purpose, which record date shall not be more than 60 nor less than 10 days proceeding the date of any meeting of stockholders or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining such consent.

## ARTICLE VI

Section 1. The corporate seal of the Company shall be in the following form:

Between two concentric circles the words "Wilmington Trust Company" within the inner circle the words "Wilmington, Delaware."

ARTICLE VII  
Fiscal Year

Section 1. The fiscal year of the Company shall be the calendar year.

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ARTICLE VIII  
Execution of Instruments of the Company

Section 1. The Chairman of the Board, the President or any Vice President, however denominated by the Board of Directors, shall have full power and authority to enter into, make, sign, execute, acknowledge and/or deliver and the Secretary or any Assistant Secretary shall have full power and authority to attest and affix the corporate seal of the Company to any and all deeds, conveyances, assignments, releases, contracts, agreements, bonds, notes, mortgages and all other instruments incident to the business of this Company or in acting as executor, administrator, guardian, trustee, agent or in any other fiduciary or representative capacity by any and every method of appointment or by whatever person, corporation, court officer or authority in the State of Delaware, or elsewhere, without any specific authority, ratification, approval or confirmation by the Board of Directors or the Executive Committee, and any and all such instruments shall have the same force and validity as though expressly authorized by the Board of Directors and/or the Executive Committee.

ARTICLE IX  
Compensation of Directors and Members of Committees

Section 1. Directors and associate directors of the Company, other than salaried officers of the Company, shall be paid such reasonable honoraria or fees for attending meetings of the Board of Directors as the Board of Directors may from time to time determine. Directors and associate directors who serve as members of committees, other than salaried employees of the Company, shall be paid such reasonable honoraria or fees for services as members of committees as the Board of Directors shall from time to time determine and directors and associate directors may be employed by the Company for such special services as the Board of Directors may from time to time determine and shall be paid for such special services so performed reasonable compensation as may be determined by the Board of Directors.

ARTICLE X  
Indemnification

Section 1. (A) The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding") by reason of the fact that he, or a person for whom he is the legal representative, is or was a director, officer, employee or agent of the Corporation or is or

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was serving at the request of the Corporation as a director, officer, employee, fiduciary or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person. The Corporation shall indemnify a person in connection with a proceeding initiated by such person only if the proceeding was authorized by the Board of Directors of the Corporation.

(B) The Corporation shall pay the expenses incurred in defending any proceeding in advance of its final disposition, provided, however, that the payment of expenses incurred by a Director officer in his capacity as a Director or officer in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Director or officer to repay all amounts advanced if it should be ultimately determined that the Director or officer is not entitled to be indemnified under this Article or otherwise.

(C) If a claim for indemnification or payment of expenses, under this Article X is not paid in full within ninety days after a written claim therefor has been received by the Corporation the claimant may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the claimant was not entitled to the requested indemnification of payment of expenses under applicable law.

(D) The rights conferred on any person by this Article X shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Charter or Act of Incorporation, these By-Laws, agreement, vote of stockholders or disinterested Directors or otherwise.

(E) Any repeal or modification of the foregoing provisions of this Article X shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

ARTICLE XI  
Amendments to the By-Laws

Section 1. These By-Laws may be altered, amended or repealed, in whole

or in part, and any new By-Law or By-Laws adopted at any regular or special meeting of the Board of Directors by a vote of the majority of all the members of the Board of Directors then in office.

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EXHIBIT C

Section 321(b) Consent

Pursuant to Section 321(b) of the Trust Indenture Act of 1939, as amended, Wilmington Trust Company hereby consents that reports of examinations by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon requests therefor.

WILMINGTON TRUST COMPANY

Dated: March 23, 1999

By: /s/ Norma P. Closs

-----

Name: Norma P. Closs

Title: Vice President

EXHIBIT D

NOTICE

This form is intended to assist state nonmember banks and savings banks with state publication requirements. It has not been approved by any state banking authorities. Refer to your appropriate state banking authorities for your state publication requirements.

R E P O R T   O F   C O N D I T I O N

Consolidating domestic subsidiaries of the

-----  
WILMINGTON TRUST COMPANY

of

WILMINGTON  
-----

Name of Bank

City

in the State of DELAWARE, at the close of business on December 31, 1998.

<TABLE>

<CAPTION>

ASSETS

Thousands of dollars

<S>

<C>

Cash and balances due from depository institutions:

Noninterest-bearing balances and currency and coins..... 194,839

Interest-bearing balances..... 0

Held-to-maturity securities..... 73,911

Available-for-sale securities..... 1,228,194

Federal funds sold and securities purchased under agreements to resell..... 203,500

Loans and lease financing receivables:

Loans and leases, net of unearned income..... 4,167,235

LESS: Allowance for loan and lease losses..... 66,897

LESS: Allocated transfer risk reserve..... 0

Loans and leases, net of unearned income, allowance, and reserve... 4,100,338

Assets held in trading accounts..... 0

Premises and fixed assets (including capitalized leases)..... 139,079

Other real estate owned..... 1,532

Investments in unconsolidated subsidiaries and associated companies..... 1,052

Customers' liability to this bank on acceptances outstanding..... 0

Intangible assets..... 3,047

Other assets..... 98,867

Total assets..... 6,044,359

</TABLE>

CONTINUED ON NEXT PAGE

<TABLE>

<S>

<C>

LIABILITIES

Deposits:

In domestic offices..... 4,474,659

Noninterest-bearing ..... 1,037,549

Interest-bearing..... 3,437,110

Federal funds purchased and Securities sold under agreements to repurchase. 390,060

Demand notes issued to the U.S. Treasury..... 18,944

Trading liabilities (from Schedule RC-D)..... 0

Other borrowed money:..... //

With original maturity of one year or less..... 555,000

With original maturity of more than one year..... 43,000

Bank's liability on acceptances executed and outstanding..... 0

Subordinated notes and debentures..... 0

Other liabilities (from Schedule RC-G)..... 90,951

Total liabilities..... 5,572,614

## EQUITY CAPITAL

Perpetual preferred stock and related surplus.....	0
Common Stock.....	500
Surplus (exclude all surplus related to preferred stock).....	62,118
Undivided profits and capital reserves.....	403,264
Net unrealized holding gains (losses) on available-for-sale securities.....	5,863
Total equity capital.....	471,745
Total liabilities, limited-life preferred stock, and equity capital.....	6,044,359

</TABLE>



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) ☒ |X|

WILMINGTON TRUST COMPANY  
(Exact name of trustee as specified in its charter)

Delaware  
(State of incorporation)

51-0055023  
(I.R.S. employer identification no.)

Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890  
(Address of principal executive offices)

Cynthia L. Corliss  
Vice President and Trust Counsel  
Wilmington Trust Company  
Rodney Square North  
Wilmington, Delaware 19890  
(302) 651-8516  
(Name, address and telephone number of agent for service)

POGO PRODUCING COMPANY  
POGO TRUST II  
(Exact name of obligor as specified in its charter)

Delaware  
Delaware  
(State of incorporation)

74-1659398  
Applied For  
(I.R.S. employer identification no.)

5 Greenway Plaza  
Suite 2700  
Houston, Texas  
(Address of principal executive offices)

77046  
(Zip Code)

Preferred Trust Securities of Pogo Trust II

=====

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.

Federal Deposit Insurance Co.	State Bank Commissioner
Five Penn Center	Dover, Delaware
Suite #2901	
Philadelphia, PA	

(b) Whether it is authorized to exercise corporate trust powers.

The trustee is authorized to exercise corporate trust powers.

ITEM 2. AFFILIATIONS WITH THE OBLIGOR.

If the obligor is an affiliate of the trustee, describe each affiliation:

Based upon an examination of the books and records of the trustee and upon information furnished by the obligor, the obligor is not an affiliate of the trustee.

ITEM 3. LIST OF EXHIBITS.

List below all exhibits filed as part of this Statement of Eligibility and Qualification.

- A. Copy of the Charter of Wilmington Trust Company, which includes the certificate of authority of Wilmington Trust Company to commence business and the authorization of Wilmington Trust Company to exercise corporate trust powers.
- B. Copy of By-Laws of Wilmington Trust Company.
- C. Consent of Wilmington Trust Company required by Section 321(b) of Trust Indenture Act.
- D. Copy of most recent Report of Condition of Wilmington Trust Company.

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Wilmington Trust Company, a corporation organized and existing under the laws of Delaware, has duly caused this Statement of Eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Wilmington and State of Delaware on the 23rd day of March, 1999.

[SEAL]

Attest: /s/ Patricia A. Evans  
-----  
Assistant Secretary

By: /s/ Norma P. Closs  
-----  
Name: Norma P. Closs  
Title: Vice President

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EXHIBIT A

AMENDED CHARTER

Wilmington Trust Company

Wilmington, Delaware

As existing on May 9, 1987

Amended Charter  
or  
Act of Incorporation  
of  
Wilmington Trust Company

Wilmington Trust Company, originally incorporated by an Act of the General Assembly of the State of Delaware, entitled "An Act to Incorporate the Delaware Guarantee and Trust Company", approved March 2, A.D. 1901, and the name of which company was changed to "Wilmington Trust Company" by an amendment filed in the Office of the Secretary of State on March 18, A.D. 1903, and the Charter or Act of Incorporation of which company has been from time to time amended and changed by merger agreements pursuant to the corporation law for state banks and trust companies of the State of Delaware, does hereby alter and amend its Charter or Act of Incorporation so that the same as so altered and amended shall in its entirety read as follows:

First: - The name of this corporation is Wilmington Trust Company.

Second: - The location of its principal office in the State of Delaware is at Rodney Square North, in the City of Wilmington, County of New Castle; the name of its resident agent is Wilmington Trust Company whose address is Rodney Square North, in said City. In addition to such principal office, the said corporation maintains and operates branch offices in the City of Newark, New Castle County, Delaware, the Town of Newport, New Castle County, Delaware, at Claymont, New Castle County, Delaware, at Greenville, New Castle County Delaware, and at Milford Cross Roads, New Castle County, Delaware, and shall be empowered to open, maintain and operate branch offices at Ninth and Shipley Streets, 418 Delaware Avenue, 2120 Market Street, and 3605 Market Street, all in the City of Wilmington, New Castle County, Delaware, and such other branch offices or places of business as may be authorized from time to time by the agency or agencies of the government of the State of

Delaware empowered to confer such authority.

Third: - (a) The nature of the business and the objects and purposes proposed to be transacted, promoted or carried on by this Corporation are to do any or all of the things herein mentioned as fully and to the same extent as natural persons might or could do and in any part of the world, viz.:

(1) To sue and be sued, complain and defend in any Court of law or equity and to make and use a common seal, and alter the seal at pleasure, to hold,

purchase, convey, mortgage or otherwise deal in real and personal estate and property, and to appoint such officers and agents as the business of the Corporation shall require, to make by-laws not inconsistent with the Constitution or laws of the United States or of this State, to discount bills, notes or other evidences of debt, to receive deposits of money, or securities for money, to buy gold and silver bullion and foreign coins, to buy and sell bills of exchange, and generally to use, exercise and enjoy all the powers, rights, privileges and franchises incident to a corporation which are proper or necessary for the transaction of the business of the Corporation hereby created.

(2) To insure titles to real and personal property, or any estate or interests therein, and to guarantee the holder of such property, real or personal, against any claim or claims, adverse to his interest therein, and to prepare and give certificates of title for any lands or premises in the State of Delaware, or elsewhere.

(3) To act as factor, agent, broker or attorney in the receipt, collection, custody, investment and management of funds, and the purchase, sale, management and disposal of property of all descriptions, and to prepare and execute all papers which may be necessary or proper in such business.

(4) To prepare and draw agreements, contracts, deeds, leases, conveyances, mortgages, bonds and legal papers of every description, and to carry on the business of conveyancing in all its branches.

(5) To receive upon deposit for safekeeping money, jewelry, plate, deeds, bonds and any and all other personal property of every sort and kind, from executors, administrators, guardians, public officers, courts, receivers, assignees, trustees, and from all fiduciaries, and from all other persons and individuals, and from all corporations whether state, municipal, corporate or private, and to rent boxes, safes, vaults and other receptacles for such property.

(6) To act as agent or otherwise for the purpose of registering, issuing, certificating, countersigning, transferring or underwriting the stock, bonds or other obligations of any corporation, association, state or municipality, and may receive

and manage any sinking fund therefor on such terms as may be agreed upon between the two parties, and in like manner may act as Treasurer of any corporation or municipality.

(7) To act as Trustee under any deed of trust, mortgage, bond or other

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instrument issued by any state, municipality, body politic, corporation, association or person, either alone or in conjunction with any other person or persons, corporation or corporations.

(8) To guarantee the validity, performance or effect of any contract or agreement, and the fidelity of persons holding places of responsibility or trust; to become surety for any person, or persons, for the faithful performance of any trust, office, duty, contract or agreement, either by itself or in conjunction with any other person, or persons, corporation, or corporations, or in like manner become surety upon any bond, recognizance, obligation, judgment, suit, order, or decree to be entered in any court of record within the State of Delaware or elsewhere, or which may now or hereafter be required by any law, judge, officer or court in the State of Delaware or elsewhere.

(9) To act by any and every method of appointment as trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian, bailee, or in any other trust capacity in the receiving, holding, managing, and disposing of any and all estates and property, real, personal or mixed, and to be appointed as such trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian or bailee by any persons, corporations, court, officer, or authority, in the State of Delaware or elsewhere; and whenever this Corporation is so appointed by any person, corporation, court, officer or authority such trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian, bailee, or in any other trust capacity, it shall not be required to give bond with surety, but its capital stock shall be taken and held as security for the performance of the duties devolving upon it by such appointment.

(10) And for its care, management and trouble, and the exercise of any of its powers hereby given, or for the performance of any of the duties which it may undertake or be called upon to perform, or for the assumption of any responsibility the said Corporation may be entitled to receive a proper compensation.

(11) To purchase, receive, hold and own bonds, mortgages, debentures, shares of capital stock, and other securities, obligations, contracts and evidences of indebtedness, of any private, public or municipal corporation within and without the State of Delaware, or of the Government of the United States, or of any state, territory, colony, or possession thereof, or of any

foreign government or country; to receive, collect, receipt for, and dispose of

interest, dividends and income upon and from any of the bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property held and owned by it, and to exercise in respect of all such bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property, any and all the rights, powers and privileges of individual owners thereof, including the right to vote thereon; to invest and deal in and with any of the moneys of the Corporation upon such securities and in such manner as it may think fit and proper, and from time to time to vary or realize such investments; to issue bonds and secure the same by pledges or deeds of trust or mortgages of or upon the whole or any part of the property held or owned by the Corporation, and to sell and pledge such bonds, as and when the Board of Directors shall determine, and in the promotion of its said corporate business of investment and to the extent authorized by law, to lease, purchase, hold, sell, assign, transfer, pledge, mortgage and convey real and personal property of any name and nature and any estate or interest therein.

(b) In furtherance of, and not in limitation, of the powers conferred by the laws of the State of Delaware, it is hereby expressly provided that the said Corporation shall also have the following powers:

(1) To do any or all of the things herein set forth, to the same extent as natural persons might or could do, and in any part of the world.

(2) To acquire the good will, rights, property and franchises and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock of this Corporation, bonds or otherwise; to hold or in any manner to dispose of the whole or any part of the property so purchased; to conduct in any lawful manner the whole or any part of any business so acquired, and to exercise all the powers necessary or convenient in and about the conduct and management of such business.

(3) To take, hold, own, deal in, mortgage or otherwise lien, and to lease, sell, exchange, transfer, or in any manner whatever dispose of property, real, personal or mixed, wherever situated.

(4) To enter into, make, perform and carry out contracts of every kind with any person, firm, association or corporation, and, without limit as to amount, to draw, make, accept, endorse, discount, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures, and other

negotiable or transferable instruments.

(5) To have one or more offices, to carry on all or any of its operations and businesses, without restriction to the same extent as natural persons might or could do, to purchase or otherwise acquire, to hold, own, to mortgage, sell, convey or otherwise dispose of, real and personal property, of every class and description, in any State, District, Territory or Colony of the United States, and in any foreign country or place.

(6) It is the intention that the objects, purposes and powers specified and clauses contained in this paragraph shall (except where otherwise expressed in said paragraph) be nowise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in this charter, but that the objects, purposes and powers specified in each of the clauses of this paragraph shall be regarded as independent objects, purposes and powers.

Fourth: - (a) The total number of shares of all classes of stock which the Corporation shall have authority to issue is forty-one million (41,000,000) shares, consisting of:

(1) One million (1,000,000) shares of Preferred stock, par value \$10.00 per share (hereinafter referred to as "Preferred Stock"); and

(2) Forty million (40,000,000) shares of Common Stock, par value \$1.00 per share (hereinafter referred to as "Common Stock").

(b) Shares of Preferred Stock may be issued from time to time in one or more series as may from time to time be determined by the Board of Directors each of said series to be distinctly designated. All shares of any one series of Preferred Stock shall be alike in every particular, except that there may be different dates from which dividends, if any, thereon shall be cumulative, if made cumulative. The voting powers and the preferences and relative, participating, optional and other special rights of each such series, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding; and, subject to the provisions of subparagraph 1 of Paragraph (c) of this Article Fourth, the Board of Directors of the Corporation is hereby expressly granted authority to fix by resolution or resolutions adopted prior to the issuance of any shares of a particular series of Preferred Stock, the voting powers and the designations, preferences and relative, optional and other special rights, and the qualifications, limitations and restrictions of such series, including, but without limiting the generality of the foregoing, the following:

(1) The distinctive designation of, and the number of shares of Preferred Stock which shall constitute such series, which number

may be increased (except where otherwise provided by the Board of Directors) or decreased (but not below the number of shares thereof then outstanding) from time to time by like action of the Board of Directors;

(2) The rate and times at which, and the terms and conditions on which, dividends, if any, on Preferred Stock of such series shall be paid, the extent of the preference or relation, if any, of such dividends to the dividends payable on any other class or classes, or series of the same or other class of stock and whether such dividends shall be cumulative or non-cumulative;

(3) The right, if any, of the holders of Preferred Stock of such series to convert the same into or exchange the same for, shares of any other class or classes or of any series of the same or any other class or classes of stock of the Corporation and the terms and conditions of such conversion or exchange;

(4) Whether or not Preferred Stock of such series shall be subject to redemption, and the redemption price or prices and the time or times at which, and the terms and conditions on which, Preferred Stock of such series may be redeemed.

(5) The rights, if any, of the holders of Preferred Stock of such series upon the voluntary or involuntary liquidation, merger, consolidation, distribution or sale of assets, dissolution or winding-up, of the Corporation.

(6) The terms of the sinking fund or redemption or purchase account, if any, to be provided for the Preferred Stock of such series; and

(7) The voting powers, if any, of the holders of such series of Preferred Stock which may, without limiting the generality of the foregoing include the right, voting as a series or by itself or together with other series of Preferred Stock or all series of Preferred Stock as a class, to elect one or more directors of the Corporation if there shall have been a default in the payment of dividends on any one or more series of Preferred Stock or under such circumstances and on such conditions as the Board of Directors may determine.

(c) (1) After the requirements with respect to preferential dividends on the Preferred Stock (fixed in accordance with the provisions of section (b) of this Article Fourth), if any, shall have been met and after the Corporation shall have complied with all the requirements, if any, with respect to the setting aside of sums

as sinking funds or redemption or purchase accounts (fixed in accordance with the provisions of section (b) of this Article Fourth), and subject further to any conditions which may be fixed in accordance with the provisions of section (b) of this Article Fourth, then and not otherwise



the holders of Common Stock shall be entitled to receive such dividends as may be declared from time to time by the Board of Directors.

(2) After distribution in full of the preferential amount, if any, (fixed in accordance with the provisions of section (b) of this Article Fourth), to be distributed to the holders of Preferred Stock in the event of voluntary or involuntary liquidation, distribution or sale of assets, dissolution or winding-up, of the Corporation, the holders of the Common Stock shall be entitled to receive all of the remaining assets of the Corporation, tangible and intangible, of whatever kind available for distribution to stockholders ratably in proportion to the number of shares of Common Stock held by them respectively.

(3) Except as may otherwise be required by law or by the provisions of such resolution or resolutions as may be adopted by the Board of Directors pursuant to section (b) of this Article Fourth, each holder of Common Stock shall have one vote in respect of each share of Common Stock held on all matters voted upon by the stockholders.

(d) No holder of any of the shares of any class or series of stock or of options, warrants or other rights to purchase shares of any class or series of stock or of other securities of the Corporation shall have any preemptive right to purchase or subscribe for any unissued stock of any class or series or any additional shares of any class or series to be issued by reason of any increase of the authorized capital stock of the Corporation of any class or series, or bonds, certificates of indebtedness, debentures or other securities convertible into or exchangeable for stock of the Corporation of any class or series, or carrying any right to purchase stock of any class or series, but any such unissued stock, additional authorized issue of shares of any class or series of stock or securities convertible into or exchangeable for stock, or carrying any right to purchase stock, may be issued and disposed of pursuant to resolution of the Board of Directors to such persons, firms, corporations or associations, whether such holders or others, and upon such terms as may be deemed advisable by the Board of Directors in the exercise of its sole discretion.

(e) The relative powers, preferences and rights of each series of Preferred Stock in relation to the relative powers, preferences and rights of each other series of Preferred Stock shall, in each case, be as fixed from time to time by the Board of

Directors in the resolution or resolutions adopted pursuant to authority granted in section (b) of this Article Fourth and the consent, by class or series vote or otherwise, of the holders of such of the series of Preferred Stock as are from time to time outstanding shall not be required for the issuance by the Board of Directors of any other series of Preferred Stock whether or not the powers, preferences and rights of such other series shall be fixed by the Board of Directors as senior to, or on a parity with, the powers, preferences and rights of such outstanding series, or any of them; provided, however, that the Board of

Directors may provide in the resolution or resolutions as to any series of Preferred Stock adopted pursuant to section (b) of this Article Fourth that the consent of the holders of a majority (or such greater proportion as shall be therein fixed) of the outstanding shares of such series voting thereon shall be required for the issuance of any or all other series of Preferred Stock.

(f) Subject to the provisions of section (e), shares of any series of Preferred Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

(g) Shares of Common Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

(h) The authorized amount of shares of Common Stock and of Preferred Stock may, without a class or series vote, be increased or decreased from time to time by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote thereon.

Fifth: - (a) The business and affairs of the Corporation shall be conducted and managed by a Board of Directors. The number of directors constituting the entire Board shall be not less than five nor more than twenty-five as fixed from time to time by vote of a majority of the whole Board, provided, however, that the number of directors shall not be reduced so as to shorten the term of any director at the time in office, and provided further, that the number of directors constituting the whole Board shall be twenty-four until otherwise fixed by a majority of the whole Board.

(b) The Board of Directors shall be divided into three classes, as nearly equal in number as the then total number of directors constituting the whole Board permits, with the term of office of one class expiring each year. At the annual meeting of stockholders in 1982, directors of the first class shall be elected to hold office for a term expiring at the next succeeding annual meeting, directors of the second class

shall be elected to hold office for a term expiring at the second succeeding annual meeting and directors of the third class shall be elected to hold office for a term expiring at the third succeeding annual meeting. Any vacancies in the Board of Directors for any reason, and any newly created directorships resulting from any increase in the directors, may be filled by the Board of Directors, acting by a majority of the directors then in office, although less than a quorum, and any directors so chosen shall hold office until the next annual election of directors. At such election, the stockholders shall elect a successor to such director to hold office until the next election of the class for which such director shall have been chosen and until his successor shall be elected and qualified. No decrease in the number of directors shall shorten the term of any incumbent director.

(c) Notwithstanding any other provisions of this Charter or Act of Incorporation or the By-Laws of the Corporation (and notwithstanding the fact that some lesser percentage may be specified by law, this Charter or Act of Incorporation or the ByLaws of the Corporation), any director or the entire Board of Directors of the Corporation may be removed at any time without cause, but only by the affirmative vote of the holders of two-thirds or more of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) cast at a meeting of the stockholders called for that purpose.

(d) Nominations for the election of directors may be made by the Board of Directors or by any stockholder entitled to vote for the election of directors. Such nominations shall be made by notice in writing, delivered or mailed by first class United States mail, postage prepaid, to the Secretary of the Corporation not less than 14 days nor more than 50 days prior to any meeting of the stockholders called for the election of directors; provided, however, that if less than 21 days' notice of the meeting is given to stockholders, such written notice shall be delivered or mailed, as prescribed, to the Secretary of the Corporation not later than the close of the seventh day following the day on which notice of the meeting was mailed to stockholders. Notice of nominations which are proposed by the Board of Directors shall be given by the Chairman on behalf of the Board.

(e) Each notice under subsection (d) shall set forth (i) the name, age, business address and, if known, residence address of each nominee proposed in such notice, (ii) the principal occupation or employment of such nominee and (iii) the number of shares of stock of the Corporation which are beneficially owned by each such nominee.

(f) The Chairman of the meeting may, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the foregoing

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procedure, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

(g) No action required to be taken or which may be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, and the power of stockholders to consent in writing, without a meeting, to the taking of any action is specifically denied.

Sixth: - The Directors shall choose such officers, agent and servants as may be provided in the By-Laws as they may from time to time find necessary or proper.

Seventh: - The Corporation hereby created is hereby given the same powers, rights and privileges as may be conferred upon corporations organized under the Act entitled "An Act Providing a General Corporation Law", approved March 10, 1899, as from time to time amended.

Eighth: - This Act shall be deemed and taken to be a private Act.

Ninth: - This Corporation is to have perpetual existence.

Tenth: - The Board of Directors, by resolution passed by a majority of the whole Board, may designate any of their number to constitute an Executive Committee, which Committee, to the extent provided in said resolution, or in the By-Laws of the Company, shall have and may exercise all of the powers of the Board of Directors in the management of the business and affairs of the Corporation, and shall have power to authorize the seal of the Corporation to be affixed to all papers which may require it.

Eleventh: - The private property of the stockholders shall not be liable for the payment of corporate debts to any extent whatever.

Twelfth: - The Corporation may transact business in any part of the world.

Thirteenth: - The Board of Directors of the Corporation is expressly authorized to make, alter or repeal the By-Laws of the Corporation by a vote of the majority of the entire Board. The stockholders may make, alter or repeal any By-Law whether or not adopted by them, provided however, that any such additional By-Laws, alterations or repeal may be adopted only by the affirmative vote of the holders of two-thirds or more of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class).

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Fourteenth: - Meetings of the Directors may be held outside of the State of Delaware at such places as may be from time to time designated by the Board, and the Directors may keep the books of the Company outside of the State of Delaware at such places as may be from time to time designated by them.

Fifteenth: - (a) In addition to any affirmative vote required by law, and except as otherwise expressly provided in sections (b) and (c) of this Article Fifteenth:

(A) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with or into (i) any Interested Stockholder (as hereinafter defined) or (ii) any other corporation (whether or not itself an Interested Stockholder), which, after such merger or consolidation, would be an Affiliate (as hereinafter defined) of an Interested Stockholder, or

(B) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of related transactions) to or with any Interested Stockholder or any Affiliate of any Interested Stockholder of any assets of the

Corporation or any Subsidiary having an aggregate fair market value of \$1,000,000 or more, or

(C) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of related transactions) of any securities of the Corporation or any Subsidiary to any Interested Stockholder or any Affiliate of any Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate fair market value of \$1,000,000 or more, or

(D) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation, or

(E) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any similar transaction (whether or not with or into or otherwise involving an Interested Stockholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which is directly or indirectly owned by any Interested Stockholder, or any Affiliate of any Interested Stockholder,

shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, considered for the purpose of this Article Fifteenth as one class ("Voting Shares").

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Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that some lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise.

(2) The term "business combination" as used in this Article Fifteenth shall mean any transaction which is referred to any one or more of clauses (A) through (E) of paragraph 1 of the section (a).

(b) The provisions of section (a) of this Article Fifteenth shall not be applicable to any particular business combination and such business combination shall require only such affirmative vote as is required by law and any other provisions of the Charter or Act of Incorporation of By-Laws if such business combination has been approved by a majority of the whole Board.

(c) For the purposes of this Article Fifteenth:

(1) A "person" shall mean any individual firm, corporation or other entity.

(2) "Interested Stockholder" shall mean, in respect of any business

combination, any person (other than the Corporation or any Subsidiary) who or which as of the record date for the determination of stockholders entitled to notice of and to vote on such business combination, or immediately prior to the consummation of any such transaction:

(A) is the beneficial owner, directly or indirectly, of more than 10% of the Voting Shares, or

(B) is an Affiliate of the Corporation and at any time within two years prior thereto was the beneficial owner, directly or indirectly, of not less than 10% of the then outstanding voting Shares, or

(C) is an assignee of or has otherwise succeeded in any share of capital stock of the Corporation which were at any time within two years prior thereto beneficially owned by any Interested Stockholder, and such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933.

(3) A person shall be the "beneficial owner" of any Voting Shares:

(A) which such person or any of its Affiliates and Associates (as hereafter

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defined) beneficially own, directly or indirectly, or

(B) which such person or any of its Affiliates or Associates has (i) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (ii) the right to vote pursuant to any agreement, arrangement or understanding, or

(C) which are beneficially owned, directly or indirectly, by any other person with which such first mentioned person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of capital stock of the Corporation.

(4) The outstanding Voting Shares shall include shares deemed owned through application of paragraph (3) above but shall not include any other Voting Shares which may be issuable pursuant to any agreement, or upon exercise of conversion rights, warrants or options or otherwise.

(5) "Affiliate" and "Associate" shall have the respective meanings given those terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on December 31, 1981.

(6) "Subsidiary" shall mean any corporation of which a majority of any

class of equity security (as defined in Rule 3a11-1 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect in December 31, 1981) is owned, directly or indirectly, by the Corporation; provided, however, that for the purposes of the definition of Investment Stockholder set forth in paragraph (2) of this section (c), the term "Subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the Corporation.

(d) majority of the directors shall have the power and duty to determine for the purposes of this Article Fifteenth on the basis of information known to them, (1) the number of Voting Shares beneficially owned by any person (2) whether a person is an Affiliate or Associate of another, (3) whether a person has an agreement, arrangement or understanding with another as to the matters referred to in paragraph (3) of section (c), or (4) whether the assets subject to any business combination or the consideration received for the issuance or transfer of securities by the Corporation, or any Subsidiary has an aggregate fair market value of \$1,000,000 or more.

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(e) Nothing contained in this Article Fifteenth shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

Sixteenth: Notwithstanding any other provision of this Charter or Act of Incorporation or the By-Laws of the Corporation (and in addition to any other vote that may be required by law, this Charter or Act of Incorporation by the By-Laws), the affirmative vote of the holders of at least two-thirds of the outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) shall be required to amend, alter or repeal any provision of Articles Fifth, Thirteenth, Fifteenth or Sixteenth of this Charter or Act of Incorporation.

Seventeenth: (a) a Director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except to the extent such exemption from liability or limitation thereof is not permitted under the Delaware General Corporation Laws as the same exists or may hereafter be amended.

(b) Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a Director of the Corporation existing hereunder with respect to any act or omission occurring prior to the time of such repeal or modification."

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EXHIBIT B

BY-LAWS

WILMINGTON TRUST COMPANY

WILMINGTON, DELAWARE

As existing on January 16, 1997

BY-LAWS OF WILMINGTON TRUST COMPANY

ARTICLE I

Stockholders' Meetings

Section 1. The Annual Meeting of Stockholders shall be held on the third Thursday in April each year at the principal office at the Company or at such other date, time, or place as may be designated by resolution by the Board of Directors.

Section 2. Special meetings of all stockholders may be called at any time by the Board of Directors, the Chairman of the Board or the President.

Section 3. Notice of all meetings of the stockholders shall be given by mailing to each stockholder at least ten (10) days before said meeting, at his last known address, a written or printed notice fixing the time and place of such meeting.

Section 4. A majority in the amount of the capital stock of the Company issued and outstanding on the record date, as herein determined, shall constitute a quorum at all meetings of stockholders for the transaction of any business, but the holders of a small number of shares may adjourn, from time to time, without further notice, until a quorum is secured. At each annual or special meeting of stockholders, each stockholder shall be entitled to one vote, either in person or by proxy, for each shares of stock registered in the stockholder's name on the books of the Company on the record date for any such meeting as determined herein.

ARTICLE II

Directors

Section 1. The number and classification of the Board of Directors shall be as set forth in the Charter of the Bank.

Section 2. No person who has attained the age of seventy-two (72) years shall be nominated for election to the Board of Directors of the Company, provided, however, that this limitation shall not apply to any person who was serving as director of the Company on September 16, 1971.

Section 3. The class of Directors so elected shall hold office for three



years or until their successors are elected and qualified.

Section 4. The affairs and business of the Company shall be managed and conducted by the Board of Directors.

Section 5. The Board of Directors shall meet at the principal office of the Company or elsewhere in its discretion at such times to be determined by a majority of its members, or at the call of the Chairman of the Board of Directors or the President.

Section 6. Special meetings of the Board of Directors may be called at any time by the Chairman of the Board of Directors or by the President, and shall be called upon the written request of a majority of the directors.

Section 7. A majority of the directors elected and qualified shall be necessary to constitute a quorum for the transaction of business at any meeting of the Board of Directors.

Section 8. Written notice shall be sent by mail to each director of any special meeting of the Board of Directors, and of any change in the time or place of any regular meeting, stating the time and place of such meeting, which shall be mailed not less than two days before the time of holding such meeting.

Section 9. In the event of the death, resignation, removal, inability to act, or disqualification of any director, the Board of Directors, although less than a quorum, shall have the right to elect the successor who shall hold office for the remainder of the full term of the class of directors in which the vacancy occurred, and until such director's successor shall have been duly elected and qualified.

Section 10. The Board of Directors at its first meeting after its election by the stockholders shall appoint an Executive Committee, a Trust Committee, an Audit Committee and a Compensation Committee, and shall elect from its own members a Chairman of the Board of Directors and a President who may be the same person. The Board of Directors shall also elect at such meeting a Secretary and a Treasurer, who may be the same person, may appoint at any time such other committees and elect or appoint such other officers as it may deem advisable. The Board of Directors may also elect at such meeting one or more Associate Directors.

Section 11. The Board of Directors may at any time remove, with or without cause, any member of any Committee appointed by it or any associate director or officer elected by it and may appoint or elect his successor.

Section 12. The Board of Directors may designate an officer to be in charge of such of the departments or division of the Company as it may deem advisable.

ARTICLE III  
Committees

Section 1. Executive Committee

(A) The Executive Committee shall be composed of not more than nine members who shall be selected by the Board of Directors from its own members and who shall hold office during the pleasure of the Board.

(B) The Executive Committee shall have all the powers of the Board of Directors when it is not in session to transact all business for and in behalf of the Company that may be brought before it.

(C) The Executive Committee shall meet at the principal office of the Company or elsewhere in its discretion at such times to be determined by a majority of its members, or at the call of the Chairman of the Executive Committee or at the call of the Chairman of the Board of Directors. The majority of its members shall be necessary to constitute a quorum for the transaction of business. Special meetings of the Executive Committee may be held at any time when a quorum is present.

(D) Minutes of each meeting of the Executive Committee shall be kept and submitted to the Board of Directors at its next meeting.

(E) The Executive Committee shall advise and superintend all investments that may be made of the funds of the Company, and shall direct the disposal of the same, in accordance with such rules and regulations as the Board of Directors from time to time make.

(F) In the event of a state of disaster of sufficient severity to prevent the conduct and management of the affairs and business of the Company by its directors and officers as contemplated by these By-Laws any two available members of the Executive Committee as constituted immediately prior to such disaster shall constitute a quorum of that Committee for the full conduct and management of the affairs and business of the Company in accordance with the provisions of Article III of these By-Laws; and if less than three members of the Trust Committee is constituted immediately prior to such disaster shall be available for the transaction of its business, such Executive Committee shall also be empowered to exercise all of the powers reserved to the Trust Committee under Article III Section 2 hereof. In the event of the unavailability, at such time, of a minimum of two members of such Executive Committee, any three available directors shall constitute the Executive Committee for the full conduct and management of the affairs and business of the Company in accordance with the foregoing provisions of this Section. This By-Law shall be subject to implementation by Resolutions of the Board of Directors presently existing or

hereafter passed from time to time for that purpose, and any provisions of these By-Laws (other than this Section) and any resolutions which are contrary to the provisions of this Section or to the provisions of any such implementary Resolutions shall be suspended during such a disaster period until it shall be determined by any interim Executive Committee acting under this section that it

shall be to the advantage of the Company to resume the conduct and management of its affairs and business under all of the other provisions of these By-Laws.

## Section 2. Trust Committee

(A) The Trust Committee shall be composed of not more than thirteen members who shall be selected by the Board of Directors, a majority of whom shall be members of the Board of Directors and who shall hold office during the pleasure of the Board.

(B) The Trust Committee shall have general supervision over the Trust Department and the investment of trust funds, in all matters, however, being subject to the approval of the Board of Directors.

(C) The Trust Committee shall meet at the principal office of the Company or elsewhere in its discretion at such times to be determined by a majority of its members or at the call of its chairman. A majority of its members shall be necessary to constitute a quorum for the transaction of business.

(D) Minutes of each meeting of the Trust Committee shall be kept and promptly submitted to the Board of Directors.

(E) The Trust Committee shall have the power to appoint Committees and/or designate officers or employees of the Company to whom supervision over the investment of trust funds may be delegated when the Trust Committee is not in session.

## Section 3. Audit Committee

(A) The Audit Committee shall be composed of five members who shall be selected by the Board of Directors from its own members, none of whom shall be an officer of the Company, and shall hold office at the pleasure of the Board.

(B) The Audit Committee shall have general supervision over the Audit Division in all matters however subject to the approval of the Board of Directors; it shall consider all matters brought to its attention by the officer in charge of the Audit Division, review all reports of examination of the Company made by any governmental agency or such independent auditor employed for that purpose, and make such recommendations to the Board of Directors with respect thereto or with respect to any other matters pertaining to

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auditing the Company as it shall deem desirable.

(C) The Audit Committee shall meet whenever and wherever the majority of its members shall deem it to be proper for the transaction of its business, and a majority of its Committee shall constitute a quorum.

## Section 4. Compensation Committee

(A) The Compensation Committee shall be composed of not more

than five (5) members who shall be selected by the Board of Directors from its own members who are not officers of the Company and who shall hold office during the pleasure of the Board.

(B) The Compensation Committee shall in general advise upon all matters of policy concerning the Company brought to its attention by the management and from time to time review the management of the Company, major organizational matters, including salaries and employee benefits and specifically shall administer the Executive Incentive Compensation Plan.

(C) Meetings of the Compensation Committee may be called at any time by the Chairman of the Compensation Committee, the Chairman of the Board of Directors, or the President of the Company.

#### Section 5. Associate Directors

(A) Any person who has served as a director may be elected by the Board of Directors as an associate director, to serve during the pleasure of the Board.

(B) An associate director shall be entitled to attend all directors meetings and participate in the discussion of all matters brought to the Board, with the exception that he would have no right to vote. An associate director will be eligible for appointment to Committees of the Company, with the exception of the Executive Committee, Audit Committee and Compensation Committee, which must be comprised solely of active directors.

#### Section 6. Absence or Disqualification of Any Member of a Committee

(A) In the absence or disqualification of any member of any Committee created under Article III of the By-Laws of this Company, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absence or disqualified member.

### ARTICLE IV Officers

Section 1. The Chairman of the Board of Directors shall preside at all meetings of the Board and shall have such further authority and powers and shall perform such duties as the Board of Directors may from time to time confer and direct. He shall also exercise such powers and perform such duties as may from time to time be agreed upon between himself and the President of the Company.

Section 2. The Vice Chairman of the Board. The Vice Chairman of the Board of Directors shall preside at all meetings of the Board of Directors at which the Chairman of the Board shall not be present and shall have such further authority and powers and shall perform such duties as the Board of Directors or the Chairman of the Board may from time to time confer and direct.

Section 3. The President shall have the powers and duties pertaining to the office of the President conferred or imposed upon him by statute or assigned to him by the Board of Directors in the absence of the Chairman of the Board the President shall have the powers and duties of the Chairman of the Board.

Section 4. The Chairman of the Board of Directors or the President as designated by the Board of Directors, shall carry into effect all legal directions of the Executive Committee and of the Board of Directors, and shall at all times exercise general supervision over the interest, affairs and operations of the Company and perform all duties incident to his office.

Section 5. There may be one or more Vice Presidents, however denominated by the Board of Directors, who may at any time perform all the duties of the Chairman of the Board of Directors and/or the President and such other powers and duties as may from time to time be assigned to them by the Board of Directors, the Executive Committee, the Chairman of the Board or the President and by the officer in charge of the department or division to which they are assigned.

Section 6. The Secretary shall attend to the giving of notice of meetings of the stockholders and the Board of Directors, as well as the Committees thereof, to the keeping of accurate minutes of all such meetings and to recording the same in the minute books of the Company. In addition to the other notice requirements of these By-Laws and as may be practicable under the circumstances, all such notices shall be in writing and mailed well in advance of the scheduled date of any other meeting. He shall have custody of the corporate seal and shall affix the same to any documents requiring such corporate seal and to attest the same.

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Section 7. The Treasurer shall have general supervision over all assets and liabilities of the Company. He shall be custodian of and responsible for all monies, funds and valuables of the Company and for the keeping of proper records of the evidence of property or indebtedness and of all the transactions of the Company. He shall have general supervision of the expenditures of the Company and shall report to the Board of Directors at each regular meeting of the condition of the Company, and perform such other duties as may be assigned to him from time to time by the Board of Directors of the Executive Committee.

Section 8. There may be a Controller who shall exercise general supervision over the internal operations of the Company, including accounting, and shall render to the Board of Directors at appropriate times a report relating to the general condition and internal operations of the Company.

There may be one or more subordinate accounting or controller officers however denominated, who may perform the duties of the Controller and such duties as may be prescribed by the Controller.

Section 9. The officer designated by the Board of Directors to be in charge of the Audit Division of the Company with such title as the Board of Directors shall prescribe, shall report to and be directly responsible only to the Board of Directors.

There shall be an Auditor and there may be one or more Audit Officers, however denominated, who may perform all the duties of the Auditor and such duties as may be prescribed by the officer in charge of the Audit Division.

Section 10. There may be one or more officers, subordinate in rank to all Vice Presidents with such functional titles as shall be determined from time to time by the Board of Directors, who shall ex officio hold the office Assistant Secretary of this Company and who may perform such duties as may be prescribed by the officer in charge of the department or division to whom they are assigned.

Section 11. The powers and duties of all other officers of the Company shall be those usually pertaining to their respective offices, subject to the direction of the Board of Directors, the Executive Committee, Chairman of the Board of Directors or the President and the officer in charge of the department or division to which they are assigned.

## ARTICLE V

### Stock and Stock Certificates

Section 1. Shares of stock shall be transferrable on the books of the Company and a transfer book shall be kept in which all transfers of stock shall be recorded.

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Section 2. Certificate of stock shall bear the signature of the President or any Vice President, however denominated by the Board of Directors and countersigned by the Secretary or Treasurer or an Assistant Secretary, and the seal of the corporation shall be engraved thereon. Each certificate shall recite that the stock represented thereby is transferrable only upon the books of the Company by the holder thereof or his attorney, upon surrender of the certificate properly endorsed. Any certificate of stock surrendered to the Company shall be cancelled at the time of transfer, and before a new certificate or certificates shall be issued in lieu thereof. Duplicate certificates of stock shall be issued only upon giving such security as may be satisfactory to the Board of Directors or the Executive Committee.

Section 3. The Board of Directors of the Company is authorized to fix in advance a record date for the determination of the stockholders entitled to notice of, and to vote at, any meeting of stockholders and any adjournment thereof, or entitled to receive payment of any dividend, or to any allotment or rights, or to exercise any rights in respect of any change, conversion or exchange of capital stock, or in connection with obtaining the consent of stockholders for any purpose, which record date shall not be more than 60 nor less than 10 days proceeding the date of any meeting of stockholders or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining such consent.

## ARTICLE VI

Section 1. The corporate seal of the Company shall be in the following form:

Between two concentric circles the words "Wilmington Trust Company" within the inner circle the words "Wilmington, Delaware."

ARTICLE VII  
Fiscal Year

Section 1. The fiscal year of the Company shall be the calendar year.

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ARTICLE VIII  
Execution of Instruments of the Company

Section 1. The Chairman of the Board, the President or any Vice President, however denominated by the Board of Directors, shall have full power and authority to enter into, make, sign, execute, acknowledge and/or deliver and the Secretary or any Assistant Secretary shall have full power and authority to attest and affix the corporate seal of the Company to any and all deeds, conveyances, assignments, releases, contracts, agreements, bonds, notes, mortgages and all other instruments incident to the business of this Company or in acting as executor, administrator, guardian, trustee, agent or in any other fiduciary or representative capacity by any and every method of appointment or by whatever person, corporation, court officer or authority in the State of Delaware, or elsewhere, without any specific authority, ratification, approval or confirmation by the Board of Directors or the Executive Committee, and any and all such instruments shall have the same force and validity as though expressly authorized by the Board of Directors and/or the Executive Committee.

ARTICLE IX  
Compensation of Directors and Members of Committees

Section 1. Directors and associate directors of the Company, other than salaried officers of the Company, shall be paid such reasonable honoraria or fees for attending meetings of the Board of Directors as the Board of Directors may from time to time determine. Directors and associate directors who serve as members of committees, other than salaried employees of the Company, shall be paid such reasonable honoraria or fees for services as members of committees as the Board of Directors shall from time to time determine and directors and associate directors may be employed by the Company for such special services as the Board of Directors may from time to time determine and shall be paid for such special services so performed reasonable compensation as may be determined by the Board of Directors.

ARTICLE X  
Indemnification

Section 1. (A) The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding") by reason of the fact that he, or a person for whom he is the legal representative, is or was a director, officer, employee or agent of the Corporation or is or

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was serving at the request of the Corporation as a director, officer, employee, fiduciary or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person. The Corporation shall indemnify a person in connection with a proceeding initiated by such person only if the proceeding was authorized by the Board of Directors of the Corporation.

(B) The Corporation shall pay the expenses incurred in defending any proceeding in advance of its final disposition, provided, however, that the payment of expenses incurred by a Director officer in his capacity as a Director or officer in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Director or officer to repay all amounts advanced if it should be ultimately determined that the Director or officer is not entitled to be indemnified under this Article or otherwise.

(C) If a claim for indemnification or payment of expenses, under this Article X is not paid in full within ninety days after a written claim therefor has been received by the Corporation the claimant may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the claimant was not entitled to the requested indemnification of payment of expenses under applicable law.

(D) The rights conferred on any person by this Article X shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Charter or Act of Incorporation, these By-Laws, agreement, vote of stockholders or disinterested Directors or otherwise.

(E) Any repeal or modification of the foregoing provisions of this Article X shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

ARTICLE XI  
Amendments to the By-Laws

Section 1. These By-Laws may be altered, amended or repealed, in whole



or in part, and any new By-Law or By-Laws adopted at any regular or special meeting of the Board of Directors by a vote of the majority of all the members of the Board of Directors then in office.

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EXHIBIT C

Section 321(b) Consent

Pursuant to Section 321(b) of the Trust Indenture Act of 1939, as amended, Wilmington Trust Company hereby consents that reports of examinations by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon requests therefor.

WILMINGTON TRUST COMPANY

Dated: March 23, 1999

By: /s/ Norma P. Closs

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Name: Norma P. Closs

Title: Vice President

EXHIBIT D

NOTICE

This form is intended to assist state nonmember banks and savings banks with state publication requirements. It has not been approved by any state banking authorities. Refer to your appropriate state banking authorities for your state publication requirements.

R E P O R T   O F   C O N D I T I O N

Consolidating domestic subsidiaries of the

-----  
WILMINGTON TRUST COMPANY

of

WILMINGTON  
-----

Name of Bank

City

in the State of DELAWARE, at the close of business on December 31, 1998.

<TABLE>

<CAPTION>

ASSETS

Thousands of dollars

<S>

<C>

Cash and balances due from depository institutions:

Noninterest-bearing balances and currency and coins..... 194,839

Interest-bearing balances..... 0

Held-to-maturity securities..... 73,911

Available-for-sale securities..... 1,228,194

Federal funds sold and securities purchased under agreements to resell..... 203,500

Loans and lease financing receivables:

Loans and leases, net of unearned income..... 4,167,235

LESS: Allowance for loan and lease losses..... 66,897

LESS: Allocated transfer risk reserve..... 0

Loans and leases, net of unearned income, allowance, and reserve... 4,100,338

Assets held in trading accounts..... 0

Premises and fixed assets (including capitalized leases)..... 139,079

Other real estate owned..... 1,532

Investments in unconsolidated subsidiaries and associated companies..... 1,052

Customers' liability to this bank on acceptances outstanding..... 0

Intangible assets..... 3,047

Other assets..... 98,867

Total assets..... 6,044,359

</TABLE>

CONTINUED ON NEXT PAGE

<TABLE>

<S>

<C>

LIABILITIES

Deposits:

In domestic offices..... 4,474,659

Noninterest-bearing ..... 1,037,549

Interest-bearing..... 3,437,110

Federal funds purchased and Securities sold under agreements to repurchase. 390,060

Demand notes issued to the U.S. Treasury..... 18,944

Trading liabilities (from Schedule RC-D)..... 0

Other borrowed money:..... //

With original maturity of one year or less..... 555,000

With original maturity of more than one year..... 43,000

Bank's liability on acceptances executed and outstanding..... 0

Subordinated notes and debentures..... 0

Other liabilities (from Schedule RC-G)..... 90,951

Total liabilities..... 5,572,614

## EQUITY CAPITAL

Perpetual preferred stock and related surplus.....	0
Common Stock.....	500
Surplus (exclude all surplus related to preferred stock).....	62,118
Undivided profits and capital reserves.....	403,264
Net unrealized holding gains (losses) on available-for-sale securities.....	5,863
Total equity capital.....	471,745
Total liabilities, limited-life preferred stock, and equity capital.....	6,044,359

</TABLE>

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) ☒ |X|

WILMINGTON TRUST COMPANY  
(Exact name of trustee as specified in its charter)

Delaware  
(State of incorporation)

51-0055023  
(I.R.S. employer identification no.)

Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890  
(Address of principal executive offices)

Cynthia L. Corliss  
Vice President and Trust Counsel  
Wilmington Trust Company  
Rodney Square North  
Wilmington, Delaware 19890  
(302) 651-8516  
(Name, address and telephone number of agent for service)

POGO PRODUCING COMPANY  
(Exact name of obligor as specified in its charter)

Delaware  
(State of incorporation)

74-1659398  
(I.R.S. employer identification no.)

5 Greenway Plaza  
Suite 2700  
Houston, Texas  
(Address of principal executive offices)

77046  
(Zip Code)

Guarantee of Preferred Securities of Pogo Trust I by Pogo Producing Company  
(Title of the indenture securities)

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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.

Federal Deposit Insurance Co.	State Bank Commissioner
Five Penn Center	Dover, Delaware
Suite #2901	
Philadelphia, PA	

(b) Whether it is authorized to exercise corporate trust powers.

The trustee is authorized to exercise corporate trust powers.

ITEM 2. AFFILIATIONS WITH THE OBLIGOR.

If the obligor is an affiliate of the trustee, describe each affiliation:

Based upon an examination of the books and records of the trustee and upon information furnished by the obligor, the obligor is not an affiliate of the trustee.

ITEM 3. LIST OF EXHIBITS.

List below all exhibits filed as part of this Statement of Eligibility and Qualification.

- A. Copy of the Charter of Wilmington Trust Company, which includes the certificate of authority of Wilmington Trust Company to commence business and the authorization of Wilmington Trust Company to exercise corporate trust powers.
- B. Copy of By-Laws of Wilmington Trust Company.
- C. Consent of Wilmington Trust Company required by Section 321(b) of Trust Indenture Act.
- D. Copy of most recent Report of Condition of Wilmington Trust Company.

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Wilmington Trust Company, a corporation organized and existing under the laws of Delaware, has duly caused this Statement of Eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Wilmington and State of Delaware on the 23rd day of March, 1999.

WILMINGTON TRUST COMPANY

[SEAL]

Attest: /s/ Patricia A. Evans

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Assistant Secretary

By: /s/ Norma P. Closs

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Name: Norma P. Closs

Title: Vice President

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EXHIBIT A

AMENDED CHARTER

Wilmington Trust Company

Wilmington, Delaware

As existing on May 9, 1987

Amended Charter

or

Act of Incorporation

of

Wilmington Trust Company

Wilmington Trust Company, originally incorporated by an Act of the General Assembly of the State of Delaware, entitled "An Act to Incorporate the Delaware Guarantee and Trust Company", approved March 2, A.D. 1901, and the name of which company was changed to "Wilmington Trust Company" by an amendment filed in the Office of the Secretary of State on March 18, A.D. 1903, and the Charter or Act of Incorporation of which company has been from time to time amended and changed by merger agreements pursuant to the corporation law for state banks and trust companies of the State of Delaware, does hereby alter and amend its Charter or Act of Incorporation so that the same as so altered and amended shall in its entirety read as follows:

First: - The name of this corporation is Wilmington Trust Company.

Second: - The location of its principal office in the State of Delaware is at Rodney Square North, in the City of Wilmington, County of New Castle; the name of its resident agent is Wilmington Trust Company whose address is Rodney Square North, in said City. In addition to such principal office, the said corporation maintains and operates branch offices in the City of Newark, New Castle County, Delaware, the Town of Newport, New Castle County, Delaware, at Claymont, New Castle County, Delaware, at Greenville, New Castle County Delaware, and at Milford Cross Roads, New Castle County, Delaware, and shall be empowered to open, maintain and operate branch offices at Ninth and Shipley Streets, 418 Delaware Avenue, 2120 Market Street, and 3605 Market Street, all in the City of Wilmington, New Castle County, Delaware, and such other branch offices or places of business as may be authorized from time to time by the agency or agencies of the government of the State of Delaware empowered to confer such authority.

Third: - (a) The nature of the business and the objects and purposes proposed to be transacted, promoted or carried on by this Corporation are to do any or all of the things herein mentioned as fully and to the same extent as natural persons might or could do and in any part of the world, viz.:

(1) To sue and be sued, complain and defend in any Court of law or equity and to make and use a common seal, and alter the seal at pleasure, to hold,

purchase, convey, mortgage or otherwise deal in real and personal estate and property, and to appoint such officers and agents as the business of the Corporation shall require, to make by-laws not inconsistent with the Constitution or laws of the United States or of this State, to discount bills, notes or other evidences of debt, to receive deposits of money, or securities for money, to buy gold and silver bullion and foreign coins, to buy and sell bills of exchange, and generally to use, exercise and enjoy all the powers, rights, privileges and franchises incident to a corporation which are proper or necessary for the transaction of the business of the Corporation hereby created.

(2) To insure titles to real and personal property, or any estate or interests therein, and to guarantee the holder of such property, real or personal, against any claim or claims, adverse to his interest therein, and to prepare and give certificates of title for any lands or premises in the State of Delaware, or elsewhere.

(3) To act as factor, agent, broker or attorney in the receipt, collection, custody, investment and management of funds, and the purchase, sale, management and disposal of property of all descriptions, and to prepare and execute all papers which may be necessary or proper in such business.

(4) To prepare and draw agreements, contracts, deeds, leases, conveyances, mortgages, bonds and legal papers of every description, and to carry on the business of conveyancing in all its branches.

(5) To receive upon deposit for safekeeping money, jewelry, plate, deeds, bonds and any and all other personal property of every sort and kind, from executors, administrators, guardians, public officers, courts, receivers, assignees, trustees, and from all fiduciaries, and from all other persons and individuals, and from all corporations whether state, municipal, corporate or private, and to rent boxes, safes, vaults and other receptacles for such property.

(6) To act as agent or otherwise for the purpose of registering, issuing, certificating, countersigning, transferring or underwriting the stock, bonds or other obligations of any corporation, association, state or municipality, and may receive and manage any sinking fund therefor on such terms as may be agreed

upon between the two parties, and in like manner may act as Treasurer of any corporation or municipality.

(7) To act as Trustee under any deed of trust, mortgage, bond or other

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instrument issued by any state, municipality, body politic, corporation, association or person, either alone or in conjunction with any other person or persons, corporation or corporations.

(8) To guarantee the validity, performance or effect of any contract or agreement, and the fidelity of persons holding places of responsibility or trust; to become surety for any person, or persons, for the faithful performance of any trust, office, duty, contract or agreement, either by itself or in conjunction with any other person, or persons, corporation, or corporations, or in like manner become surety upon any bond, recognizance, obligation, judgment, suit, order, or decree to be entered in any court of record within the State of Delaware or elsewhere, or which may now or hereafter be required by any law, judge, officer or court in the State of Delaware or elsewhere.

(9) To act by any and every method of appointment as trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian, bailee, or in any other trust capacity in the receiving, holding, managing, and disposing of any and all estates and property, real, personal or mixed, and to be appointed as such trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian or bailee by any persons, corporations, court, officer, or authority, in the State of Delaware or elsewhere; and whenever this Corporation is so appointed by any person, corporation, court, officer or authority such trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian, bailee, or in any other trust capacity, it shall not be required to give bond with surety, but its capital stock shall be taken and held as security for the performance of the duties devolving upon it by such appointment.

(10) And for its care, management and trouble, and the exercise of any of its powers hereby given, or for the performance of any of the duties which it may undertake or be called upon to perform, or for the assumption of any responsibility the said Corporation may be entitled to receive a proper compensation.

(11) To purchase, receive, hold and own bonds, mortgages, debentures, shares of capital stock, and other securities, obligations, contracts and evidences of indebtedness, of any private, public or municipal corporation within and without the State of Delaware, or of the Government of the United States, or of any state, territory, colony, or possession thereof, or of any foreign government or country; to receive, collect, receipt for,



interest, dividends and income upon and from any of the bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property held and owned by it, and to exercise in respect of all such bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property, any and all the rights, powers and privileges of individual owners thereof, including the right to vote thereon; to invest and deal in and with any of the moneys of the Corporation upon such securities and in such manner as it may think fit and proper, and from time to time to vary or realize such investments; to issue bonds and secure the same by pledges or deeds of trust or mortgages of or upon the whole or any part of the property held or owned by the Corporation, and to sell and pledge such bonds, as and when the Board of Directors shall determine, and in the promotion of its said corporate business of investment and to the extent authorized by law, to lease, purchase, hold, sell, assign, transfer, pledge, mortgage and convey real and personal property of any name and nature and any estate or interest therein.

(b) In furtherance of, and not in limitation, of the powers conferred by the laws of the State of Delaware, it is hereby expressly provided that the said Corporation shall also have the following powers:

(1) To do any or all of the things herein set forth, to the same extent as natural persons might or could do, and in any part of the world.

(2) To acquire the good will, rights, property and franchises and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock of this Corporation, bonds or otherwise; to hold or in any manner to dispose of the whole or any part of the property so purchased; to conduct in any lawful manner the whole or any part of any business so acquired, and to exercise all the powers necessary or convenient in and about the conduct and management of such business.

(3) To take, hold, own, deal in, mortgage or otherwise lien, and to lease, sell, exchange, transfer, or in any manner whatever dispose of property, real, personal or mixed, wherever situated.

(4) To enter into, make, perform and carry out contracts of every kind with any person, firm, association or corporation, and, without limit as to amount, to draw, make, accept, endorse, discount, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures, and other

negotiable or transferable instruments.

(5) To have one or more offices, to carry on all or any of its operations and businesses, without restriction to the same extent as natural persons might or could do, to purchase or otherwise acquire, to hold, own, to mortgage, sell, convey or otherwise dispose of, real and personal property, of every class and description, in any State, District, Territory or Colony of the United States, and in any foreign country or place.

(6) It is the intention that the objects, purposes and powers specified and clauses contained in this paragraph shall (except where otherwise expressed in said paragraph) be nowise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in this charter, but that the objects, purposes and powers specified in each of the clauses of this paragraph shall be regarded as independent objects, purposes and powers.

Fourth: - (a) The total number of shares of all classes of stock which the Corporation shall have authority to issue is forty-one million (41,000,000) shares, consisting of:

(1) One million (1,000,000) shares of Preferred stock, par value \$10.00 per share (hereinafter referred to as "Preferred Stock"); and

(2) Forty million (40,000,000) shares of Common Stock, par value \$1.00 per share (hereinafter referred to as "Common Stock").

(b) Shares of Preferred Stock may be issued from time to time in one or more series as may from time to time be determined by the Board of Directors each of said series to be distinctly designated. All shares of any one series of Preferred Stock shall be alike in every particular, except that there may be different dates from which dividends, if any, thereon shall be cumulative, if made cumulative. The voting powers and the preferences and relative, participating, optional and other special rights of each such series, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding; and, subject to the provisions of subparagraph 1 of Paragraph (c) of this Article Fourth, the Board of Directors of the Corporation is hereby expressly granted authority to fix by resolution or resolutions adopted prior to the issuance of any shares of a particular series of Preferred Stock, the voting powers and the designations, preferences and relative, optional and other special rights, and the qualifications, limitations and restrictions of such series, including, but without limiting the generality of the foregoing, the following:

(1) The distinctive designation of, and the number of shares of Preferred Stock which shall constitute such series, which number

may be increased (except where otherwise provided by the Board of Directors) or decreased (but not below the number of shares thereof then outstanding) from time to time by like action of the Board of Directors;

(2) The rate and times at which, and the terms and conditions on which, dividends, if any, on Preferred Stock of such series shall be paid, the extent of the preference or relation, if any, of such dividends to the dividends payable on any other class or classes, or series of the same or other class of stock and whether such dividends shall be cumulative or non-cumulative;

(3) The right, if any, of the holders of Preferred Stock of such series to convert the same into or exchange the same for, shares of any other class or classes or of any series of the same or any other class or classes of stock of the Corporation and the terms and conditions of such conversion or exchange;

(4) Whether or not Preferred Stock of such series shall be subject to redemption, and the redemption price or prices and the time or times at which, and the terms and conditions on which, Preferred Stock of such series may be redeemed.

(5) The rights, if any, of the holders of Preferred Stock of such series upon the voluntary or involuntary liquidation, merger, consolidation, distribution or sale of assets, dissolution or winding-up, of the Corporation.

(6) The terms of the sinking fund or redemption or purchase account, if any, to be provided for the Preferred Stock of such series; and

(7) The voting powers, if any, of the holders of such series of Preferred Stock which may, without limiting the generality of the foregoing include the right, voting as a series or by itself or together with other series of Preferred Stock or all series of Preferred Stock as a class, to elect one or more directors of the Corporation if there shall have been a default in the payment of dividends on any one or more series of Preferred Stock or under such circumstances and on such conditions as the Board of Directors may determine.

(c) (1) After the requirements with respect to preferential dividends on the Preferred Stock (fixed in accordance with the provisions of section (b) of this Article Fourth), if any, shall have been met and after the Corporation shall have complied with all the requirements, if any, with respect to the setting aside of sums

as sinking funds or redemption or purchase accounts (fixed in accordance with the provisions of section (b) of this Article Fourth), and subject further to any conditions which may be fixed in accordance with the provisions of section (b) of this Article Fourth, then and not otherwise

the holders of Common Stock shall be entitled to receive such dividends as may be declared from time to time by the Board of Directors.

(2) After distribution in full of the preferential amount, if any, (fixed in accordance with the provisions of section (b) of this Article Fourth), to be distributed to the holders of Preferred Stock in the event of voluntary or involuntary liquidation, distribution or sale of assets, dissolution or winding-up, of the Corporation, the holders of the Common Stock shall be entitled to receive all of the remaining assets of the Corporation, tangible and intangible, of whatever kind available for distribution to stockholders ratably in proportion to the number of shares of Common Stock held by them respectively.

(3) Except as may otherwise be required by law or by the provisions of such resolution or resolutions as may be adopted by the Board of Directors pursuant to section (b) of this Article Fourth, each holder of Common Stock shall have one vote in respect of each share of Common Stock held on all matters voted upon by the stockholders.

(d) No holder of any of the shares of any class or series of stock or of options, warrants or other rights to purchase shares of any class or series of stock or of other securities of the Corporation shall have any preemptive right to purchase or subscribe for any unissued stock of any class or series or any additional shares of any class or series to be issued by reason of any increase of the authorized capital stock of the Corporation of any class or series, or bonds, certificates of indebtedness, debentures or other securities convertible into or exchangeable for stock of the Corporation of any class or series, or carrying any right to purchase stock of any class or series, but any such unissued stock, additional authorized issue of shares of any class or series of stock or securities convertible into or exchangeable for stock, or carrying any right to purchase stock, may be issued and disposed of pursuant to resolution of the Board of Directors to such persons, firms, corporations or associations, whether such holders or others, and upon such terms as may be deemed advisable by the Board of Directors in the exercise of its sole discretion.

(e) The relative powers, preferences and rights of each series of Preferred Stock in relation to the relative powers, preferences and rights of each other series of Preferred Stock shall, in each case, be as fixed from time to time by the Board of

Directors in the resolution or resolutions adopted pursuant to authority granted in section (b) of this Article Fourth and the consent, by class or series vote or otherwise, of the holders of such of the series of Preferred Stock as are from time to time outstanding shall not be required for the issuance by the Board of Directors of any other series of Preferred Stock whether or not the powers, preferences and rights of such other series shall be fixed by the Board of Directors as senior to, or on a parity with, the powers, preferences and rights of such outstanding series, or any of them; provided, however, that the Board of

Directors may provide in the resolution or resolutions as to any series of Preferred Stock adopted pursuant to section (b) of this Article Fourth that the consent of the holders of a majority (or such greater proportion as shall be therein fixed) of the outstanding shares of such series voting thereon shall be required for the issuance of any or all other series of Preferred Stock.

(f) Subject to the provisions of section (e), shares of any series of Preferred Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

(g) Shares of Common Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

(h) The authorized amount of shares of Common Stock and of Preferred Stock may, without a class or series vote, be increased or decreased from time to time by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote thereon.

Fifth: - (a) The business and affairs of the Corporation shall be conducted and managed by a Board of Directors. The number of directors constituting the entire Board shall be not less than five nor more than twenty-five as fixed from time to time by vote of a majority of the whole Board, provided, however, that the number of directors shall not be reduced so as to shorten the term of any director at the time in office, and provided further, that the number of directors constituting the whole Board shall be twenty-four until otherwise fixed by a majority of the whole Board.

(b) The Board of Directors shall be divided into three classes, as nearly equal in number as the then total number of directors constituting the whole Board permits, with the term of office of one class expiring each year. At the annual meeting of stockholders in 1982, directors of the first class shall be elected to hold office for a term expiring at the next succeeding annual meeting, directors of the second class

shall be elected to hold office for a term expiring at the second succeeding annual meeting and directors of the third class shall be elected to hold office for a term expiring at the third succeeding annual meeting. Any vacancies in the Board of Directors for any reason, and any newly created directorships resulting from any increase in the directors, may be filled by the Board of Directors, acting by a majority of the directors then in office, although less than a quorum, and any directors so chosen shall hold office until the next annual election of directors. At such election, the stockholders shall elect a successor to such director to hold office until the next election of the class for which such director shall have been chosen and until his successor shall be elected and qualified. No decrease in the number of directors shall shorten the term of any incumbent director.

(c) Notwithstanding any other provisions of this Charter or Act of Incorporation or the By-Laws of the Corporation (and notwithstanding the fact that some lesser percentage may be specified by law, this Charter or Act of Incorporation or the ByLaws of the Corporation), any director or the entire Board of Directors of the Corporation may be removed at any time without cause, but only by the affirmative vote of the holders of two-thirds or more of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) cast at a meeting of the stockholders called for that purpose.

(d) Nominations for the election of directors may be made by the Board of Directors or by any stockholder entitled to vote for the election of directors. Such nominations shall be made by notice in writing, delivered or mailed by first class United States mail, postage prepaid, to the Secretary of the Corporation not less than 14 days nor more than 50 days prior to any meeting of the stockholders called for the election of directors; provided, however, that if less than 21 days' notice of the meeting is given to stockholders, such written notice shall be delivered or mailed, as prescribed, to the Secretary of the Corporation not later than the close of the seventh day following the day on which notice of the meeting was mailed to stockholders. Notice of nominations which are proposed by the Board of Directors shall be given by the Chairman on behalf of the Board.

(e) Each notice under subsection (d) shall set forth (i) the name, age, business address and, if known, residence address of each nominee proposed in such notice, (ii) the principal occupation or employment of such nominee and (iii) the number of shares of stock of the Corporation which are beneficially owned by each such nominee.

(f) The Chairman of the meeting may, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the foregoing

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procedure, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

(g) No action required to be taken or which may be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, and the power of stockholders to consent in writing, without a meeting, to the taking of any action is specifically denied.

Sixth: - The Directors shall choose such officers, agent and servants as may be provided in the By-Laws as they may from time to time find necessary or proper.

Seventh: - The Corporation hereby created is hereby given the same powers, rights and privileges as may be conferred upon corporations organized under the Act entitled "An Act Providing a General Corporation Law", approved March 10, 1899, as from time to time amended.

Eighth: - This Act shall be deemed and taken to be a private Act.

Ninth: - This Corporation is to have perpetual existence.

Tenth: - The Board of Directors, by resolution passed by a majority of the whole Board, may designate any of their number to constitute an Executive Committee, which Committee, to the extent provided in said resolution, or in the By-Laws of the Company, shall have and may exercise all of the powers of the Board of Directors in the management of the business and affairs of the Corporation, and shall have power to authorize the seal of the Corporation to be affixed to all papers which may require it.

Eleventh: - The private property of the stockholders shall not be liable for the payment of corporate debts to any extent whatever.

Twelfth: - The Corporation may transact business in any part of the world.

Thirteenth: - The Board of Directors of the Corporation is expressly authorized to make, alter or repeal the By-Laws of the Corporation by a vote of the majority of the entire Board. The stockholders may make, alter or repeal any By-Law whether or not adopted by them, provided however, that any such additional By-Laws, alterations or repeal may be adopted only by the affirmative vote of the holders of two-thirds or more of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class).

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Fourteenth: - Meetings of the Directors may be held outside of the State of Delaware at such places as may be from time to time designated by the Board, and the Directors may keep the books of the Company outside of the State of Delaware at such places as may be from time to time designated by them.

Fifteenth: - (a) In addition to any affirmative vote required by law, and except as otherwise expressly provided in sections (b) and (c) of this Article Fifteenth:

(A) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with or into (i) any Interested Stockholder (as hereinafter defined) or (ii) any other corporation (whether or not itself an Interested Stockholder), which, after such merger or consolidation, would be an Affiliate (as hereinafter defined) of an Interested Stockholder, or

(B) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of related transactions) to or with any Interested Stockholder or any Affiliate of any Interested Stockholder of any assets of the



Corporation or any Subsidiary having an aggregate fair market value of \$1,000,000 or more, or

(C) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of related transactions) of any securities of the Corporation or any Subsidiary to any Interested Stockholder or any Affiliate of any Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate fair market value of \$1,000,000 or more, or

(D) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation, or

(E) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any similar transaction (whether or not with or into or otherwise involving an Interested Stockholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which is directly or indirectly owned by any Interested Stockholder, or any Affiliate of any Interested Stockholder,

shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, considered for the purpose of this Article Fifteenth as one class ("Voting Shares").

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Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that some lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise.

(2) The term "business combination" as used in this Article Fifteenth shall mean any transaction which is referred to any one or more of clauses (A) through (E) of paragraph 1 of the section (a).

(b) The provisions of section (a) of this Article Fifteenth shall not be applicable to any particular business combination and such business combination shall require only such affirmative vote as is required by law and any other provisions of the Charter or Act of Incorporation of By-Laws if such business combination has been approved by a majority of the whole Board.

(c) For the purposes of this Article Fifteenth:

(1) A "person" shall mean any individual firm, corporation or other entity.

(2) "Interested Stockholder" shall mean, in respect of any business



combination, any person (other than the Corporation or any Subsidiary) who or which as of the record date for the determination of stockholders entitled to notice of and to vote on such business combination, or immediately prior to the consummation of any such transaction:

(A) is the beneficial owner, directly or indirectly, of more than 10% of the Voting Shares, or

(B) is an Affiliate of the Corporation and at any time within two years prior thereto was the beneficial owner, directly or indirectly, of not less than 10% of the then outstanding voting Shares, or

(C) is an assignee of or has otherwise succeeded in any share of capital stock of the Corporation which were at any time within two years prior thereto beneficially owned by any Interested Stockholder, and such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933.

(3) A person shall be the "beneficial owner" of any Voting Shares:

(A) which such person or any of its Affiliates and Associates (as hereafter

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defined) beneficially own, directly or indirectly, or

(B) which such person or any of its Affiliates or Associates has (i) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (ii) the right to vote pursuant to any agreement, arrangement or understanding, or

(C) which are beneficially owned, directly or indirectly, by any other person with which such first mentioned person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of capital stock of the Corporation.

(4) The outstanding Voting Shares shall include shares deemed owned through application of paragraph (3) above but shall not include any other Voting Shares which may be issuable pursuant to any agreement, or upon exercise of conversion rights, warrants or options or otherwise.

(5) "Affiliate" and "Associate" shall have the respective meanings given those terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on December 31, 1981.

(6) "Subsidiary" shall mean any corporation of which a majority of any

class of equity security (as defined in Rule 3a11-1 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect in December 31, 1981) is owned, directly or indirectly, by the Corporation; provided, however, that for the purposes of the definition of Investment Stockholder set forth in paragraph (2) of this section (c), the term "Subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the Corporation.

(d) majority of the directors shall have the power and duty to determine for the purposes of this Article Fifteenth on the basis of information known to them, (1) the number of Voting Shares beneficially owned by any person (2) whether a person is an Affiliate or Associate of another, (3) whether a person has an agreement, arrangement or understanding with another as to the matters referred to in paragraph (3) of section (c), or (4) whether the assets subject to any business combination or the consideration received for the issuance or transfer of securities by the Corporation, or any Subsidiary has an aggregate fair market value of \$1,000,000 or more.

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(e) Nothing contained in this Article Fifteenth shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

Sixteenth: Notwithstanding any other provision of this Charter or Act of Incorporation or the By-Laws of the Corporation (and in addition to any other vote that may be required by law, this Charter or Act of Incorporation by the By-Laws), the affirmative vote of the holders of at least two-thirds of the outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) shall be required to amend, alter or repeal any provision of Articles Fifth, Thirteenth, Fifteenth or Sixteenth of this Charter or Act of Incorporation.

Seventeenth: (a) a Director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except to the extent such exemption from liability or limitation thereof is not permitted under the Delaware General Corporation Laws as the same exists or may hereafter be amended.

(b) Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a Director of the Corporation existing hereunder with respect to any act or omission occurring prior to the time of such repeal or modification."

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EXHIBIT B

BY-LAWS

WILMINGTON TRUST COMPANY

WILMINGTON, DELAWARE

As existing on January 16, 1997

BY-LAWS OF WILMINGTON TRUST COMPANY

ARTICLE I

Stockholders' Meetings

Section 1. The Annual Meeting of Stockholders shall be held on the third Thursday in April each year at the principal office at the Company or at such other date, time, or place as may be designated by resolution by the Board of Directors.

Section 2. Special meetings of all stockholders may be called at any time by the Board of Directors, the Chairman of the Board or the President.

Section 3. Notice of all meetings of the stockholders shall be given by mailing to each stockholder at least ten (10) days before said meeting, at his last known address, a written or printed notice fixing the time and place of such meeting.

Section 4. A majority in the amount of the capital stock of the Company issued and outstanding on the record date, as herein determined, shall constitute a quorum at all meetings of stockholders for the transaction of any business, but the holders of a small number of shares may adjourn, from time to time, without further notice, until a quorum is secured. At each annual or special meeting of stockholders, each stockholder shall be entitled to one vote, either in person or by proxy, for each shares of stock registered in the stockholder's name on the books of the Company on the record date for any such meeting as determined herein.

ARTICLE II

Directors

Section 1. The number and classification of the Board of Directors shall be as set forth in the Charter of the Bank.

Section 2. No person who has attained the age of seventy-two (72) years shall be nominated for election to the Board of Directors of the Company, provided, however, that this limitation shall not apply to any person who was serving as director of the Company on September 16, 1971.

Section 3. The class of Directors so elected shall hold office for three

years or until their successors are elected and qualified.

Section 4. The affairs and business of the Company shall be managed and conducted by the Board of Directors.

Section 5. The Board of Directors shall meet at the principal office of the Company or elsewhere in its discretion at such times to be determined by a majority of its members, or at the call of the Chairman of the Board of Directors or the President.

Section 6. Special meetings of the Board of Directors may be called at any time by the Chairman of the Board of Directors or by the President, and shall be called upon the written request of a majority of the directors.

Section 7. A majority of the directors elected and qualified shall be necessary to constitute a quorum for the transaction of business at any meeting of the Board of Directors.

Section 8. Written notice shall be sent by mail to each director of any special meeting of the Board of Directors, and of any change in the time or place of any regular meeting, stating the time and place of such meeting, which shall be mailed not less than two days before the time of holding such meeting.

Section 9. In the event of the death, resignation, removal, inability to act, or disqualification of any director, the Board of Directors, although less than a quorum, shall have the right to elect the successor who shall hold office for the remainder of the full term of the class of directors in which the vacancy occurred, and until such director's successor shall have been duly elected and qualified.

Section 10. The Board of Directors at its first meeting after its election by the stockholders shall appoint an Executive Committee, a Trust Committee, an Audit Committee and a Compensation Committee, and shall elect from its own members a Chairman of the Board of Directors and a President who may be the same person. The Board of Directors shall also elect at such meeting a Secretary and a Treasurer, who may be the same person, may appoint at any time such other committees and elect or appoint such other officers as it may deem advisable. The Board of Directors may also elect at such meeting one or more Associate Directors.

Section 11. The Board of Directors may at any time remove, with or without cause, any member of any Committee appointed by it or any associate director or officer elected by it and may appoint or elect his successor.

Section 12. The Board of Directors may designate an officer to be in charge of such of the departments or division of the Company as it may deem advisable.

ARTICLE III  
Committees

Section 1. Executive Committee

(A) The Executive Committee shall be composed of not more than nine members who shall be selected by the Board of Directors from its own members and who shall hold office during the pleasure of the Board.

(B) The Executive Committee shall have all the powers of the Board of Directors when it is not in session to transact all business for and in behalf of the Company that may be brought before it.

(C) The Executive Committee shall meet at the principal office of the Company or elsewhere in its discretion at such times to be determined by a majority of its members, or at the call of the Chairman of the Executive Committee or at the call of the Chairman of the Board of Directors. The majority of its members shall be necessary to constitute a quorum for the transaction of business. Special meetings of the Executive Committee may be held at any time when a quorum is present.

(D) Minutes of each meeting of the Executive Committee shall be kept and submitted to the Board of Directors at its next meeting.

(E) The Executive Committee shall advise and superintend all investments that may be made of the funds of the Company, and shall direct the disposal of the same, in accordance with such rules and regulations as the Board of Directors from time to time make.

(F) In the event of a state of disaster of sufficient severity to prevent the conduct and management of the affairs and business of the Company by its directors and officers as contemplated by these By-Laws any two available members of the Executive Committee as constituted immediately prior to such disaster shall constitute a quorum of that Committee for the full conduct and management of the affairs and business of the Company in accordance with the provisions of Article III of these By-Laws; and if less than three members of the Trust Committee is constituted immediately prior to such disaster shall be available for the transaction of its business, such Executive Committee shall also be empowered to exercise all of the powers reserved to the Trust Committee under Article III Section 2 hereof. In the event of the unavailability, at such time, of a minimum of two members of such Executive Committee, any three available directors shall constitute the Executive Committee for the full conduct and management of the affairs and business of the Company in accordance with the foregoing provisions of this Section. This By-Law shall be subject to implementation by Resolutions of the Board of Directors presently existing or

hereafter passed from time to time for that purpose, and any provisions of these By-Laws (other than this Section) and any resolutions which are contrary to the provisions of this Section or to the provisions of any such implementary Resolutions shall be suspended during such a disaster period until it shall be determined by any interim Executive Committee acting under this section that it

shall be to the advantage of the Company to resume the conduct and management of its affairs and business under all of the other provisions of these By-Laws.

## Section 2. Trust Committee

(A) The Trust Committee shall be composed of not more than thirteen members who shall be selected by the Board of Directors, a majority of whom shall be members of the Board of Directors and who shall hold office during the pleasure of the Board.

(B) The Trust Committee shall have general supervision over the Trust Department and the investment of trust funds, in all matters, however, being subject to the approval of the Board of Directors.

(C) The Trust Committee shall meet at the principal office of the Company or elsewhere in its discretion at such times to be determined by a majority of its members or at the call of its chairman. A majority of its members shall be necessary to constitute a quorum for the transaction of business.

(D) Minutes of each meeting of the Trust Committee shall be kept and promptly submitted to the Board of Directors.

(E) The Trust Committee shall have the power to appoint Committees and/or designate officers or employees of the Company to whom supervision over the investment of trust funds may be delegated when the Trust Committee is not in session.

## Section 3. Audit Committee

(A) The Audit Committee shall be composed of five members who shall be selected by the Board of Directors from its own members, none of whom shall be an officer of the Company, and shall hold office at the pleasure of the Board.

(B) The Audit Committee shall have general supervision over the Audit Division in all matters however subject to the approval of the Board of Directors; it shall consider all matters brought to its attention by the officer in charge of the Audit Division, review all reports of examination of the Company made by any governmental agency or such independent auditor employed for that purpose, and make such recommendations to the Board of Directors with respect thereto or with respect to any other matters pertaining to

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auditing the Company as it shall deem desirable.

(C) The Audit Committee shall meet whenever and wherever the majority of its members shall deem it to be proper for the transaction of its business, and a majority of its Committee shall constitute a quorum.

## Section 4. Compensation Committee

(A) The Compensation Committee shall be composed of not more

than five (5) members who shall be selected by the Board of Directors from its own members who are not officers of the Company and who shall hold office during the pleasure of the Board.

(B) The Compensation Committee shall in general advise upon all matters of policy concerning the Company brought to its attention by the management and from time to time review the management of the Company, major organizational matters, including salaries and employee benefits and specifically shall administer the Executive Incentive Compensation Plan.

(C) Meetings of the Compensation Committee may be called at any time by the Chairman of the Compensation Committee, the Chairman of the Board of Directors, or the President of the Company.

#### Section 5. Associate Directors

(A) Any person who has served as a director may be elected by the Board of Directors as an associate director, to serve during the pleasure of the Board.

(B) An associate director shall be entitled to attend all directors meetings and participate in the discussion of all matters brought to the Board, with the exception that he would have no right to vote. An associate director will be eligible for appointment to Committees of the Company, with the exception of the Executive Committee, Audit Committee and Compensation Committee, which must be comprised solely of active directors.

#### Section 6. Absence or Disqualification of Any Member of a Committee

(A) In the absence or disqualification of any member of any Committee created under Article III of the By-Laws of this Company, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absence or disqualified member.

### ARTICLE IV Officers

Section 1. The Chairman of the Board of Directors shall preside at all meetings of the Board and shall have such further authority and powers and shall perform such duties as the Board of Directors may from time to time confer and direct. He shall also exercise such powers and perform such duties as may from time to time be agreed upon between himself and the President of the Company.

Section 2. The Vice Chairman of the Board. The Vice Chairman of the Board of Directors shall preside at all meetings of the Board of Directors at which the Chairman of the Board shall not be present and shall have such further authority and powers and shall perform such duties as the Board of Directors or the Chairman of the Board may from time to time confer and direct.

Section 3. The President shall have the powers and duties pertaining to the office of the President conferred or imposed upon him by statute or assigned to him by the Board of Directors in the absence of the Chairman of the Board the President shall have the powers and duties of the Chairman of the Board.

Section 4. The Chairman of the Board of Directors or the President as designated by the Board of Directors, shall carry into effect all legal directions of the Executive Committee and of the Board of Directors, and shall at all times exercise general supervision over the interest, affairs and operations of the Company and perform all duties incident to his office.

Section 5. There may be one or more Vice Presidents, however denominated by the Board of Directors, who may at any time perform all the duties of the Chairman of the Board of Directors and/or the President and such other powers and duties as may from time to time be assigned to them by the Board of Directors, the Executive Committee, the Chairman of the Board or the President and by the officer in charge of the department or division to which they are assigned.

Section 6. The Secretary shall attend to the giving of notice of meetings of the stockholders and the Board of Directors, as well as the Committees thereof, to the keeping of accurate minutes of all such meetings and to recording the same in the minute books of the Company. In addition to the other notice requirements of these By-Laws and as may be practicable under the circumstances, all such notices shall be in writing and mailed well in advance of the scheduled date of any other meeting. He shall have custody of the corporate seal and shall affix the same to any documents requiring such corporate seal and to attest the same.

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Section 7. The Treasurer shall have general supervision over all assets and liabilities of the Company. He shall be custodian of and responsible for all monies, funds and valuables of the Company and for the keeping of proper records of the evidence of property or indebtedness and of all the transactions of the Company. He shall have general supervision of the expenditures of the Company and shall report to the Board of Directors at each regular meeting of the condition of the Company, and perform such other duties as may be assigned to him from time to time by the Board of Directors of the Executive Committee.

Section 8. There may be a Controller who shall exercise general supervision over the internal operations of the Company, including accounting, and shall render to the Board of Directors at appropriate times a report relating to the general condition and internal operations of the Company.

There may be one or more subordinate accounting or controller officers however denominated, who may perform the duties of the Controller and such duties as may be prescribed by the Controller.

Section 9. The officer designated by the Board of Directors to be in charge of the Audit Division of the Company with such title as the Board of Directors shall prescribe, shall report to and be directly responsible only to the Board of Directors.



There shall be an Auditor and there may be one or more Audit Officers, however denominated, who may perform all the duties of the Auditor and such duties as may be prescribed by the officer in charge of the Audit Division.

Section 10. There may be one or more officers, subordinate in rank to all Vice Presidents with such functional titles as shall be determined from time to time by the Board of Directors, who shall ex officio hold the office Assistant Secretary of this Company and who may perform such duties as may be prescribed by the officer in charge of the department or division to whom they are assigned.

Section 11. The powers and duties of all other officers of the Company shall be those usually pertaining to their respective offices, subject to the direction of the Board of Directors, the Executive Committee, Chairman of the Board of Directors or the President and the officer in charge of the department or division to which they are assigned.

## ARTICLE V

### Stock and Stock Certificates

Section 1. Shares of stock shall be transferrable on the books of the Company and a transfer book shall be kept in which all transfers of stock shall be recorded.

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Section 2. Certificate of stock shall bear the signature of the President or any Vice President, however denominated by the Board of Directors and countersigned by the Secretary or Treasurer or an Assistant Secretary, and the seal of the corporation shall be engraved thereon. Each certificate shall recite that the stock represented thereby is transferrable only upon the books of the Company by the holder thereof or his attorney, upon surrender of the certificate properly endorsed. Any certificate of stock surrendered to the Company shall be cancelled at the time of transfer, and before a new certificate or certificates shall be issued in lieu thereof. Duplicate certificates of stock shall be issued only upon giving such security as may be satisfactory to the Board of Directors or the Executive Committee.

Section 3. The Board of Directors of the Company is authorized to fix in advance a record date for the determination of the stockholders entitled to notice of, and to vote at, any meeting of stockholders and any adjournment thereof, or entitled to receive payment of any dividend, or to any allotment or rights, or to exercise any rights in respect of any change, conversion or exchange of capital stock, or in connection with obtaining the consent of stockholders for any purpose, which record date shall not be more than 60 nor less than 10 days proceeding the date of any meeting of stockholders or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining such consent.

## ARTICLE VI

Section 1. The corporate seal of the Company shall be in the following form:

Between two concentric circles the words "Wilmington Trust Company" within the inner circle the words "Wilmington, Delaware."

ARTICLE VII  
Fiscal Year

Section 1. The fiscal year of the Company shall be the calendar year.

ARTICLE VIII  
Execution of Instruments of the Company

Section 1. The Chairman of the Board, the President or any Vice President, however denominated by the Board of Directors, shall have full power and authority to enter into, make, sign, execute, acknowledge and/or deliver and the Secretary or any Assistant Secretary shall have full power and authority to attest and affix the corporate seal of the Company to any and all deeds, conveyances, assignments, releases, contracts, agreements, bonds, notes, mortgages and all other instruments incident to the business of this Company or in acting as executor, administrator, guardian, trustee, agent or in any other fiduciary or representative capacity by any and every method of appointment or by whatever person, corporation, court officer or authority in the State of Delaware, or elsewhere, without any specific authority, ratification, approval or confirmation by the Board of Directors or the Executive Committee, and any and all such instruments shall have the same force and validity as though expressly authorized by the Board of Directors and/or the Executive Committee.

ARTICLE IX  
Compensation of Directors and Members of Committees

Section 1. Directors and associate directors of the Company, other than salaried officers of the Company, shall be paid such reasonable honoraria or fees for attending meetings of the Board of Directors as the Board of Directors may from time to time determine. Directors and associate directors who serve as members of committees, other than salaried employees of the Company, shall be paid such reasonable honoraria or fees for services as members of committees as the Board of Directors shall from time to time determine and directors and associate directors may be employed by the Company for such special services as the Board of Directors may from time to time determine and shall be paid for such special services so performed reasonable compensation as may be determined by the Board of Directors.

ARTICLE X  
Indemnification

Section 1. (A) The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding") by reason of the fact that he, or a person for whom he is the legal representative, is or was a director, officer, employee or agent of the Corporation or is or

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was serving at the request of the Corporation as a director, officer, employee, fiduciary or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person. The Corporation shall indemnify a person in connection with a proceeding initiated by such person only if the proceeding was authorized by the Board of Directors of the Corporation.

(B) The Corporation shall pay the expenses incurred in defending any proceeding in advance of its final disposition, provided, however, that the payment of expenses incurred by a Director officer in his capacity as a Director or officer in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Director or officer to repay all amounts advanced if it should be ultimately determined that the Director or officer is not entitled to be indemnified under this Article or otherwise.

(C) If a claim for indemnification or payment of expenses, under this Article X is not paid in full within ninety days after a written claim therefor has been received by the Corporation the claimant may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the claimant was not entitled to the requested indemnification of payment of expenses under applicable law.

(D) The rights conferred on any person by this Article X shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Charter or Act of Incorporation, these By-Laws, agreement, vote of stockholders or disinterested Directors or otherwise.

(E) Any repeal or modification of the foregoing provisions of this Article X shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

ARTICLE XI  
Amendments to the By-Laws

Section 1. These By-Laws may be altered, amended or repealed, in whole

or in part, and any new By-Law or By-Laws adopted at any regular or special meeting of the Board of Directors by a vote of the majority of all the members of the Board of Directors then in office.

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EXHIBIT C

Section 321(b) Consent

Pursuant to Section 321(b) of the Trust Indenture Act of 1939, as amended, Wilmington Trust Company hereby consents that reports of examinations by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon requests therefor.

WILMINGTON TRUST COMPANY

Dated: March 23, 1999

By: /s/ Norma P. Closs

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Name: Norma P. Closs

Title: Vice President

EXHIBIT D

NOTICE

This form is intended to assist state nonmember banks and savings banks with state publication requirements. It has not been approved by any state banking authorities. Refer to your appropriate state banking authorities for your state publication requirements.

R E P O R T   O F   C O N D I T I O N

Consolidating domestic subsidiaries of the

WILMINGTON TRUST COMPANY

of

WILMINGTON

-----  
Name of Bank

-----  
City

in the State of DELAWARE, at the close of business on December 31, 1998.

<TABLE>

<CAPTION>

ASSETS

Thousands of dollars

<S>

<C>

Cash and balances due from depository institutions:

Noninterest-bearing balances and currency and coins.....	194,839
--	---------

Interest-bearing balances.....	0
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Held-to-maturity securities.....	73,911
----------------------------------	--------

Available-for-sale securities.....	1,228,194
------------------------------------	-----------

Federal funds sold and securities purchased under agreements to resell.....	203,500
---	---------

Loans and lease financing receivables:

Loans and leases, net of unearned income.....	4,167,235
---	-----------

LESS: Allowance for loan and lease losses.....	66,897
--	--------

LESS: Allocated transfer risk reserve.....	0
--	---

Loans and leases, net of unearned income, allowance, and reserve...	4,100,338
---	-----------

Assets held in trading accounts.....	0
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Premises and fixed assets (including capitalized leases).....	139,079
---	---------

Other real estate owned.....	1,532
------------------------------	-------

Investments in unconsolidated subsidiaries and associated companies.....	1,052
--	-------

Customers' liability to this bank on acceptances outstanding.....	0
---	---

Intangible assets.....	3,047
------------------------	-------

Other assets.....	98,867
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Total assets.....	6,044,359
-------------------	-----------

</TABLE>

CONTINUED ON NEXT PAGE

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<S>

<C>

LIABILITIES

Deposits:

In domestic offices.....	4,474,659
--------------------------	-----------

Noninterest-bearing .....	1,037,549
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Interest-bearing.....	3,437,110
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Federal funds purchased and Securities sold under agreements to repurchase.	390,060
---	---------

Demand notes issued to the U.S. Treasury.....	18,944
---	--------

Trading liabilities (from Schedule RC-D).....	0
---	---

Other borrowed money:.....	////////
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With original maturity of one year or less.....	555,000
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With original maturity of more than one year.....	43,000
---	--------

Bank's liability on acceptances executed and outstanding.....	0
---	---

Subordinated notes and debentures.....	0
--	---

Other liabilities (from Schedule RC-G).....	90,951
---	--------

Total liabilities.....	5,572,614
------------------------	-----------

## EQUITY CAPITAL

Perpetual preferred stock and related surplus.....	0
Common Stock.....	500
Surplus (exclude all surplus related to preferred stock).....	62,118
Undivided profits and capital reserves.....	403,264
Net unrealized holding gains (losses) on available-for-sale securities.....	5,863
Total equity capital.....	471,745
Total liabilities, limited-life preferred stock, and equity capital.....	6,044,359

</TABLE>

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) ☒ |X|

WILMINGTON TRUST COMPANY  
(Exact name of trustee as specified in its charter)

Delaware  
(State of incorporation)

51-0055023  
(I.R.S. employer identification no.)

Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890  
(Address of principal executive offices)

Cynthia L. Corliss  
Vice President and Trust Counsel  
Wilmington Trust Company  
Rodney Square North  
Wilmington, Delaware 19890  
(302) 651-8516  
(Name, address and telephone number of agent for service)

POGO PRODUCING COMPANY  
(Exact name of obligor as specified in its charter)

Delaware  
(State of incorporation)

74-1659398  
(I.R.S. employer identification no.)

5 Greenway Plaza  
Suite 2700  
Houston, Texas  
(Address of principal executive offices)

77046  
(Zip Code)

Guarantee of Preferred Securities of Pogo Trust II by Pogo Producing Company  
(Title of the indenture securities)

=====

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.

Federal Deposit Insurance Co.	State Bank Commissioner
Five Penn Center	Dover, Delaware
Suite #2901	
Philadelphia, PA	

(b) Whether it is authorized to exercise corporate trust powers.

The trustee is authorized to exercise corporate trust powers.

ITEM 2. AFFILIATIONS WITH THE OBLIGOR.

If the obligor is an affiliate of the trustee, describe each affiliation:

Based upon an examination of the books and records of the trustee and upon information furnished by the obligor, the obligor is not an affiliate of the trustee.

ITEM 3. LIST OF EXHIBITS.

List below all exhibits filed as part of this Statement of Eligibility and Qualification.

- A. Copy of the Charter of Wilmington Trust Company, which includes the certificate of authority of Wilmington Trust Company to commence business and the authorization of Wilmington Trust Company to exercise corporate trust powers.
- B. Copy of By-Laws of Wilmington Trust Company.
- C. Consent of Wilmington Trust Company required by Section 321(b) of Trust Indenture Act.
- D. Copy of most recent Report of Condition of Wilmington Trust Company.

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Wilmington Trust Company, a corporation organized and existing under the laws of Delaware, has duly caused this Statement of Eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Wilmington and State of Delaware on the 23rd day of March, 1999.

WILMINGTON TRUST COMPANY



[SEAL]

Attest: /s/ Patricia A. Evans

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Assistant Secretary

By: /s/ Norma P. Closs

-----

Name: Norma P. Closs

Title: Vice President

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EXHIBIT A

AMENDED CHARTER

Wilmington Trust Company

Wilmington, Delaware

As existing on May 9, 1987

Amended Charter

or

Act of Incorporation

of

Wilmington Trust Company

Wilmington Trust Company, originally incorporated by an Act of the General Assembly of the State of Delaware, entitled "An Act to Incorporate the Delaware Guarantee and Trust Company", approved March 2, A.D. 1901, and the name of which company was changed to "Wilmington Trust Company" by an amendment filed in the Office of the Secretary of State on March 18, A.D. 1903, and the Charter or Act of Incorporation of which company has been from time to time amended and changed by merger agreements pursuant to the corporation law for state banks and trust companies of the State of Delaware, does hereby alter and amend its Charter or Act of Incorporation so that the same as so altered and amended shall in its entirety read as follows:

First: - The name of this corporation is Wilmington Trust Company.

Second: - The location of its principal office in the State of Delaware is at Rodney Square North, in the City of Wilmington, County of New Castle; the name of its resident agent is Wilmington Trust Company whose address is Rodney Square North, in said City. In addition to such principal office, the said corporation maintains and operates branch offices in the City of Newark, New Castle County, Delaware, the Town of Newport, New Castle County, Delaware, at Claymont, New Castle County, Delaware, at Greenville, New Castle County Delaware, and at Milford Cross Roads, New Castle County, Delaware, and shall be empowered to open, maintain and operate branch offices at Ninth and Shipley Streets, 418 Delaware Avenue, 2120 Market Street, and 3605 Market Street, all in the City of Wilmington, New Castle County, Delaware, and such other branch offices or places of business as may be authorized from time to time by the agency or agencies of the government of the State of Delaware empowered to confer such authority.

Third: - (a) The nature of the business and the objects and purposes proposed to be transacted, promoted or carried on by this Corporation are to do any or all of the things herein mentioned as fully and to the same extent as natural persons might or could do and in any part of the world, viz.:

(1) To sue and be sued, complain and defend in any Court of law or equity and to make and use a common seal, and alter the seal at pleasure, to hold,

purchase, convey, mortgage or otherwise deal in real and personal estate and property, and to appoint such officers and agents as the business of the Corporation shall require, to make by-laws not inconsistent with the Constitution or laws of the United States or of this State, to discount bills, notes or other evidences of debt, to receive deposits of money, or securities for money, to buy gold and silver bullion and foreign coins, to buy and sell bills of exchange, and generally to use, exercise and enjoy all the powers, rights, privileges and franchises incident to a corporation which are proper or necessary for the transaction of the business of the Corporation hereby created.

(2) To insure titles to real and personal property, or any estate or interests therein, and to guarantee the holder of such property, real or personal, against any claim or claims, adverse to his interest therein, and to prepare and give certificates of title for any lands or premises in the State of Delaware, or elsewhere.

(3) To act as factor, agent, broker or attorney in the receipt, collection, custody, investment and management of funds, and the purchase, sale, management and disposal of property of all descriptions, and to prepare and execute all papers which may be necessary or proper in such business.

(4) To prepare and draw agreements, contracts, deeds, leases, conveyances, mortgages, bonds and legal papers of every description, and to carry on the business of conveyancing in all its branches.

(5) To receive upon deposit for safekeeping money, jewelry, plate, deeds, bonds and any and all other personal property of every sort and kind, from executors, administrators, guardians, public officers, courts, receivers, assignees, trustees, and from all fiduciaries, and from all other persons and individuals, and from all corporations whether state, municipal, corporate or private, and to rent boxes, safes, vaults and other receptacles for such property.

(6) To act as agent or otherwise for the purpose of registering, issuing, certificating, countersigning, transferring or underwriting the stock, bonds or other obligations of any corporation, association, state or municipality, and may receive and manage any sinking fund therefor on such terms as may be agreed

upon between the two parties, and in like manner may act as Treasurer of any corporation or municipality.

(7) To act as Trustee under any deed of trust, mortgage, bond or other

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instrument issued by any state, municipality, body politic, corporation, association or person, either alone or in conjunction with any other person or persons, corporation or corporations.

(8) To guarantee the validity, performance or effect of any contract or agreement, and the fidelity of persons holding places of responsibility or trust; to become surety for any person, or persons, for the faithful performance of any trust, office, duty, contract or agreement, either by itself or in conjunction with any other person, or persons, corporation, or corporations, or in like manner become surety upon any bond, recognizance, obligation, judgment, suit, order, or decree to be entered in any court of record within the State of Delaware or elsewhere, or which may now or hereafter be required by any law, judge, officer or court in the State of Delaware or elsewhere.

(9) To act by any and every method of appointment as trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian, bailee, or in any other trust capacity in the receiving, holding, managing, and disposing of any and all estates and property, real, personal or mixed, and to be appointed as such trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian or bailee by any persons, corporations, court, officer, or authority, in the State of Delaware or elsewhere; and whenever this Corporation is so appointed by any person, corporation, court, officer or authority such trustee, trustee in bankruptcy, receiver, assignee, assignee in bankruptcy, executor, administrator, guardian, bailee, or in any other trust capacity, it shall not be required to give bond with surety, but its capital stock shall be taken and held as security for the performance of the duties devolving upon it by such appointment.

(10) And for its care, management and trouble, and the exercise of any of its powers hereby given, or for the performance of any of the duties which it may undertake or be called upon to perform, or for the assumption of any responsibility the said Corporation may be entitled to receive a proper compensation.

(11) To purchase, receive, hold and own bonds, mortgages, debentures, shares of capital stock, and other securities, obligations, contracts and evidences of indebtedness, of any private, public or municipal corporation within and without the State of Delaware, or of the Government of the United States, or of any state, territory, colony, or possession thereof, or of any foreign government or country; to receive, collect, receipt for,

interest, dividends and income upon and from any of the bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property held and owned by it, and to exercise in respect of all such bonds, mortgages, debentures, notes, shares of capital stock, securities, obligations, contracts, evidences of indebtedness and other property, any and all the rights, powers and privileges of individual owners thereof, including the right to vote thereon; to invest and deal in and with any of the moneys of the Corporation upon such securities and in such manner as it may think fit and proper, and from time to time to vary or realize such investments; to issue bonds and secure the same by pledges or deeds of trust or mortgages of or upon the whole or any part of the property held or owned by the Corporation, and to sell and pledge such bonds, as and when the Board of Directors shall determine, and in the promotion of its said corporate business of investment and to the extent authorized by law, to lease, purchase, hold, sell, assign, transfer, pledge, mortgage and convey real and personal property of any name and nature and any estate or interest therein.

(b) In furtherance of, and not in limitation, of the powers conferred by the laws of the State of Delaware, it is hereby expressly provided that the said Corporation shall also have the following powers:

(1) To do any or all of the things herein set forth, to the same extent as natural persons might or could do, and in any part of the world.

(2) To acquire the good will, rights, property and franchises and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock of this Corporation, bonds or otherwise; to hold or in any manner to dispose of the whole or any part of the property so purchased; to conduct in any lawful manner the whole or any part of any business so acquired, and to exercise all the powers necessary or convenient in and about the conduct and management of such business.

(3) To take, hold, own, deal in, mortgage or otherwise lien, and to lease, sell, exchange, transfer, or in any manner whatever dispose of property, real, personal or mixed, wherever situated.

(4) To enter into, make, perform and carry out contracts of every kind with any person, firm, association or corporation, and, without limit as to amount, to draw, make, accept, endorse, discount, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures, and other

negotiable or transferable instruments.

(5) To have one or more offices, to carry on all or any of its operations and businesses, without restriction to the same extent as natural persons might or could do, to purchase or otherwise acquire, to hold, own, to mortgage, sell, convey or otherwise dispose of, real and personal property, of every class and description, in any State, District, Territory or Colony of the United States, and in any foreign country or place.

(6) It is the intention that the objects, purposes and powers specified and clauses contained in this paragraph shall (except where otherwise expressed in said paragraph) be nowise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in this charter, but that the objects, purposes and powers specified in each of the clauses of this paragraph shall be regarded as independent objects, purposes and powers.

Fourth: - (a) The total number of shares of all classes of stock which the Corporation shall have authority to issue is forty-one million (41,000,000) shares, consisting of:

(1) One million (1,000,000) shares of Preferred stock, par value \$10.00 per share (hereinafter referred to as "Preferred Stock"); and

(2) Forty million (40,000,000) shares of Common Stock, par value \$1.00 per share (hereinafter referred to as "Common Stock").

(b) Shares of Preferred Stock may be issued from time to time in one or more series as may from time to time be determined by the Board of Directors each of said series to be distinctly designated. All shares of any one series of Preferred Stock shall be alike in every particular, except that there may be different dates from which dividends, if any, thereon shall be cumulative, if made cumulative. The voting powers and the preferences and relative, participating, optional and other special rights of each such series, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding; and, subject to the provisions of subparagraph 1 of Paragraph (c) of this Article Fourth, the Board of Directors of the Corporation is hereby expressly granted authority to fix by resolution or resolutions adopted prior to the issuance of any shares of a particular series of Preferred Stock, the voting powers and the designations, preferences and relative, optional and other special rights, and the qualifications, limitations and restrictions of such series, including, but without limiting the generality of the foregoing, the following:

(1) The distinctive designation of, and the number of shares of Preferred Stock which shall constitute such series, which number

may be increased (except where otherwise provided by the Board of Directors) or decreased (but not below the number of shares thereof then outstanding) from time to time by like action of the Board of Directors;

(2) The rate and times at which, and the terms and conditions on which, dividends, if any, on Preferred Stock of such series shall be paid, the extent of the preference or relation, if any, of such dividends to the dividends payable on any other class or classes, or series of the same or other class of stock and whether such dividends shall be cumulative or non-cumulative;

(3) The right, if any, of the holders of Preferred Stock of such series to convert the same into or exchange the same for, shares of any other class or classes or of any series of the same or any other class or classes of stock of the Corporation and the terms and conditions of such conversion or exchange;

(4) Whether or not Preferred Stock of such series shall be subject to redemption, and the redemption price or prices and the time or times at which, and the terms and conditions on which, Preferred Stock of such series may be redeemed.

(5) The rights, if any, of the holders of Preferred Stock of such series upon the voluntary or involuntary liquidation, merger, consolidation, distribution or sale of assets, dissolution or winding-up, of the Corporation.

(6) The terms of the sinking fund or redemption or purchase account, if any, to be provided for the Preferred Stock of such series; and

(7) The voting powers, if any, of the holders of such series of Preferred Stock which may, without limiting the generality of the foregoing include the right, voting as a series or by itself or together with other series of Preferred Stock or all series of Preferred Stock as a class, to elect one or more directors of the Corporation if there shall have been a default in the payment of dividends on any one or more series of Preferred Stock or under such circumstances and on such conditions as the Board of Directors may determine.

(c) (1) After the requirements with respect to preferential dividends on the Preferred Stock (fixed in accordance with the provisions of section (b) of this Article Fourth), if any, shall have been met and after the Corporation shall have complied with all the requirements, if any, with respect to the setting aside of sums

as sinking funds or redemption or purchase accounts (fixed in accordance with the provisions of section (b) of this Article Fourth), and subject further to any conditions which may be fixed in accordance with the provisions of section (b) of this Article Fourth, then and not otherwise

the holders of Common Stock shall be entitled to receive such dividends as may be declared from time to time by the Board of Directors.

(2) After distribution in full of the preferential amount, if any, (fixed in accordance with the provisions of section (b) of this Article Fourth), to be distributed to the holders of Preferred Stock in the event of voluntary or involuntary liquidation, distribution or sale of assets, dissolution or winding-up, of the Corporation, the holders of the Common Stock shall be entitled to receive all of the remaining assets of the Corporation, tangible and intangible, of whatever kind available for distribution to stockholders ratably in proportion to the number of shares of Common Stock held by them respectively.

(3) Except as may otherwise be required by law or by the provisions of such resolution or resolutions as may be adopted by the Board of Directors pursuant to section (b) of this Article Fourth, each holder of Common Stock shall have one vote in respect of each share of Common Stock held on all matters voted upon by the stockholders.

(d) No holder of any of the shares of any class or series of stock or of options, warrants or other rights to purchase shares of any class or series of stock or of other securities of the Corporation shall have any preemptive right to purchase or subscribe for any unissued stock of any class or series or any additional shares of any class or series to be issued by reason of any increase of the authorized capital stock of the Corporation of any class or series, or bonds, certificates of indebtedness, debentures or other securities convertible into or exchangeable for stock of the Corporation of any class or series, or carrying any right to purchase stock of any class or series, but any such unissued stock, additional authorized issue of shares of any class or series of stock or securities convertible into or exchangeable for stock, or carrying any right to purchase stock, may be issued and disposed of pursuant to resolution of the Board of Directors to such persons, firms, corporations or associations, whether such holders or others, and upon such terms as may be deemed advisable by the Board of Directors in the exercise of its sole discretion.

(e) The relative powers, preferences and rights of each series of Preferred Stock in relation to the relative powers, preferences and rights of each other series of Preferred Stock shall, in each case, be as fixed from time to time by the Board of

Directors in the resolution or resolutions adopted pursuant to authority granted in section (b) of this Article Fourth and the consent, by class or series vote or otherwise, of the holders of such of the series of Preferred Stock as are from time to time outstanding shall not be required for the issuance by the Board of Directors of any other series of Preferred Stock whether or not the powers, preferences and rights of such other series shall be fixed by the Board of Directors as senior to, or on a parity with, the powers, preferences and rights of such outstanding series, or any of them; provided, however, that the Board of



Directors may provide in the resolution or resolutions as to any series of Preferred Stock adopted pursuant to section (b) of this Article Fourth that the consent of the holders of a majority (or such greater proportion as shall be therein fixed) of the outstanding shares of such series voting thereon shall be required for the issuance of any or all other series of Preferred Stock.

(f) Subject to the provisions of section (e), shares of any series of Preferred Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

(g) Shares of Common Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

(h) The authorized amount of shares of Common Stock and of Preferred Stock may, without a class or series vote, be increased or decreased from time to time by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote thereon.

Fifth: - (a) The business and affairs of the Corporation shall be conducted and managed by a Board of Directors. The number of directors constituting the entire Board shall be not less than five nor more than twenty-five as fixed from time to time by vote of a majority of the whole Board, provided, however, that the number of directors shall not be reduced so as to shorten the term of any director at the time in office, and provided further, that the number of directors constituting the whole Board shall be twenty-four until otherwise fixed by a majority of the whole Board.

(b) The Board of Directors shall be divided into three classes, as nearly equal in number as the then total number of directors constituting the whole Board permits, with the term of office of one class expiring each year. At the annual meeting of stockholders in 1982, directors of the first class shall be elected to hold office for a term expiring at the next succeeding annual meeting, directors of the second class

shall be elected to hold office for a term expiring at the second succeeding annual meeting and directors of the third class shall be elected to hold office for a term expiring at the third succeeding annual meeting. Any vacancies in the Board of Directors for any reason, and any newly created directorships resulting from any increase in the directors, may be filled by the Board of Directors, acting by a majority of the directors then in office, although less than a quorum, and any directors so chosen shall hold office until the next annual election of directors. At such election, the stockholders shall elect a successor to such director to hold office until the next election of the class for which such director shall have been chosen and until his successor shall be elected and qualified. No decrease in the number of directors shall shorten the term of any incumbent director.



(c) Notwithstanding any other provisions of this Charter or Act of Incorporation or the By-Laws of the Corporation (and notwithstanding the fact that some lesser percentage may be specified by law, this Charter or Act of Incorporation or the ByLaws of the Corporation), any director or the entire Board of Directors of the Corporation may be removed at any time without cause, but only by the affirmative vote of the holders of two-thirds or more of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) cast at a meeting of the stockholders called for that purpose.

(d) Nominations for the election of directors may be made by the Board of Directors or by any stockholder entitled to vote for the election of directors. Such nominations shall be made by notice in writing, delivered or mailed by first class United States mail, postage prepaid, to the Secretary of the Corporation not less than 14 days nor more than 50 days prior to any meeting of the stockholders called for the election of directors; provided, however, that if less than 21 days' notice of the meeting is given to stockholders, such written notice shall be delivered or mailed, as prescribed, to the Secretary of the Corporation not later than the close of the seventh day following the day on which notice of the meeting was mailed to stockholders. Notice of nominations which are proposed by the Board of Directors shall be given by the Chairman on behalf of the Board.

(e) Each notice under subsection (d) shall set forth (i) the name, age, business address and, if known, residence address of each nominee proposed in such notice, (ii) the principal occupation or employment of such nominee and (iii) the number of shares of stock of the Corporation which are beneficially owned by each such nominee.

(f) The Chairman of the meeting may, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the foregoing

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procedure, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

(g) No action required to be taken or which may be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, and the power of stockholders to consent in writing, without a meeting, to the taking of any action is specifically denied.

Sixth: - The Directors shall choose such officers, agent and servants as may be provided in the By-Laws as they may from time to time find necessary or proper.

Seventh: - The Corporation hereby created is hereby given the same powers, rights and privileges as may be conferred upon corporations organized under the Act entitled "An Act Providing a General Corporation Law", approved March 10, 1899, as from time to time amended.

Eighth: - This Act shall be deemed and taken to be a private Act.

Ninth: - This Corporation is to have perpetual existence.

Tenth: - The Board of Directors, by resolution passed by a majority of the whole Board, may designate any of their number to constitute an Executive Committee, which Committee, to the extent provided in said resolution, or in the By-Laws of the Company, shall have and may exercise all of the powers of the Board of Directors in the management of the business and affairs of the Corporation, and shall have power to authorize the seal of the Corporation to be affixed to all papers which may require it.

Eleventh: - The private property of the stockholders shall not be liable for the payment of corporate debts to any extent whatever.

Twelfth: - The Corporation may transact business in any part of the world.

Thirteenth: - The Board of Directors of the Corporation is expressly authorized to make, alter or repeal the By-Laws of the Corporation by a vote of the majority of the entire Board. The stockholders may make, alter or repeal any By-Law whether or not adopted by them, provided however, that any such additional By-Laws, alterations or repeal may be adopted only by the affirmative vote of the holders of two-thirds or more of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class).

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Fourteenth: - Meetings of the Directors may be held outside of the State of Delaware at such places as may be from time to time designated by the Board, and the Directors may keep the books of the Company outside of the State of Delaware at such places as may be from time to time designated by them.

Fifteenth: - (a) In addition to any affirmative vote required by law, and except as otherwise expressly provided in sections (b) and (c) of this Article Fifteenth:

(A) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with or into (i) any Interested Stockholder (as hereinafter defined) or (ii) any other corporation (whether or not itself an Interested Stockholder), which, after such merger or consolidation, would be an Affiliate (as hereinafter defined) of an Interested Stockholder, or

(B) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of related transactions) to or with any Interested Stockholder or any Affiliate of any Interested Stockholder of any assets of the

Corporation or any Subsidiary having an aggregate fair market value of \$1,000,000 or more, or

(C) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of related transactions) of any securities of the Corporation or any Subsidiary to any Interested Stockholder or any Affiliate of any Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate fair market value of \$1,000,000 or more, or

(D) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation, or

(E) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any similar transaction (whether or not with or into or otherwise involving an Interested Stockholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which is directly or indirectly owned by any Interested Stockholder, or any Affiliate of any Interested Stockholder,

shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, considered for the purpose of this Article Fifteenth as one class ("Voting Shares").

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Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that some lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise.

(2) The term "business combination" as used in this Article Fifteenth shall mean any transaction which is referred to any one or more of clauses (A) through (E) of paragraph 1 of the section (a).

(b) The provisions of section (a) of this Article Fifteenth shall not be applicable to any particular business combination and such business combination shall require only such affirmative vote as is required by law and any other provisions of the Charter or Act of Incorporation of By-Laws if such business combination has been approved by a majority of the whole Board.

(c) For the purposes of this Article Fifteenth:

(1) A "person" shall mean any individual firm, corporation or other entity.

(2) "Interested Stockholder" shall mean, in respect of any business

combination, any person (other than the Corporation or any Subsidiary) who or which as of the record date for the determination of stockholders entitled to notice of and to vote on such business combination, or immediately prior to the consummation of any such transaction:

(A) is the beneficial owner, directly or indirectly, of more than 10% of the Voting Shares, or

(B) is an Affiliate of the Corporation and at any time within two years prior thereto was the beneficial owner, directly or indirectly, of not less than 10% of the then outstanding voting Shares, or

(C) is an assignee of or has otherwise succeeded in any share of capital stock of the Corporation which were at any time within two years prior thereto beneficially owned by any Interested Stockholder, and such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933.

(3) A person shall be the "beneficial owner" of any Voting Shares:

(A) which such person or any of its Affiliates and Associates (as hereafter

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defined) beneficially own, directly or indirectly, or

(B) which such person or any of its Affiliates or Associates has (i) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (ii) the right to vote pursuant to any agreement, arrangement or understanding, or

(C) which are beneficially owned, directly or indirectly, by any other person with which such first mentioned person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of capital stock of the Corporation.

(4) The outstanding Voting Shares shall include shares deemed owned through application of paragraph (3) above but shall not include any other Voting Shares which may be issuable pursuant to any agreement, or upon exercise of conversion rights, warrants or options or otherwise.

(5) "Affiliate" and "Associate" shall have the respective meanings given those terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on December 31, 1981.

(6) "Subsidiary" shall mean any corporation of which a majority of any

class of equity security (as defined in Rule 3a11-1 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect in December 31, 1981) is owned, directly or indirectly, by the Corporation; provided, however, that for the purposes of the definition of Investment Stockholder set forth in paragraph (2) of this section (c), the term "Subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the Corporation.

(d) majority of the directors shall have the power and duty to determine for the purposes of this Article Fifteenth on the basis of information known to them, (1) the number of Voting Shares beneficially owned by any person (2) whether a person is an Affiliate or Associate of another, (3) whether a person has an agreement, arrangement or understanding with another as to the matters referred to in paragraph (3) of section (c), or (4) whether the assets subject to any business combination or the consideration received for the issuance or transfer of securities by the Corporation, or any Subsidiary has an aggregate fair market value of \$1,000,000 or more.

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(e) Nothing contained in this Article Fifteenth shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

Sixteenth: Notwithstanding any other provision of this Charter or Act of Incorporation or the By-Laws of the Corporation (and in addition to any other vote that may be required by law, this Charter or Act of Incorporation by the By-Laws), the affirmative vote of the holders of at least two-thirds of the outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors (considered for this purpose as one class) shall be required to amend, alter or repeal any provision of Articles Fifth, Thirteenth, Fifteenth or Sixteenth of this Charter or Act of Incorporation.

Seventeenth: (a) a Director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except to the extent such exemption from liability or limitation thereof is not permitted under the Delaware General Corporation Laws as the same exists or may hereafter be amended.

(b) Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a Director of the Corporation existing hereunder with respect to any act or omission occurring prior to the time of such repeal or modification."

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EXHIBIT B

BY-LAWS

WILMINGTON TRUST COMPANY

WILMINGTON, DELAWARE

As existing on January 16, 1997

BY-LAWS OF WILMINGTON TRUST COMPANY

ARTICLE I

Stockholders' Meetings

Section 1. The Annual Meeting of Stockholders shall be held on the third Thursday in April each year at the principal office at the Company or at such other date, time, or place as may be designated by resolution by the Board of Directors.

Section 2. Special meetings of all stockholders may be called at any time by the Board of Directors, the Chairman of the Board or the President.

Section 3. Notice of all meetings of the stockholders shall be given by mailing to each stockholder at least ten (10) days before said meeting, at his last known address, a written or printed notice fixing the time and place of such meeting.

Section 4. A majority in the amount of the capital stock of the Company issued and outstanding on the record date, as herein determined, shall constitute a quorum at all meetings of stockholders for the transaction of any business, but the holders of a small number of shares may adjourn, from time to time, without further notice, until a quorum is secured. At each annual or special meeting of stockholders, each stockholder shall be entitled to one vote, either in person or by proxy, for each shares of stock registered in the stockholder's name on the books of the Company on the record date for any such meeting as determined herein.

ARTICLE II

Directors

Section 1. The number and classification of the Board of Directors shall be as set forth in the Charter of the Bank.

Section 2. No person who has attained the age of seventy-two (72) years shall be nominated for election to the Board of Directors of the Company, provided, however, that this limitation shall not apply to any person who was serving as director of the Company on September 16, 1971.

Section 3. The class of Directors so elected shall hold office for three

years or until their successors are elected and qualified.

Section 4. The affairs and business of the Company shall be managed and conducted by the Board of Directors.

Section 5. The Board of Directors shall meet at the principal office of the Company or elsewhere in its discretion at such times to be determined by a majority of its members, or at the call of the Chairman of the Board of Directors or the President.

Section 6. Special meetings of the Board of Directors may be called at any time by the Chairman of the Board of Directors or by the President, and shall be called upon the written request of a majority of the directors.

Section 7. A majority of the directors elected and qualified shall be necessary to constitute a quorum for the transaction of business at any meeting of the Board of Directors.

Section 8. Written notice shall be sent by mail to each director of any special meeting of the Board of Directors, and of any change in the time or place of any regular meeting, stating the time and place of such meeting, which shall be mailed not less than two days before the time of holding such meeting.

Section 9. In the event of the death, resignation, removal, inability to act, or disqualification of any director, the Board of Directors, although less than a quorum, shall have the right to elect the successor who shall hold office for the remainder of the full term of the class of directors in which the vacancy occurred, and until such director's successor shall have been duly elected and qualified.

Section 10. The Board of Directors at its first meeting after its election by the stockholders shall appoint an Executive Committee, a Trust Committee, an Audit Committee and a Compensation Committee, and shall elect from its own members a Chairman of the Board of Directors and a President who may be the same person. The Board of Directors shall also elect at such meeting a Secretary and a Treasurer, who may be the same person, may appoint at any time such other committees and elect or appoint such other officers as it may deem advisable. The Board of Directors may also elect at such meeting one or more Associate Directors.

Section 11. The Board of Directors may at any time remove, with or without cause, any member of any Committee appointed by it or any associate director or officer elected by it and may appoint or elect his successor.

Section 12. The Board of Directors may designate an officer to be in charge of such of the departments or division of the Company as it may deem advisable.

ARTICLE III  
Committees

Section 1. Executive Committee

(A) The Executive Committee shall be composed of not more than nine members who shall be selected by the Board of Directors from its own members and who shall hold office during the pleasure of the Board.

(B) The Executive Committee shall have all the powers of the Board of Directors when it is not in session to transact all business for and in behalf of the Company that may be brought before it.

(C) The Executive Committee shall meet at the principal office of the Company or elsewhere in its discretion at such times to be determined by a majority of its members, or at the call of the Chairman of the Executive Committee or at the call of the Chairman of the Board of Directors. The majority of its members shall be necessary to constitute a quorum for the transaction of business. Special meetings of the Executive Committee may be held at any time when a quorum is present.

(D) Minutes of each meeting of the Executive Committee shall be kept and submitted to the Board of Directors at its next meeting.

(E) The Executive Committee shall advise and superintend all investments that may be made of the funds of the Company, and shall direct the disposal of the same, in accordance with such rules and regulations as the Board of Directors from time to time make.

(F) In the event of a state of disaster of sufficient severity to prevent the conduct and management of the affairs and business of the Company by its directors and officers as contemplated by these By-Laws any two available members of the Executive Committee as constituted immediately prior to such disaster shall constitute a quorum of that Committee for the full conduct and management of the affairs and business of the Company in accordance with the provisions of Article III of these By-Laws; and if less than three members of the Trust Committee is constituted immediately prior to such disaster shall be available for the transaction of its business, such Executive Committee shall also be empowered to exercise all of the powers reserved to the Trust Committee under Article III Section 2 hereof. In the event of the unavailability, at such time, of a minimum of two members of such Executive Committee, any three available directors shall constitute the Executive Committee for the full conduct and management of the affairs and business of the Company in accordance with the foregoing provisions of this Section. This By-Law shall be subject to implementation by Resolutions of the Board of Directors presently existing or

hereafter passed from time to time for that purpose, and any provisions of these By-Laws (other than this Section) and any resolutions which are contrary to the provisions of this Section or to the provisions of any such implementary Resolutions shall be suspended during such a disaster period until it shall be determined by any interim Executive Committee acting under this section that it



shall be to the advantage of the Company to resume the conduct and management of its affairs and business under all of the other provisions of these By-Laws.

## Section 2. Trust Committee

(A) The Trust Committee shall be composed of not more than thirteen members who shall be selected by the Board of Directors, a majority of whom shall be members of the Board of Directors and who shall hold office during the pleasure of the Board.

(B) The Trust Committee shall have general supervision over the Trust Department and the investment of trust funds, in all matters, however, being subject to the approval of the Board of Directors.

(C) The Trust Committee shall meet at the principal office of the Company or elsewhere in its discretion at such times to be determined by a majority of its members or at the call of its chairman. A majority of its members shall be necessary to constitute a quorum for the transaction of business.

(D) Minutes of each meeting of the Trust Committee shall be kept and promptly submitted to the Board of Directors.

(E) The Trust Committee shall have the power to appoint Committees and/or designate officers or employees of the Company to whom supervision over the investment of trust funds may be delegated when the Trust Committee is not in session.

## Section 3. Audit Committee

(A) The Audit Committee shall be composed of five members who shall be selected by the Board of Directors from its own members, none of whom shall be an officer of the Company, and shall hold office at the pleasure of the Board.

(B) The Audit Committee shall have general supervision over the Audit Division in all matters however subject to the approval of the Board of Directors; it shall consider all matters brought to its attention by the officer in charge of the Audit Division, review all reports of examination of the Company made by any governmental agency or such independent auditor employed for that purpose, and make such recommendations to the Board of Directors with respect thereto or with respect to any other matters pertaining to

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auditing the Company as it shall deem desirable.

(C) The Audit Committee shall meet whenever and wherever the majority of its members shall deem it to be proper for the transaction of its business, and a majority of its Committee shall constitute a quorum.

## Section 4. Compensation Committee

(A) The Compensation Committee shall be composed of not more

than five (5) members who shall be selected by the Board of Directors from its own members who are not officers of the Company and who shall hold office during the pleasure of the Board.

(B) The Compensation Committee shall in general advise upon all matters of policy concerning the Company brought to its attention by the management and from time to time review the management of the Company, major organizational matters, including salaries and employee benefits and specifically shall administer the Executive Incentive Compensation Plan.

(C) Meetings of the Compensation Committee may be called at any time by the Chairman of the Compensation Committee, the Chairman of the Board of Directors, or the President of the Company.

#### Section 5. Associate Directors

(A) Any person who has served as a director may be elected by the Board of Directors as an associate director, to serve during the pleasure of the Board.

(B) An associate director shall be entitled to attend all directors meetings and participate in the discussion of all matters brought to the Board, with the exception that he would have no right to vote. An associate director will be eligible for appointment to Committees of the Company, with the exception of the Executive Committee, Audit Committee and Compensation Committee, which must be comprised solely of active directors.

#### Section 6. Absence or Disqualification of Any Member of a Committee

(A) In the absence or disqualification of any member of any Committee created under Article III of the By-Laws of this Company, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absence or disqualified member.

### ARTICLE IV Officers

Section 1. The Chairman of the Board of Directors shall preside at all meetings of the Board and shall have such further authority and powers and shall perform such duties as the Board of Directors may from time to time confer and direct. He shall also exercise such powers and perform such duties as may from time to time be agreed upon between himself and the President of the Company.

Section 2. The Vice Chairman of the Board. The Vice Chairman of the Board of Directors shall preside at all meetings of the Board of Directors at which the Chairman of the Board shall not be present and shall have such further authority and powers and shall perform such duties as the Board of Directors or the Chairman of the Board may from time to time confer and direct.

Section 3. The President shall have the powers and duties pertaining to the office of the President conferred or imposed upon him by statute or assigned to him by the Board of Directors in the absence of the Chairman of the Board the President shall have the powers and duties of the Chairman of the Board.

Section 4. The Chairman of the Board of Directors or the President as designated by the Board of Directors, shall carry into effect all legal directions of the Executive Committee and of the Board of Directors, and shall at all times exercise general supervision over the interest, affairs and operations of the Company and perform all duties incident to his office.

Section 5. There may be one or more Vice Presidents, however denominated by the Board of Directors, who may at any time perform all the duties of the Chairman of the Board of Directors and/or the President and such other powers and duties as may from time to time be assigned to them by the Board of Directors, the Executive Committee, the Chairman of the Board or the President and by the officer in charge of the department or division to which they are assigned.

Section 6. The Secretary shall attend to the giving of notice of meetings of the stockholders and the Board of Directors, as well as the Committees thereof, to the keeping of accurate minutes of all such meetings and to recording the same in the minute books of the Company. In addition to the other notice requirements of these By-Laws and as may be practicable under the circumstances, all such notices shall be in writing and mailed well in advance of the scheduled date of any other meeting. He shall have custody of the corporate seal and shall affix the same to any documents requiring such corporate seal and to attest the same.

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Section 7. The Treasurer shall have general supervision over all assets and liabilities of the Company. He shall be custodian of and responsible for all monies, funds and valuables of the Company and for the keeping of proper records of the evidence of property or indebtedness and of all the transactions of the Company. He shall have general supervision of the expenditures of the Company and shall report to the Board of Directors at each regular meeting of the condition of the Company, and perform such other duties as may be assigned to him from time to time by the Board of Directors of the Executive Committee.

Section 8. There may be a Controller who shall exercise general supervision over the internal operations of the Company, including accounting, and shall render to the Board of Directors at appropriate times a report relating to the general condition and internal operations of the Company.

There may be one or more subordinate accounting or controller officers however denominated, who may perform the duties of the Controller and such duties as may be prescribed by the Controller.

Section 9. The officer designated by the Board of Directors to be in charge of the Audit Division of the Company with such title as the Board of Directors shall prescribe, shall report to and be directly responsible only to the Board of Directors.

There shall be an Auditor and there may be one or more Audit Officers, however denominated, who may perform all the duties of the Auditor and such duties as may be prescribed by the officer in charge of the Audit Division.

Section 10. There may be one or more officers, subordinate in rank to all Vice Presidents with such functional titles as shall be determined from time to time by the Board of Directors, who shall ex officio hold the office Assistant Secretary of this Company and who may perform such duties as may be prescribed by the officer in charge of the department or division to whom they are assigned.

Section 11. The powers and duties of all other officers of the Company shall be those usually pertaining to their respective offices, subject to the direction of the Board of Directors, the Executive Committee, Chairman of the Board of Directors or the President and the officer in charge of the department or division to which they are assigned.

## ARTICLE V

### Stock and Stock Certificates

Section 1. Shares of stock shall be transferrable on the books of the Company and a transfer book shall be kept in which all transfers of stock shall be recorded.

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Section 2. Certificate of stock shall bear the signature of the President or any Vice President, however denominated by the Board of Directors and countersigned by the Secretary or Treasurer or an Assistant Secretary, and the seal of the corporation shall be engraved thereon. Each certificate shall recite that the stock represented thereby is transferrable only upon the books of the Company by the holder thereof or his attorney, upon surrender of the certificate properly endorsed. Any certificate of stock surrendered to the Company shall be cancelled at the time of transfer, and before a new certificate or certificates shall be issued in lieu thereof. Duplicate certificates of stock shall be issued only upon giving such security as may be satisfactory to the Board of Directors or the Executive Committee.

Section 3. The Board of Directors of the Company is authorized to fix in advance a record date for the determination of the stockholders entitled to notice of, and to vote at, any meeting of stockholders and any adjournment thereof, or entitled to receive payment of any dividend, or to any allotment or rights, or to exercise any rights in respect of any change, conversion or exchange of capital stock, or in connection with obtaining the consent of stockholders for any purpose, which record date shall not be more than 60 nor less than 10 days proceeding the date of any meeting of stockholders or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining such consent.

## ARTICLE VI

Section 1. The corporate seal of the Company shall be in the following form:

Between two concentric circles the words "Wilmington Trust Company" within the inner circle the words "Wilmington, Delaware."

ARTICLE VII  
Fiscal Year

Section 1. The fiscal year of the Company shall be the calendar year.

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ARTICLE VIII  
Execution of Instruments of the Company

Section 1. The Chairman of the Board, the President or any Vice President, however denominated by the Board of Directors, shall have full power and authority to enter into, make, sign, execute, acknowledge and/or deliver and the Secretary or any Assistant Secretary shall have full power and authority to attest and affix the corporate seal of the Company to any and all deeds, conveyances, assignments, releases, contracts, agreements, bonds, notes, mortgages and all other instruments incident to the business of this Company or in acting as executor, administrator, guardian, trustee, agent or in any other fiduciary or representative capacity by any and every method of appointment or by whatever person, corporation, court officer or authority in the State of Delaware, or elsewhere, without any specific authority, ratification, approval or confirmation by the Board of Directors or the Executive Committee, and any and all such instruments shall have the same force and validity as though expressly authorized by the Board of Directors and/or the Executive Committee.

ARTICLE IX  
Compensation of Directors and Members of Committees

Section 1. Directors and associate directors of the Company, other than salaried officers of the Company, shall be paid such reasonable honoraria or fees for attending meetings of the Board of Directors as the Board of Directors may from time to time determine. Directors and associate directors who serve as members of committees, other than salaried employees of the Company, shall be paid such reasonable honoraria or fees for services as members of committees as the Board of Directors shall from time to time determine and directors and associate directors may be employed by the Company for such special services as the Board of Directors may from time to time determine and shall be paid for such special services so performed reasonable compensation as may be determined by the Board of Directors.

ARTICLE X  
Indemnification

Section 1. (A) The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding") by reason of the fact that he, or a person for whom he is the legal representative, is or was a director, officer, employee or agent of the Corporation or is or

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was serving at the request of the Corporation as a director, officer, employee, fiduciary or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person. The Corporation shall indemnify a person in connection with a proceeding initiated by such person only if the proceeding was authorized by the Board of Directors of the Corporation.

(B) The Corporation shall pay the expenses incurred in defending any proceeding in advance of its final disposition, provided, however, that the payment of expenses incurred by a Director officer in his capacity as a Director or officer in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Director or officer to repay all amounts advanced if it should be ultimately determined that the Director or officer is not entitled to be indemnified under this Article or otherwise.

(C) If a claim for indemnification or payment of expenses, under this Article X is not paid in full within ninety days after a written claim therefor has been received by the Corporation the claimant may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the claimant was not entitled to the requested indemnification of payment of expenses under applicable law.

(D) The rights conferred on any person by this Article X shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Charter or Act of Incorporation, these By-Laws, agreement, vote of stockholders or disinterested Directors or otherwise.

(E) Any repeal or modification of the foregoing provisions of this Article X shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

ARTICLE XI  
Amendments to the By-Laws

Section 1. These By-Laws may be altered, amended or repealed, in whole

or in part, and any new By-Law or By-Laws adopted at any regular or special meeting of the Board of Directors by a vote of the majority of all the members of the Board of Directors then in office.

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EXHIBIT C

Section 321(b) Consent

Pursuant to Section 321(b) of the Trust Indenture Act of 1939, as amended, Wilmington Trust Company hereby consents that reports of examinations by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon requests therefor.

WILMINGTON TRUST COMPANY

Dated: March 23, 1999

By: /s/ Norma P. Closs

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Name: Norma P. Closs

Title: Vice President

EXHIBIT D

NOTICE

This form is intended to assist state nonmember banks and savings banks with state publication requirements. It has not been approved by any state banking authorities. Refer to your appropriate state banking authorities for your state publication requirements.

R E P O R T   O F   C O N D I T I O N

Consolidating domestic subsidiaries of the

-----  
WILMINGTON TRUST COMPANY

of

-----  
WILMINGTON

Name of Bank

City

in the State of DELAWARE, at the close of business on December 31, 1998.

<TABLE>

<CAPTION>

ASSETS

Thousands of dollars

<S>

<C>

Cash and balances due from depository institutions:

Noninterest-bearing balances and currency and coins.....	194,839
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Interest-bearing balances.....	0
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Held-to-maturity securities.....	73,911
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Available-for-sale securities.....	1,228,194
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Federal funds sold and securities purchased under agreements to resell.....	203,500
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Loans and lease financing receivables:

Loans and leases, net of unearned income.....	4,167,235
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LESS: Allowance for loan and lease losses.....	66,897
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LESS: Allocated transfer risk reserve.....	0
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Loans and leases, net of unearned income, allowance, and reserve...	4,100,338
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Assets held in trading accounts.....	0
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Premises and fixed assets (including capitalized leases).....	139,079
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Other real estate owned.....	1,532
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Investments in unconsolidated subsidiaries and associated companies.....	1,052
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Customers' liability to this bank on acceptances outstanding.....	0
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Intangible assets.....	3,047
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Other assets.....	98,867
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Total assets.....	6,044,359
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LIABILITIES

Deposits:

In domestic offices.....	4,474,659
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Noninterest-bearing .....	1,037,549
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Interest-bearing.....	3,437,110
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Federal funds purchased and Securities sold under agreements to repurchase.	390,060
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Demand notes issued to the U.S. Treasury.....	18,944
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Trading liabilities (from Schedule RC-D).....	0
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Other borrowed money:.....	////////
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With original maturity of one year or less.....	555,000
---	---------

With original maturity of more than one year.....	43,000
---	--------

Bank's liability on acceptances executed and outstanding.....	0
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Subordinated notes and debentures.....	0
--	---

Other liabilities (from Schedule RC-G).....	90,951
---	--------

Total liabilities.....	5,572,614
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## EQUITY CAPITAL

Perpetual preferred stock and related surplus.....	0
Common Stock.....	500
Surplus (exclude all surplus related to preferred stock).....	62,118
Undivided profits and capital reserves.....	403,264
Net unrealized holding gains (losses) on available-for-sale securities.....	5,863
Total equity capital.....	471,745
Total liabilities, limited-life preferred stock, and equity capital.....	6,044,359

</TABLE>