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

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**Form 8-K**

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**CURRENT REPORT**

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): August 20, 2003

**SOUTHWEST GAS CORPORATION**

(Exact names of registrant and co-registrant as specified in their charters)

**SOUTHWEST GAS CAPITAL II**

California  
(State of incorporation or organization)

1-7850  
(Commission File Number)

88-0085720  
(I.R.S. Employer Identification No.)

Delaware  
(State of incorporation or organization)

1-7850  
(Commission File Number)

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

c/o Southwest Gas Corporation  
5241 Spring Mountain Road  
Las Vegas, Nevada 89150  
(Address and zip code of principal executive offices)

Registrant's telephone number, including area code: (702) 876-7237

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**ITEM 5. Other Events and Regulation FD Disclosure.**

On August 20, 2003, Southwest Gas Corporation (the “Company”) and Southwest Gas Capital II (the “Trust”) completed the pricing for an offering of the Trust’s 4,000,000 7.70% Preferred Trust Securities (liquidation amount \$25 per Preferred Trust Security) (the “Preferred Trust Securities”) with respect to the Registration Statement on Form S-3 (File Nos. 333-106419 and 333-106419-03). The following exhibits are filed in connection therewith.

**ITEM 7. Financial Statements and Exhibits.**

- 1.01 Underwriting Agreement dated August 20, 2003, by and among the Company, the Trust, and the underwriters named therein.
- 4.09 Form of Amended and Restated Trust Agreement dated as of August 25, 2003 of the Trust.
- 4.13 Form of Guarantee Agreement dated as of August 25, 2003 with respect to the Preferred Trust Securities.
- 4.14 Form of Indenture dated as of August 25, 2003 with respect to the 7.70% Junior Subordinated Debentures of the Company.
- 4.16 Form of Preferred Trust Security (included in Exhibit 4.09 hereto).
- 4.17 Form of 7.70% Junior Subordinated Debenture (included in Exhibit 4.14 hereto).
- 5.01 Opinion of O’Melveny & Myers LLP with respect to the validity of the 7.70% Junior Subordinated Debentures and the Guarantee Agreement with respect to the Preferred Trust Securities.
- 5.02 Opinion of Richards, Layton & Finger, P.A. with respect to the validity of the Preferred Trust Securities.
- 8.01 Opinion of O’Melveny & Myers LLP with respect to certain tax matters for the Preferred Trust Securities.
- 23.02 Consent of O’Melveny & Myers (included in Exhibit 5.01).
- 23.03 Consent of Richards, Layton & Finger, P.A. (included in Exhibit 5.02).
- 23.04 Consent of O’Melveny & Myers LLP (included in Exhibit 8.01).

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrants have duly caused this report to be signed on their behalf by the undersigned hereunto duly authorized.

SOUTHWEST GAS CORPORATION  
as Sponsor of the Registrant

/s/ EDWARD A. JANOV

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Edward A. Janov  
Vice President/Finance

SOUTHWEST GAS CAPITAL II

/s/ ROBERT M. JOHNSON

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Robert M. Johnson, Trustee

Date: August 22, 2003

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## EXHIBIT INDEX

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**4,000,000 Preferred Trust Securities****SOUTHWEST GAS CAPITAL II****7.70% Preferred Trust Securities****(Liquidation Amount \$25 per Preferred Trust Security)****Fully and Unconditionally Guaranteed, to the Extent Set Forth Herein, by****SOUTHWEST GAS CORPORATION****UNDERWRITING AGREEMENT**

August 20, 2003

UBS SECURITIES LLC

As Representative of the several Underwriters

named in Schedule A hereto

677 Washington Boulevard

Stamford, Connecticut 06901

Ladies and Gentlemen:

Southwest Gas Capital II (the "Trust"), a statutory trust organized under the Delaware Statutory Trust Act (Title 12, Chapter 38 of the Delaware Code, 12 Del. C §§3801, et seq.) (the "Delaware Act"), and Southwest Gas Corporation, a California corporation (the "Company" and, together with the Trust, the "Offerors"), confirm their agreement (the "Agreement") with the several Underwriters named in Schedule A hereto (collectively, the "Underwriters," which term shall also include any underwriter substituted as hereinafter provided in Section 7 hereof), for whom UBS Securities LLC is acting as representative (in such capacity, the "Representative"), with respect to the sale by the Trust and the purchase by the Underwriters, acting severally and not jointly, of the respective numbers of 7.70% Preferred Trust Securities (liquidation amount \$25 per preferred trust security) of the Trust set forth in Schedule A hereto (the "Preferred Securities"). The Preferred Securities will be guaranteed by the Company, to the extent set forth in the Prospectus (as defined below), with respect to distributions and payments upon liquidation and redemption (the "Preferred Securities Guarantee") pursuant to the Preferred Securities Guarantee Agreement (the "Preferred Securities Guarantee Agreement"), dated as of August 25, 2003, between the Company and BNY Midwest Trust Company, as guarantee trustee (the "Guarantee Trustee"). The Preferred Securities and the Preferred Securities Guarantee are referred to herein as the "Securities."

The proceeds of the sale of the Preferred Securities to the public, together with the proceeds of the sale of common trust securities of the Trust (the "Common Securities") to the

Company concurrently with the sale of the Preferred Securities, are to be invested by the Trust in \$103,100,000 aggregate principal amount of 7.70% Junior Subordinated Debentures due September 15, 2043 (the "Trust Debt Securities") to be issued by the Company pursuant to the Indenture, dated as of August 25, 2003 (the "Indenture"), between the Company and BNY Midwest Trust Company, as indenture trustee (the "Indenture Trustee"). The Common Securities will be guaranteed by the Company, to the extent set forth in the Prospectus, with respect to distributions and payments upon liquidation and redemption (the "Common Securities Guarantee" and, together with the Preferred Securities Guarantee, the "Guarantees") pursuant to the Common Securities Guarantee Agreement, dated as of August 25, 2003, by the Company for the benefit of the holder of the Common Securities (the "Common Securities Guarantee Agreement" and, together with the Preferred Securities Guarantee Agreement, the "Guarantee Agreements").

The Trust Agreement (as defined below), the Indenture, and the Preferred Securities Guarantee Agreement have been qualified under the Trust Indenture Act of 1939, as amended (the "1939 Act"). The Preferred Securities and the Common Securities will be issued pursuant to the Amended and Restated Trust Agreement of the Trust, dated as of August 25, 2003 (the "Trust Agreement"), among the Company, as Sponsor, the trustees named therein (the "Trustees"), including BNY Midwest Trust Company, as property trustee under the Trust Agreement (the "Property Trustee"), and the holders from time to time of undivided beneficial interests in the assets of the Trust.

The Offerors (a) have filed with the Securities and Exchange Commission (the "Commission") in accordance with the provisions of the Securities Act of 1933, as amended (the "1933 Act"), a registration statement on Form S-3 (File Nos. 333-106419 and 333-106419-03) for the registration under the 1933 Act of up to \$300,000,000 aggregate offering price of securities, including (i) the Preferred Securities, (ii) the Preferred Securities Guarantee and (iii) the Trust Debt Securities, (b) have filed such amendments to such registration statement as have been required to the date hereof and (c) will file such additional amendments to such registration statement as may hereafter be required (the various parts of such registration statement and any post-effective amendment thereto, including all exhibits thereto and the documents incorporated by reference in the prospectus contained in such registration statement at the time such part of such registration statement became effective but excluding Form T-1, each as amended at the time such part of such registration statement became effective, are hereinafter collectively called the "Registration Statement"; the prospectus relating to the Securities and the Trust Debt Securities, in the form in which it has most recently been filed, or transmitted for filing, with the Commission on or prior to the date of this Agreement, is hereinafter called the "Prospectus"; any preliminary prospectus included in the Registration Statement or filed with the Commission pursuant to Rule 424(b) of the rules and regulations of the Commission under the 1933 Act (the "1933 Act Regulations") is hereinafter called a "Preliminary Prospectus"; any reference herein to any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to the applicable form under the 1933 Act, as of the date of such Preliminary Prospectus or the Prospectus, as the case may be; any reference to any amendment or supplement to any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include any documents filed after the date of such Preliminary Prospectus or the Prospectus, as the case may be, under the Securities Exchange Act of 1934, as amended (the "1934 Act"), and incorporated by reference in such Preliminary Prospectus or the

Prospectus, as the case may be; any reference to any amendment to the Registration Statement shall be deemed to refer to and include any annual report of the Company filed pursuant to Sections 13(a) or 15(d) of the 1934 Act after the effective date of the Registration Statement that is incorporated by reference in the Registration Statement; and any reference to the Prospectus as amended or supplemented shall be deemed to refer to the Prospectus as amended or supplemented in relation to the Securities and the Trust Debt Securities in the form in which it is filed with the Commission pursuant to Rule 424(b) of the 1933 Act Regulations in accordance with Section 3(a) hereof, including any documents incorporated by reference therein as of the date of such filing.

The Offerors understand that the Underwriters propose to make a public offering of the Preferred Securities as soon as the Representative deems advisable.

For purposes of this Agreement, all references to the Registration Statement, any preliminary prospectus or the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system (EDGAR).

Section 1. Representations and Warranties. The Offerors jointly and severally represent and warrant to each Underwriter as of the date of this Agreement as follows:

(a) The Registration Statement has been declared effective by the Commission; no other document with respect to the Registration Statement or document incorporated by reference therein has heretofore been filed or transmitted for filing with the Commission (other than prospectuses filed pursuant to Rule 424(b) of the 1933 Act Regulations, each in the form heretofore delivered to the Representative); no stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued and no proceeding for that purpose has been initiated or threatened by the Commission; and each of the Offerors meets, and at the times of commencement and consummation of the offering of the Securities will meet, the registrant requirements for use of Form S-3 under the 1933 Act and Rule 415 of the 1933 Act Regulations.

(b) The documents incorporated by reference in the Prospectus, when they became effective or were filed with the Commission, as the case may be, conformed in all material respects to the requirements of the 1934 Act and the rules and regulations of the Commission thereunder (the "1934 Act Regulations"), and none of such documents contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and any further documents so filed and incorporated by reference in the Prospectus or any further amendment or supplement thereto, when such documents become effective or are filed with the Commission, as the case may be, will conform in all material respects to the requirements of the 1934 Act and the 1934 Act Regulations and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, that this representation and warranty shall not apply

to any statements or omissions made in reliance upon and in conformity with information furnished in writing to the Company by any Underwriter through the Representative expressly for use in the Prospectus as amended or supplemented.

(c) The Registration Statement and the Prospectus conform, and any further amendments or supplements to the Registration Statement or the Prospectus will conform, in all material respects to the requirements of the 1933 Act and the 1939 Act, and the rules and regulations of the Commission thereunder (the "1939 Act Regulations"), and do not and will not, as of the applicable effective date as to the Registration Statement and any amendment thereto, as of the applicable filing date as to the Prospectus and any amendment or supplement thereto and as of the Closing Time (as defined in Section 2(b) hereof) as to the Registration Statement and the Prospectus and any amendment or supplement thereto, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; provided, however, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with information furnished in writing to the Company by any Underwriter through the Representative expressly for use in the Prospectus as amended or supplemented.

(d) Neither the Company nor Northern Pipeline Construction Co. or Paiute Pipeline Company (together, the "Subsidiaries") has sustained since the date of the latest audited financial statements included or incorporated by reference in the Prospectus any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Prospectus; and, since the respective dates as of which information is given in the Registration Statement and the Prospectus, (i) neither the Company nor any of its subsidiaries or the Trust has incurred any liabilities or obligations, direct or contingent, or entered into any transactions, not in the ordinary course of business, that are material to the Company and its subsidiaries and (ii) there has not been any change in the capital stock, except for issuances of capital stock pursuant to the Company's dividend reinvestment program and employee benefit plans existing on or prior to the date hereof, or long-term debt, other than the repayment of current maturities of long-term debt, of the Company or any of its subsidiaries or any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, financial position, shareholders' equity or results of operations of the Company and its subsidiaries or of the Trust, otherwise than as set forth or contemplated in the Prospectus.

(e) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of California, with full corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement and the Prospectus, is duly registered and qualified to conduct its business and is in good standing in each jurisdiction or place where the nature of its properties or the conduct of its business requires such registration or qualification.



(f) Each Subsidiary has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, with power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement and the Prospectus, is duly registered and qualified to conduct its business and is in good standing in each jurisdiction or place where the nature of its properties or the conduct of its business requires such registration or qualification.

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

(h) All of the Company's subsidiaries are listed in an exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2002, which is incorporated by reference into the Prospectus; and other than the Subsidiaries, (i) no subsidiary of the Company is a "significant subsidiary" as defined in Regulation S-X and (ii) no two or more subsidiaries of the Company considered in the aggregate constitute a "significant subsidiary" as defined in Regulation S-X.

(i) The issue and sale of the Preferred Securities, the Common Securities, the Guarantees and the Trust Debt Securities and the compliance by the Offerors with all of the provisions of this Agreement, the Trust Agreement, the Preferred Securities, the Common Securities, the Indenture, the Trust Debt Securities, the Guarantees and the Guarantee Agreements, and the consummation of the transactions herein and therein contemplated, will not conflict with or result in a breach or violation of any of the terms or provisions of, or (with the giving of notice or lapse of time or both) constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company, either of the Subsidiaries or the Trust is a party or by which the Company, either of the Subsidiaries or the Trust is bound or to which any of the property or assets of the Company, either of the Subsidiaries or the Trust is subject, nor will such action result in: (i) any violation of the provisions of the Articles of Incorporation or By-Laws of the Company or either of the Subsidiaries or the Trust Agreement or the Trust's Certificate of Trust filed with the State of Delaware on June 23, 2003 (the "Certificate of Trust") or any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company, either of the Subsidiaries or the Trust or any of their respective properties or (ii) the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company, either of the Subsidiaries or the Trust pursuant to the terms of any agreement or instrument to which any of them is a party or by which any of them may be bound or to which any of the property or assets of any of them is subject; the execution, delivery and performance of this Agreement, the Preferred Securities, the Common Securities, the Indenture, the Guarantees and the Guarantee Agreements will not require the approval or consent of any holder or trustee of any debt or other obligations or securities of the Company that will not have been obtained; and no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the issue and sale of the Securities or the Trust Debt Securities or the consummation by the Offerors of the transactions contemplated by this Agreement, the

Preferred Securities, the Common Securities, the Indenture, the Guarantees and the Guarantee Agreements, except such as have been, or prior to the Closing Time will be, obtained (A) under the 1933 Act and the 1933 Act Regulations or the 1934 Act and the 1934 Act Regulations, (B) the qualification of the Trust Agreement, the Indenture and the Preferred Securities Guarantee Agreement under the 1939 Act and (C) from the Public Utilities Commission of the State of California, and such consents, approvals, authorizations, registrations or qualifications as may be required under state securities or blue sky laws in connection with the purchase and distribution of the Securities by the Underwriters.

(j) The statements set forth in the Prospectus under the captions “Plan of Distribution” and “Underwriting,” insofar as they purport to describe the provisions of the laws and documents referred to therein, are accurate, complete and fair.

(k) The Trust is not in violation of the Trust Agreement or the Certificate of Trust; neither the Company nor either of the Subsidiaries is in violation of its respective Articles of Incorporation or By-Laws; and, to the best knowledge of the Offerors after due inquiry, none of the Company, either of the Subsidiaries and the Trust is (i) in violation of any law, ordinance, administrative or governmental rule or regulation applicable to the Company, either of the Subsidiaries or the Trust, the violation of which would reasonably be expected to have a material adverse effect on the general affairs, management, financial position, shareholders’ equity or results of operations of the Company and its subsidiaries (a “Material Adverse Effect”) or of any decree of any court or governmental agency or body having jurisdiction over the Company, either of the Subsidiaries or the Trust or (ii) in default in the performance or observance of any material obligation, agreement, covenant or condition contained in any bond, debenture, note or any other evidence of indebtedness, indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which the Company, either of the Subsidiaries or the Trust is a party or by which the Company, either of the Subsidiaries or the Trust or any of their respective properties may be bound.

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

(m) PricewaterhouseCoopers LLP, who have certified certain financial statements of the Company and the Subsidiaries, are independent public accountants with respect to the Company as required by the 1933 Act and the 1933 Act Regulations.

(n) The financial statements, together with related schedules and notes, included or incorporated by reference in the Registration Statement and the Prospectus (and any amendment or supplement thereto), present fairly the consolidated financial position, results of operations and changes in financial position of the Company and the Subsidiaries on the basis stated in the Registration Statement and the Prospectus at the

respective dates or for the respective periods to which they apply; such statements and related schedules and notes have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods involved, except as disclosed therein; and the other financial and statistical information and data included or incorporated by reference in the Registration Statement and the Prospectus (and any amendment or supplement thereto) are accurately presented and prepared on a basis consistent with such financial statements and the books and records of the Company and the Subsidiaries.

(o) The execution and delivery of, and the performance by the Company of its obligations under, this Agreement have been duly and validly authorized by the Company, and this Agreement has been duly executed and delivered by the Company and constitutes the valid and legally binding agreement of the Company, enforceable against the Company in accordance with its terms, except as rights to indemnity and contribution hereunder may be limited by applicable law and as limited by bankruptcy, insolvency, reorganization, fraudulent conveyance or other similar laws affecting creditors' rights and general equitable principles (whether considered in equity or law).

(p) Each of the Company and the Subsidiaries has such permits, licenses, franchises and authorizations of governmental or regulatory authorities (the "permits") as are necessary to own its respective properties and to conduct its business in the manner described in the Prospectus, except where the failure to obtain such permits would not reasonably be expected to have a Material Adverse Effect; to the best knowledge of the Company after due inquiry, each of the Company and the Subsidiaries has fulfilled and performed all its material obligations with respect to such permits, except where the failure to fulfill or perform any such obligation would not reasonably be expected to have a Material Adverse Effect; and no event has occurred that allows, or after notice or lapse of time would allow, revocation or termination of any material permits or would result in any other material impairment of the rights of the holder of any such material permits, subject in each case to such qualifications as may be set forth in the Prospectus.

(q) No holder of any security of the Company has any right to require registration of any security of the Company because of the filing of the Registration Statement or consummation of the transactions contemplated by this Agreement.

(r) Neither the Company nor any of its subsidiaries is currently subject to regulation under the Public Utility Holding Company Act of 1935, as amended.

(s) Neither of the Offerors is and, after giving effect to the offering and sale of the Securities, neither will be an "investment company" as such term is defined in the Investment Company Act of 1940, as amended (the "1940 Act").

(t) The Company and its subsidiaries maintain systems of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (iii) access

to assets is permitted only in accordance with management's general or specific authorization; (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and (v) material information relating to the Company and its subsidiaries is made known to the Company by its officers and employees.

(u) The Trust has been duly created and is validly existing in good standing as a statutory trust under the Delaware Act with the power and authority to own property and to conduct its business as described in the Registration Statement and the Prospectus and to enter into and perform its obligations under this Agreement, the Preferred Securities, the Common Securities and the Trust Agreement and is not required to be authorized to do business in any other jurisdiction; the Trust is not a party to or otherwise bound by any agreement other than those described in the Prospectus; the Trust is not and will not be classified as an association taxable as a corporation for United States federal income tax purposes; and the Trust is and will be treated as a consolidated subsidiary of the Company pursuant to generally accepted accounting principles.

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

(w) This Agreement has been duly authorized, executed and delivered by each of the Offerors.

(x) The Trust Agreement has been duly authorized by the Company and, at the Closing Time, will have been duly executed and delivered by the Company; assuming due authorization, execution and delivery of the Trust Agreement by the Property Trustee and the Delaware Trustee (as defined in the Trust Agreement), the Trust Agreement will, at the Closing Time, be a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equitable principles (the "Bankruptcy Exceptions"), and will conform to all statements relating thereto in the Prospectus; and at the Closing Time, the Trust Agreement will have been duly qualified under the 1939 Act.

(y) Each of the Guarantee Agreements has been duly authorized by the Company and, when validly executed and delivered by the Company, will constitute a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent enforcement thereof may be limited by the Bankruptcy Exceptions; the Guarantees and the Guarantee Agreements will conform to

all statements relating thereto contained in the Prospectus; and, at the Closing Time, the Preferred Securities Guarantee Agreement will have been duly qualified under the 1939 Act.

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

(aa) The Indenture has been duly authorized by the Company and, when validly executed and delivered by the Company, will constitute a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except to the extent that enforcement thereof may be limited by the Bankruptcy Exceptions; the Indenture will conform to all statements relating thereto contained in the Prospectus; and, at the Closing Time, the Indenture will have been duly qualified under the 1939 Act.

(bb) The Trust Debt Securities have been duly authorized by the Company and, at the Closing Time, will have been duly executed by the Company and, when authenticated in the manner provided for in the Indenture and delivered against payment therefor as described in the Prospectus, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except to the extent enforcement thereof may be limited by the Bankruptcy Exceptions, will be in the form contemplated by, and entitled to the benefits of, the Indenture and will conform to all statements relating thereto contained in the Prospectus.

(cc) The Company's obligations under each of the Guarantees are subordinate and junior in right of payment to all liabilities of the Company.

(dd) The Trust Debt Securities are subordinate and junior in right of payment to all Senior Indebtedness (as defined in the Indenture) of the Company.

Section 2. Sale and Delivery to Underwriters; Closing.

(a) On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Trust agrees to sell to each Underwriter, severally and not jointly, and each Underwriter, severally and not jointly, agrees to purchase from the Trust, at the price of \$25 per Preferred Trust Security and at an annual distribution rate per Preferred Trust Security of 7.70% of the liquidation amount of \$25 per Preferred Trust Security, the number of Preferred Trust Securities set forth in Schedule A hereto opposite the name of such Underwriter, plus any additional number of Preferred Trust Securities that such Underwriter may become obligated to purchase pursuant to the provisions of Section 7 hereof.

As compensation to the Underwriters for their commitments hereunder and in view of the fact that the entire proceeds of the sale of the Preferred Securities (together with the entire proceeds from the sale by the Trust to the Company of the Common Securities) will be used to purchase the Trust Debt Securities of the Company, the Company hereby agrees to pay at the Closing Time to the Representative, for the accounts of the several Underwriters, a commission per Preferred Trust Security equal to \$0.7875 to be delivered by the Trust hereunder at the Closing Time. At the Closing Time, the Company will pay, or cause to be paid, the commission payable at such time to the Underwriters under Section 2 hereof by wire transfer in immediately available funds to an account designated by the Representative.

(b) Payment of the purchase price for, and delivery of certificates for, the Preferred Securities shall be made at the office of O'Melveny & Myers LLP or at such other place as shall be agreed upon by the Representative and the Trust, at 11:00 A.M. New York time on the third business day (unless postponed in accordance with the provisions of Section 7 hereof) after execution of this Agreement, or such other time not later than ten business days after such date as shall be agreed upon by the Representative and the Offerors (such time and date of payment and delivery being herein called the "Closing Time"). Such payment shall be made to the Trust by wire transfer in immediately available funds to an account designated by the Trust, against delivery to The Depository Trust Company ("DTC") or its nominee for the respective accounts of the Underwriters of certificates for the Preferred Securities to be purchased by them, with any transfer taxes payable in connection with the transfer of the Preferred Securities duly paid. It is understood that each Underwriter has authorized the Representative, for its account, to accept delivery of, receipt for, and make payment of the purchase price for, the Preferred Securities that it has agreed to purchase.

Section 3. Covenants of the Offerors. Each of the Offerors jointly and severally covenant with each Underwriter as follows:

(a) To prepare the Prospectus as amended or supplemented in a form approved by the Representative and to file such Prospectus pursuant to Rule 424(b) of 1933 Act Regulations not later than the Commission's close of business on the second business day following the execution and delivery of this Agreement or, if applicable, such earlier time as may be required by such Rule 424(b); to make no further amendment or any supplement to the Registration Statement or the Prospectus as amended or supplemented after the date of this Agreement and prior to the Closing Time that shall be disapproved by the Representative promptly after reasonable notice thereof; to advise the Representative promptly of any such proposed amendment or supplement after the Closing Time and furnish the Representative with copies thereof; to file promptly all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the 1934 Act for so long as the delivery of a prospectus is required in connection with the offering or sale of the Securities and, during such same period to advise the Representative, promptly after it receives notice thereof, of the time when any amendment to the Registration Statement has been filed or becomes effective or any supplement to the Prospectus or any amended Prospectus has been filed with the Commission, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of any prospectus relating to the Securities or the Trust Debt Securities, of the

suspension of the qualification of the Securities or the Trust Debt Securities for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose, or of any request by the Commission for the amending or supplementing of the Registration Statement or the Prospectus or for additional information; and, in the event of the issuance of any such stop order or of any such order preventing or suspending the use of any prospectus relating to the Securities or the Trust Debt Securities or suspending any such qualification, to promptly use its best efforts to obtain the withdrawal of such order.

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

(c) Prior to 10:00 a.m., New York City time, on the New York Business Day (as defined in Section 12 hereof) next succeeding the date of this Agreement and from time to time as soon as practicable thereafter, to furnish each Underwriter with written and electronic copies of the Prospectus, as amended or supplemented, in New York City in such quantities as such Underwriter may reasonably request, and, if the delivery of a prospectus is required at any time in connection with the offering or sale of the Securities and if at such time any event shall have occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such Prospectus is delivered, not misleading, or, if for any other reason it shall be necessary during such same period to amend or supplement the Prospectus or to file under the 1934 Act any document incorporated by reference in the Prospectus in order to comply with the 1933 Act and the 1933 Act Regulations, the 1934 Act and the 1934 Act Regulations or the 1939 Act and the 1939 Regulations, to notify the Representative and upon its request to file such document and to prepare and furnish without charge to each Underwriter and to any dealer of the Securities as many written and electronic copies as such Underwriter may from time to time reasonably request of an amended Prospectus or a supplement to the Prospectus which will correct such statement or omission or effect such compliance.

(d) To make generally available to its securityholders as soon as practicable, but in any event not later than eighteen months after the effective date of the Registration Statement (as defined in Rule 158(c) of the 1933 Act Regulations), an earnings statement of the Company and the Subsidiaries (which need not be audited) complying with Section 11(a) of the 1933 Act and the 1933 Act Regulations (including, at the option of the Company, Rule 158 of the 1933 Act Regulations).

(e) The Offerors will use their reasonable best efforts to have the Preferred Securities listed, subject to notice of issuance, on the New York Stock Exchange (the

“NYSE”) on or before the Closing Time; if the Preferred Securities are exchanged for Trust Debt Securities, the Company will use its reasonable best efforts to have the Trust Debt Securities listed on the exchange on which the Preferred Securities were then listed; and the Offerors will use their reasonable best efforts to have their registration statement on Form 8-A declared effective under the 1934 Act within 30 days of the Closing Time.

(f) During a period of 90 days from the date of this Agreement, neither of the Offerors will, without the prior written consent of the Representative, directly or indirectly, sell, offer to sell, grant any option for the sale of, or otherwise dispose of, any Preferred Trust Securities, any security convertible into, exchangeable into or exercisable for Preferred Trust Securities or any securities substantially similar to the Preferred Securities (except for Preferred Trust Securities issued pursuant to this Agreement).

(g) The Offerors will apply the net proceeds from the sale of the Preferred Securities substantially in accordance with the description set forth in the Prospectus under the caption “Use of Proceeds.”

(h) Except as stated in the Prospectus, the Offerors will not take, directly or indirectly, any action designed to or that might reasonably be expected to cause or result in stabilization or maintenance of the price of the Preferred Securities.

Section 4. Payment of Expenses. The Company will pay all expenses incident to the performance of each Offeror’s obligations under this Agreement, including, but not limited to: (a) the fees, disbursements and expenses of the Company’s counsel and accountants in connection with the registration of the Securities under the 1933 Act and all other expenses in connection with the preparation, printing and filing of the Registration Statement, any Preliminary Prospectus and the Prospectus and amendments and supplements thereto and the mailing and delivering of copies thereof to the Underwriters and dealers; (b) the cost of printing or producing any Agreement among Underwriters, this Agreement, the Indenture, the Trust Agreement, the Guarantee Agreements, any blue sky memoranda, closing documents (including any compilations thereof) and any other documents in connection with the offering, purchase, sale and delivery of the Securities and the Trust Debt Securities; (c) all expenses in connection with the qualification of the Securities and the Trust Debt Securities for offering and sale under state securities laws as provided in Section 3(b) hereof, including the fees and disbursements of counsel for the Underwriters in connection with such qualification and in connection with the blue sky survey; (d) any fees charged by securities rating services for rating the Securities and the Trust Debt Securities; (e) any filing fees incident to, and the fees and disbursements of counsel for the Underwriters in connection with, any required review by the National Association of Securities Dealers, Inc. of the terms of the sale of the Securities or the Trust Debt Securities; (f) the cost of preparing the Securities and the Trust Debt Securities; (g) the fees and expenses of the Indenture Trustee and any agent of the Indenture Trustee and the fees and disbursements of counsel for the Indenture Trustee in connection with the Indenture and the Trust Debt Securities; (h) the fees and expenses of the Property Trustee, including the fees and disbursements of counsel for the Property Trustee in connection with the Trust Agreement and the Certificate of Trust; (i) the fees and expenses incurred in connection with the listing of the Preferred Securities and, if applicable, the Trust Debt Securities on the New York Stock Exchange or any other exchange; (j) the cost and charges of any transfer agent or registrar; (k)



the cost of qualifying the Preferred Securities with DTC; and (l) all other costs and expenses incident to the performance of each Offeror's obligations hereunder that are not otherwise specifically provided for in this Section 4. It is understood, however, that, except as provided in this Section 4, and Sections 6 and 9 hereof, the Underwriters will pay all of their own costs and expenses, including the fees of their counsel, transfer taxes on resale of any of the Securities by them, and any advertising expenses connected with any offers they may make.

Section 5. Conditions of Underwriters' Obligations. The obligations of the Underwriters hereunder shall be subject, in their discretion, to the condition that all representations and warranties and other statements of the Company and the Trust in this Agreement are, at and as of the Closing Time, true and correct, to the condition that the Company and the Trust shall have performed all of its obligations hereunder theretofore to be performed and to the following additional conditions:

(a) The Prospectus as amended or supplemented shall have been filed with the Commission pursuant to Rule 424(b) of the 1933 Act Regulations within the applicable time period prescribed for such filing by the 1933 Act Regulations and in accordance with Section 3(a) hereof; no stop order suspending the effectiveness of the Registration Statement or any part thereof shall have been issued and no proceeding for that purpose shall have been initiated or threatened by the Commission; and all requests for additional information on the part of the Commission shall have been complied with to the Representative's reasonable satisfaction.

(b) Pillsbury Winthrop LLP, counsel for the Underwriters, shall have furnished to the Representative its written opinion, dated the Closing Time, with respect to the matters covered in paragraphs (i), (ii) and (iv), the first clause of paragraph (viii), paragraphs (xiii), (xiv) and (xv) and the paragraph following paragraph (xv) of Section 5(c) hereof and in paragraph (iv) of Section 5(e) hereof, as well as such other related matters as the Representative may reasonably request, and such counsel shall have received such papers and information as they may reasonably request to enable them to pass upon such matters.

In giving its opinion, such counsel may rely (i) as to certain matters of California law upon the opinion of O'Melveny & Myers LLP, counsel for the Offerors, which shall be delivered in accordance of Section 5(c) hereof, and (ii) as to certain matters of Delaware law upon the opinion of Richards, Layton & Finger, P.A., special Delaware counsel for the Offerors, which shall be delivered in accordance with Section 5(e) hereof.

(c) O'Melveny & Myers LLP or other external counsel for the Company satisfactory to the Representative shall have furnished to the Representative its written opinion, dated the Closing Time, in form and substance satisfactory to the Representative and counsel for the Underwriters, to the effect that:

(i) The Company has been duly incorporated and is validly existing in good standing under the laws of the State of California, with corporate power to own and lease its properties, to carry on its business as described in the

Prospectus, as amended or supplemented, to enter into this Agreement and to issue and deliver the Trust Debt Securities and the Guarantees as provided herein.

(ii) The statements in the Prospectus under the captions “Risk Factors,” “The Trust,” “Description of Preferred Trust Securities” (except under the subsection “Global Preferred Trust Securities”), “Description of Junior Subordinated Debentures,” “Description of Preferred Trust Securities Guarantee,” “The Trusts,” “Description of Trust Debt Securities,” “Description of the Preferred Trust Securities,” “Description of Preferred Trust Securities Guarantee” and “Relationship Among the Preferred Trust Securities, the Trust Debt Securities and the Preferred Trust Securities Guarantee,” insofar as they summarize the provisions of the Preferred Securities, the Common Securities, the Guarantees, the Guarantee Agreements, the Trust Agreement, the Indenture and the Trust Debt Securities, fairly present the information required by Form S-3.

(iii) The Registration Statement has been declared effective under the 1933 Act and, to the knowledge of such counsel, no stop order suspending the effectiveness of the Registration Statement has been issued or threatened by the Commission.

(iv) The execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on the part of the Company, and this Agreement has been duly executed and delivered by the Company on behalf of itself and as sponsor under the Trust Agreement.

(v) No consent, approval, permit or order of any federal or California governmental authority is required on the part of the Company for the issuance and sale of the Common Securities or the offering of the Preferred Securities, the Trust Debt Securities or the Guarantees as contemplated by this Agreement, except (A) such as have been obtained under the 1933 Act and the 1933 Act Regulations or the 1939 Act and the 1939 Act Regulations and such as have been applied for under the 1934 Act and the 1934 Act Regulations, (B) the authorization of the Public Utilities Commission of the State of California referred to in Section 1(i) of this Agreement, which has been obtained and remains in full force and effect and is, to the knowledge of such counsel, not the subject of any pending or threatened application for rehearing or petition for modification, and (C) such as may be required under foreign or state securities or blue sky laws in connection with the purchase and distribution of the Preferred Securities by the Underwriters.

(vi) The Company’s execution and delivery of this Agreement, the Indenture, the Trust Agreement, the Trust Debt Securities and the Guarantees do not, and the Company’s performance of its obligations thereunder will not, violate the Company’s Articles of Incorporation or By-Laws or any applicable California, New York or federal statute, rule or regulation, except that such counsel need express no opinion regarding state securities or blue sky laws or any provisions thereof that provide for indemnification or contribution.

(vii) The Company is not an investment company required to register under the 1940 Act.

(viii) The Registration Statement, at its effective date, and the Prospectus, as of the date it was filed with the Commission, and any further amendments and supplements thereto made by the Company prior to the Closing Time at their respective effective dates or respective dates of filing, as applicable, appeared on their face to comply as to form in all material respects with the requirements for registration statements on Form S-3, except that such counsel need express no opinion concerning the financial statements and other financial information contained or incorporated by reference therein; and the documents incorporated by reference in the Prospectus, on the respective dates they were filed, appeared on their face to comply in all material respects with the requirements as to form for reports on Form 10-K, Form 10-Q and Form 8-K, as the case may be, under the 1934 Act and the 1934 Act Regulations in effect at such dates, except that such counsel need express no opinion concerning the financial statements and other financial information contained or incorporated by reference therein.

(ix) The statements in the Prospectus under the caption “U.S. Federal Income Tax Consequences” constitute a fair and accurate summary of the matters addressed therein, based upon current law and the assumptions stated or referred to therein.

(x) All of the issued and outstanding Common Securities of the Trust are owned of record by the Company.

(xi) The execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on the part of the Company, and this Agreement has been duly executed and delivered by the Company.

(xii) The Trust Agreement, the Indenture and the Preferred Securities Guarantee Agreement have been duly qualified under the 1939 Act.

(xiii) The Guarantee Agreements have been duly authorized by all necessary corporate action on the part of the Company and, upon payment for and the delivery of the Preferred Securities and the Common Securities in accordance with this Agreement, will constitute the legally valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally (including, without limitation, fraudulent conveyance laws) and by general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law.

(xiv) The Indenture has been duly authorized by all necessary corporate action on the part of the Company and constitutes a legally valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally (including, without limitation, fraudulent conveyance laws) and by general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law.

(xv) The Trust Debt Securities are in the form contemplated by the Indenture; the Trust Debt Securities have been duly authorized by all necessary corporate action on the part of the Company and, upon payment for and the delivery of the Trust Debt Securities in accordance with this Agreement, will constitute the legally valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally (including, without limitation, fraudulent conveyance laws) and by general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law.

Such counsel shall state that it participated in conferences in connection with the preparation of, and has reviewed, the Registration Statement and the Prospectus, but has not independently verified the accuracy, completeness or fairness of the statements contained or incorporated by reference therein, and the limitations inherent in the examination made by such counsel and the knowledge available to it are such that such counsel is unable to assume any responsibility for such accuracy, completeness or fairness (except as otherwise specifically stated in subparagraph (ii) above). However, such counsel shall state that on the basis of its review such counsel does not believe that the Registration Statement as of its effective date, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and such counsel does not believe that, as of its date and on the date of such opinion, the Prospectus, as amended or supplemented, and any further amendments and supplements thereto made by the Company prior to the Closing Time (in each case including the documents then incorporated by reference and considered as a whole as of such dates), contained or contains any untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. However, such counsel need not express any opinion or belief: (i) as to the financial statements and other financial information included or incorporated by reference in the Registration Statement or the Prospectus as amended or supplemented and any further amendments and supplements thereto made by the Company prior to the Closing Time, (ii) the statements of eligibility, as it may be amended, under the 1939 Act, of the Indenture Trustee, the Guarantee Trustee or the Property Trustee or (iii) any document

filed by the Company under the 1934 Act, whether before or after the effective date of the Registration Statement, except to the extent that any such document is a document incorporated by reference in the Registration Statement on its effective date, considered as a whole, or is a document incorporated by reference and read together with the Prospectus at the time it was filed with the Commission and considered as a whole. Counsel does not know of any contracts or other documents of a character required to be filed as an exhibit to the Registration Statement or the documents incorporated by reference therein that are not filed as required.

In rendering its opinion as aforesaid in this Section 5(c), such counsel may rely upon an opinion or opinions, each dated the Closing Time, of other counsel retained by them or the Company and satisfactory to the Representative as to laws of any jurisdiction other than the United States or the States of California and New York, provided that (1) such reliance is expressly authorized by each opinion so relied upon and (2) a signed copy of each such opinion is delivered to the Representative that states that the Underwriters may rely thereon and is otherwise in form and substance satisfactory to them and their counsel.

(d) Robert M. Johnson, Assistant General Counsel for the Company, shall have furnished to the Representative his written opinion, dated the Closing Time, in form and substance satisfactory to the Representative and counsel for the Underwriters, to the effect that:

(i) The Subsidiaries have been duly incorporated and are validly existing in good standing under the laws of the State of Nevada, with corporate power to own and lease their respective properties and to carry on their respective businesses as described in the Prospectus.

(ii) The Company is duly qualified to do business as a foreign corporation and is in good standing under the laws of the States of Nevada and Arizona and the Company does not own or lease material properties or conduct material business in any other jurisdiction which would require such qualification; all the outstanding shares of capital stock of the Subsidiaries have been duly authorized and validly issued, are fully paid and nonassessable, and are owned of record directly by the Company free and clear of any perfected security interest or, to the best knowledge of such counsel after reasonable inquiry, any other security interest, lien, adverse claim, equity or other encumbrance.

(iii) To the best knowledge of such counsel after reasonable inquiry, neither the Company nor either of the Subsidiaries is in violation of or is in default in the performance of any obligation contained in any bond, debenture, note or any other evidence of indebtedness or in any material agreement, indenture, lease or other instrument to which the Company or either of the Subsidiaries is a party or by which any of them or any of their respective properties may be bound which violation or default could reasonably be expected to have a Material Adverse Effect.

(iv) To the best knowledge of such counsel after reasonable inquiry, there are no rights that entitle or will entitle any person to acquire any security of the Company upon the issuance of the Trust Debt Securities and the Guarantees by the Company; and to the best knowledge of such counsel after reasonable inquiry, there is no holder of any security of the Company or any other person who has the right, contractual or otherwise, to cause the Company to sell or otherwise issue to them, or to permit them to underwrite the sale of, any security of the Company as a result of the issuance of the Trust Debt Securities and the Guarantees by the Company.

(v) The Company's execution, delivery and performance of this Agreement, the Trust Agreement, the Indenture, the Trust Debt Securities, the Guarantees and the Guarantee Agreements do not: (A) violate, breach, or result in a default under any existing obligation of the Company or the Subsidiaries under any agreement, indenture, lease or other instrument to which the Company or the Subsidiaries is a party or by which it or any of its properties is bound that is an exhibit to the Registration Statement or to any document incorporated by reference in the Prospectus or any other material agreement, indenture, lease or other instrument known to such counsel after reasonable inquiry, (B) breach or otherwise violate any existing obligation of the Company under any order, judgment or decree of any Arizona, California or Nevada or federal court or governmental authority binding on the Company, or (C) violate any applicable Arizona or Nevada law, ordinance, administrative or governmental rule or regulation.

(vi) No consent, approval, authorization or order of, or filing with, any federal, California, Arizona or Nevada governmental authority is required on the part of the Company for the issuance and sale of the Common Securities or the offering of the Preferred Securities, the Trust Debt Securities or the Guarantees as contemplated by this Agreement, except: (A) such as have been obtained under the 1933 Act and the 1933 Act Regulations and the 1939 Act and the 1939 Act Regulations, (B) the authorization of the Public Utilities Commission of the State of California referred to in Section 1(i) of this Agreement, which has been obtained, remains in full force and effect and is, to the best knowledge of such counsel, not the subject of any pending or threatened application for rehearing or petition for modification, and (C) such as may be required under applicable foreign or state securities or blue sky laws in connection with the purchase and distribution of the Preferred Securities by the Underwriters.

(vii) To the best knowledge of such counsel after reasonable inquiry, other than as described or contemplated in the Prospectus, there are no legal or governmental proceedings pending or threatened against the Company or any of its subsidiaries, or to which the Company or any of its subsidiaries or any of their property is subject, that are required to be described in the Registration Statement or the Prospectus and are not so described.

(viii) The Guarantee Agreements, the Indenture and the Trust Agreement have been duly executed and delivered by the Company.

(ix) The Trust is not a party to or otherwise bound by any agreement other than those listed on Schedule A attached to such opinion; the Trust is not subject to any judgment, order or decree of any government, governmental instrumentality or court, domestic or foreign, or any regulatory body or administrative agency or other governmental body having jurisdiction over the Trust or any of its properties; and the Trust is not required to file an application as a foreign corporation in Nevada.

In addition, such counsel shall include in his opinion a statement substantially to the effect set forth in the paragraph following paragraph (xv) of Section 5(c) hereof.

In rendering his opinion as aforesaid in this Section 5(d), such counsel may rely upon an opinion or opinions, each dated the Closing Time, of other counsel retained by them or the Company and satisfactory to the Representative as to laws of any jurisdiction other than the United States or the States of Arizona and Nevada, provided that (1) such reliance is expressly authorized by each opinion so relied upon and (2) a signed copy of each such opinion is delivered to the Representative that states that the Underwriters may rely thereon and is otherwise in form and substance satisfactory to the Representative and counsel for the Underwriters.

(e) Richards, Layton & Finger, P.A., special Delaware counsel for the Offerors, shall have furnished to the Representative its written opinion, dated the Closing Time, in form and substance satisfactory to the Representative and counsel for the Underwriters, to the effect that:

(i) The Trust has been duly created and is validly existing in good standing as a statutory trust under the Delaware Act; all filings required under the laws of the State of Delaware with respect to the creation and valid existence of the Trust as a statutory trust have been made; under the Delaware Act and the Trust Agreement the Trust has all necessary power and authority to own property

and to conduct its business as described in the Registration Statement and the Prospectus and to enter into and perform its obligations under this Agreement, the Preferred Securities and the Common Securities.

(ii) The Trust Agreement is a valid and binding agreement of the Company and the Trustees, and is enforceable against the Company and the Trustees, in accordance with its terms, except as enforcement thereof may be limited by the Bankruptcy Exceptions.

(iii) The Common Securities have been duly authorized by the Trust Agreement and, when issued, delivered and paid for in accordance with the terms of the Trust Agreement, will be validly issued and will represent fully paid undivided beneficial interests in the assets of the Trust; and, under the Delaware Act and the Trust Agreement, the issuance of the Common Securities is not subject to preemptive or other similar rights.

(iv) The Preferred Securities have been duly authorized by the Trust Agreement and, subject to the qualifications set forth herein, when issued, delivered and paid for in accordance with the terms of this Agreement and the Trust Agreement, will be validly issued, fully paid and non-assessable undivided beneficial interests in the assets of the Trust; the holders of the Preferred Securities 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; and, under the Delaware Act and the Trust Agreement, the issuance of the Preferred Securities is not subject to preemptive or other similar rights. Such counsel may bring to the attention of the Underwriters that the Preferred Securities holders may be obligated, pursuant to the Trust Agreement, to (A) provide indemnity or security in connection with and pay taxes or governmental charges arising from transfers of Preferred Trust Securities and the issuance of replacement Preferred Trust Securities and (B) provide security and indemnity in connection with requests of or directions to the Property Trustee to exercise its rights and powers under the Trust Agreement.

(v) The issuance and sale by the Trust of the Preferred Securities and the Common Securities, the purchase by the Trust of the Trust Debt Securities, the execution, delivery and performance by the Trust of this Agreement, the consummation of the transactions contemplated herein; and compliance by the Trust with its obligations hereunder have been duly authorized by all necessary actions of the Trust and do not and will not result in any violation of the provisions of its Certificate of Trust or the Trust Agreement or any applicable Delaware law or administrative regulation.

(vi) No filing with, consent, approval, authorization, order, registration, qualification or decree of any Delaware court or Delaware governmental authority or Delaware agency is necessary or required solely in connection with the issuance and sale by the Trust of the Preferred Securities or the Common Securities, the purchase by the Trust of the Trust Debt Securities, the execution,



delivery and performance by the Trust of this Agreement, the consummation by the Trust of the transactions contemplated hereby and compliance by the Trust with its obligations hereunder.

(vii) The execution and delivery of this Agreement by the Trust is not in violation of its Certificate of Trust or the Trust Agreement.

(viii) The holders of the Preferred Securities (other than those holders of Preferred Securities who reside or are domiciled in the State of Delaware) will have no liability for income taxes imposed by the State of Delaware solely as a result of their participation in the Trust; and the Trust will not be liable for any income tax imposed by the State of Delaware.

(f) Emmet, Marvin & Martin LLP, counsel to BNY Midwest Trust Company, as Property Trustee under the Trust Agreement, as Guarantee Trustee under the Preferred Securities Guarantee Agreement and as Indenture Trustee under the Indenture, shall have furnished to the Representative its written opinion, dated the Closing Time, in form and substance satisfactory to the Representative and counsel for the Underwriters, to the effect that:

(i) The execution, delivery and performance of the Trust Agreement by the Property Trustee, the Preferred Securities Guarantee Agreement by the Guarantee Trustee and the Indenture by the Indenture Trustee do not conflict with or constitute a breach of the Articles of Organization or Bylaws of the Property Trustee, the Guarantee Trustee or the Indenture Trustee, as applicable.

(ii) No consent, approval or authorization of, or registration with or notice to, any New York or federal banking authority is required for the execution, delivery or performance by the Property Trustee of the Trust Agreement, by the Guarantee Trustee of the Preferred Securities Guarantee Agreement or by the Indenture Trustee of the Indenture.

(iii) Each of the Trust Agreement, the Preferred Securities Guarantee Agreement and the Indenture is a valid and binding agreement of the Property Trustee, the Guarantee Trustee and the Indenture Trustee, as applicable, and is enforceable against the Property Trustee, the Guarantee Trustee and the Indenture Trustee, as applicable, in accordance with its terms, except as enforcement thereof may be limited by the Bankruptcy Exceptions.

(g) On the date of this Agreement and at the Closing Time, PricewaterhouseCoopers LLP, independent certified public accountants, shall have furnished to the Representative a letter, dated the date of this Agreement and a letter dated the Closing Time, respectively, to the effect set forth in Annex II hereto, and in form and substance satisfactory to the Representative and counsel for the Underwriters.

(h) (i) None of the Company, either of the Subsidiaries or the Trust shall have sustained since the date of the latest audited financial statements included or incorporated by reference in the Prospectus as amended prior to the date of this

Agreement any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Prospectus, as amended prior to the date of this Agreement, and (ii) since the respective dates as of which information is given in the Prospectus, as amended prior to the date of this Agreement, there shall not have been any change in the capital stock or long-term debt of the Company or its subsidiaries or any change, or any development involving a prospective change, in or affecting the general affairs, management, financial position, shareholders' equity or results of operations of the Company and its subsidiaries or of the Trust, otherwise than as set forth or contemplated in the Prospectus as amended prior to the date of this Agreement, the effect of which, in any such case described in clause (i) or (ii), is in the judgment of the Representative so material and adverse as to make it impracticable or inadvisable to proceed with the public offering or the delivery of the Preferred Securities on the terms and in the manner contemplated in the Prospectus as first amended or supplemented relating to the Preferred Securities.

(i) On or after the date of this Agreement: (i) no downgrading shall have occurred in the rating accorded the Company's debt securities or preferred securities by any "nationally recognized statistical rating organization," as that term is defined by the Commission for purposes of Rule 436(g)(2) of the 1933 Act Regulations; and (ii) no such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the Company's debt securities or preferred securities and no notice shall have been given of any intended or potential decrease in any such rating or of a possible change in any such rating that does not indicate the direction of the possible change.

(j) Moody's Investors Service, Inc. ("Moody's"), Standard & Poor's Ratings Services ("S&P") and Fitch, Inc. ("Fitch") shall have publicly assigned to the Preferred Securities ratings of at least "Baa3," "BB" and "BBB-," respectively, and ratings at least at those levels shall be in full force and effect at the Closing Time; and the Trust shall have delivered to the Representative a letter, dated the Closing Time, from S&P, Moody's and Fitch, respectively, or other evidence satisfactory to the Representative, confirming that the Preferred Securities have such ratings.

(k) On or after the date of this Agreement, there shall not have occurred any of the following: (i) a suspension or limitation in trading in securities generally on the NYSE, the Pacific Stock Exchange, the American Stock Exchange or the Nasdaq National Market or the establishment of minimum or maximum prices on any such exchange or the Nasdaq National Market or the imposition of additional material governmental restrictions, not in force on the date of this Agreement, upon trading in securities by any such exchange or by order of the Commission or any court or other governmental authority; (ii) a suspension or material limitation in trading in the Company's securities by the Commission, the NYSE or the Pacific Stock Exchange; (iii) the declaration of a general banking moratorium in New York, Nevada, Arizona or California by federal or state authorities or a material disruption in commercial banking or securities settlement or clearance services in the United States; or (iv) a material adverse change in financial or securities markets in the United States or the outbreak or

escalation of hostilities involving the United States or the declaration by the United States of a national emergency or war; if the effect of any such event specified in clause (iv) in the judgment of the Representative makes it impracticable or inadvisable to proceed with the public offering or the delivery of the Preferred Securities on the terms and in the manner contemplated in the Prospectus as first amended or supplemented relating to the Preferred Securities.

(l) The Company shall have complied with the provisions of Section 3(c) hereof with respect to the furnishing of prospectuses on the New York Business Day next succeeding the date of this Agreement.

(m) At the Closing Time, the Preferred Securities shall have been approved for listing on the NYSE, subject to notice of issuance and the effectiveness of the Form 8-A.

(n) Each of the Company and the Trust shall have furnished or caused to be furnished to the Representative at the Closing Time a certificate or certificates of officers of the Company and Trustees of the Trust, respectively, satisfactory to the Representative and counsel for the Underwriters as to the accuracy of the representations and warranties of the Company herein at and as of the Closing Time, as to the performance by the Company of all of its obligations hereunder to be performed at or prior to the Closing Time, as to the matters set forth in Sections 5(a) and 5(h) hereof and as to such other matters as the Representative may reasonably request; such certificate of the Trust shall also certify that (i) the Trust is not a party to or otherwise bound by any agreement other than those attached to such certificate and (ii) the Trust is not subject to any judgment, order or decree of any government, governmental instrumentality or court, domestic or foreign, or any regulatory body or administrative agency or other governmental body having jurisdiction over the Trust or any of its properties

Any certificate or document signed by any officer of the Company or any Trustee of the Trust and delivered to the Representative or the Underwriters shall be deemed a representation and warranty by the Company or the Trust, as the case may be, to each Underwriter as to the statements made therein.

If any condition specified in this Section 5 shall not have been fulfilled when and as required to be fulfilled, this Agreement may be terminated by the Underwriters by notice from the Representative to the Offerors at any time at or prior to the Closing Time, and such termination shall be without liability of any party to any other party except as provided in Section 4 hereof.

Section 6. Indemnification and Contribution. (a) The Offerors will indemnify and hold harmless each Underwriter against any losses, claims, damages, expenses or liabilities, joint or several, to which such Underwriter may become subject, under the 1933 Act or otherwise, insofar as such losses, claims, damages, expenses or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any Preliminary Prospectus, any preliminary prospectus supplement, the Registration Statement, the Prospectus, as amended or supplemented, and any other prospectus relating to the Securities, or any amendment or supplement thereto, or arise out of or are based

upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will promptly reimburse each Underwriter for any legal or other expenses reasonably incurred by such Underwriter in connection with investigating or defending any such action or claim as such expenses are incurred; provided, however, that the Offerors shall not be liable in any such case to the extent that any such loss, claim, damage, expense or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in any Preliminary Prospectus, any preliminary prospectus supplement, the Registration Statement, the Prospectus, as amended or supplemented, and any other prospectus relating to the Securities, or any such amendment or supplement in reliance upon and in conformity with written information furnished to the Company by any Underwriter through the Representative expressly for use in the Prospectus as amended or supplemented ; and provided, further, that the Offerors shall not be liable to any Underwriter under this Section 6(a) with respect to any Preliminary Prospectus to the extent that any such loss, claim, damage, expense or liability of such Underwriter results from the fact that such Underwriter sold the Securities to a person as to whom it shall be established that there was not sent or given, at or prior to the written confirmation of such sale, a copy of the Prospectus (excluding documents incorporated by reference) or of the Prospectus, as then amended or supplemented (excluding documents incorporated by reference), in any case where such delivery is required by the 1933 Act if the Company has previously furnished copies thereof in sufficient quantity to such Underwriter and the loss, claim, damage, expense or liability of such Underwriter results from an untrue statement or omission of a material fact contained in the Preliminary Prospectus that was identified in writing at such time to such Underwriter and corrected in the Prospectus (excluding documents incorporated by reference) or in the Prospectus, as then amended or supplemented (excluding documents incorporated by reference), and such correction would have cured the defect giving rise to such loss, claim, damage or liability. The Company agrees to indemnify the Trust against all losses, claims, damages, expenses or liabilities whatsoever that may become due from the Trust under this Section 6(a).

(b) Each Underwriter will indemnify and hold harmless the Offerors against any losses, claims, damages, expenses or liabilities to which the Offerors may become subject, under the 1933 Act or otherwise, insofar as such losses, claims, damages, expenses or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in any Preliminary Prospectus, any preliminary prospectus supplement, the Registration Statement, the Prospectus, as amended or supplemented, and any other prospectus relating to the Securities, or any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in any Preliminary Prospectus, any preliminary prospectus supplement, the Registration Statement, the Prospectus, as amended or supplemented, and any other prospectus relating to the Securities, or any such amendment or supplement in reliance upon and in conformity with written information furnished to the Offerors by such Underwriter through the Representative expressly for use therein; and will promptly reimburse the Offerors for such legal or other expenses reasonably incurred by the Offerors in connection with investigating or defending any such action or claim as such expenses are incurred.

(c) Promptly after receipt by an indemnified party under Section 6(a) or 6(b) hereof of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such Section, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve it from any liability that it may have to any indemnified party otherwise than under such Section. In case any such action shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such Section for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, without the written consent of the indemnified party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (i) includes an unconditional release of the indemnified party from all liability arising out of such action or claim and (ii) does not include a statement as to, or an admission of, fault, culpability or a failure to act, by or on behalf of any indemnified party.

(d) If the indemnification provided for in this Section 6 is unavailable to or insufficient to hold harmless an indemnified party under Section 6(a) or 6(b) hereof in respect of any losses, claims, damages, expenses or liabilities (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages, expenses or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Offerors on the one hand and the Underwriters on the other from the offering of the Securities to which such loss, claim, damage, expense or liability (or action in respect thereof) relates. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law or if the indemnified party failed to give the notice required under Section 6(c) hereof, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Offerors on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages, expenses or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Offerors on the one hand and such Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from such offering (before deducting expenses) received by the Offerors bear to the total underwriting discounts and commissions received by the Underwriters. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Offerors on the one hand or the Underwriters on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent

such statement or omission. The Offerors and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 6(d) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to above in this Section 6(d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages, expenses or liabilities (or actions in respect thereof) referred to above in this Section 6(d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 6(d), no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the applicable Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The obligations of the Underwriters in this Section 6(d) to contribute are several in proportion to their respective underwriting obligations with respect to the Securities and not joint.

(e) The obligations of the Offerors under this Section 6 shall be in addition to any liability that the Offerors may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls any Underwriter within the meaning of the 1933 Act and to each director and officer of any Underwriter; and the obligations of the Underwriters under this Section 6 shall be in addition to any liability that the respective Underwriters may otherwise have and shall extend, upon the same terms and conditions, to each director and trustee of the Offerors, to each officer who signed the Registration Statement and to each person, if any, who controls the Company within the meaning of the 1933 Act.

Section 7. Default by One or More of the Underwriters. (a) If any Underwriter shall default in its obligation to purchase the Preferred Securities that it has agreed to purchase under this Agreement, the non-defaulting Underwriters may in their discretion arrange for themselves or another party or other parties to purchase such Preferred Securities on the terms contained herein. If within thirty-six hours after such default by any Underwriter the non-defaulting Underwriters do not arrange for the purchase of such Preferred Securities, then the Offerors shall be entitled to a further period of thirty-six hours within which to procure another party or other parties satisfactory to the non-defaulting Underwriters to purchase such Preferred Securities on such terms. In the event that, within the respective prescribed period, the non-defaulting Underwriters notify the Offerors that they have so arranged for the purchase of such Preferred Securities, or the Offerors notify the non-defaulting Underwriters that they have so arranged for the purchase of such Preferred Securities, the non-defaulting Underwriters or the Offerors shall have the right to postpone the Closing Time for a period of not more than seven days, in order to effect whatever changes may thereby be made necessary in the Registration Statement or the Prospectus as amended or supplemented, or in any other documents or arrangements, and the Offerors agree to file promptly any amendments or supplements to the Registration Statement or the Prospectus that in the opinion of the non-defaulting Underwriters may thereby be made necessary. The term "Underwriter" as used in this Agreement shall include any person substituted under this Section 7 with like effect as if such person had originally been a party to this Agreement.

(b) If, after giving effect to any arrangements for the purchase of the Preferred Securities of a defaulting Underwriter or Underwriters by the non-defaulting Underwriters and the Offerors as provided in Section 7(a) hereof, the aggregate number of such Preferred Securities that remains unpurchased does not exceed one-eleventh of the aggregate number of the Preferred Securities, then the Offerors shall have the right to require each non-defaulting Underwriter to purchase the number of Preferred Securities that such Underwriter originally agreed to purchase under this Agreement and, in addition, to require each non-defaulting Underwriter to purchase its pro rata share (based on the number of Preferred Securities that such Underwriter originally agreed to purchase hereunder) of the Preferred Securities of such defaulting Underwriter or Underwriters for which such arrangements have not been made; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

(c) If, after giving effect to any arrangements for the purchase of the Preferred Securities of a defaulting Underwriter or Underwriters by the non-defaulting Underwriters and the Offerors as provided in Section 7(a) hereof, the aggregate principal amount of Preferred Securities that remains unpurchased exceeds one-eleventh of the aggregate number of the Preferred Securities, as referred to in Section 7(b) hereof, or if the Offerors shall not exercise the right described in Section 7(b) hereof to require non-defaulting Underwriters to purchase Preferred Securities of a defaulting Underwriter or Underwriters, then this Agreement shall thereupon terminate, without liability on the part of any non-defaulting Underwriter or the Offerors, except for the expenses to be borne by the Offerors and the Underwriters as provided in Section 4 hereof and the indemnity and contribution agreements in Section 6 hereof; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

Section 8. Representations, Warranties and Agreements to Survive. The respective indemnities, agreements, representations, warranties and other statements of the Offerors and the several Underwriters, as set forth in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement, shall remain in full force and effect, regardless of any investigation (or any statement as to the results thereof) made by or on behalf of any Underwriter or any controlling person or director of any Underwriter, or the Offerors, or any officer, director or trustee or controlling person of the Offerors, and shall survive delivery of and payment for the Preferred Securities.

Section 9. Effect of Termination. If this Agreement shall be terminated pursuant to Section 7 hereof, the Offerors shall not then be under any liability to any Underwriter with respect to the Preferred Securities except as provided in Sections 4 and 6 hereof; but, if for any other reason Preferred Securities are not delivered by or on behalf of the Offerors as provided herein, the Company will reimburse the Underwriters for all out-of-pocket expenses approved in writing by the Representative, including fees and disbursements of counsel, reasonably incurred by the Underwriters in making preparations for the purchase, sale and delivery of such Preferred Securities, but the Offerors shall then be under no further liability to any Underwriter with respect to such Preferred Securities except as provided in Sections 4 and 6 hereof.

Section 10. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Underwriters shall be directed to the Representative at

677 Washington Boulevard, Stamford, Connecticut 06901, attention of Fixed Income Syndicate, fax: (203) 719-0495; notices to the Offerors shall be directed to them at 5241 Spring Mountain Road, Las Vegas, Nevada 98510, attention of the chief financial officer.

Section 11. Parties. This Agreement shall be binding upon, and inure solely to the benefit of, the Underwriters, the Offerors and, to the extent provided in Sections 6 and 8 hereof, the officers, directors and trustees of the Offerors and each person who controls the Offerors or any Underwriter, and their respective heirs, executors, administrators, successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement. No purchaser of any of the Preferred Securities from any Underwriter shall be deemed a successor or assign by reason merely of such purchase.

Section 12. Governing Law and Time. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Time shall be of the essence of each Pricing Agreement. As used herein, "business day" shall mean any day when the Commission's office in Washington, D.C. is open for business. As used herein, "New York Business Day" shall mean any day other than Saturday, Sunday or any day on which banks located in the State of New York are authorized or obligated to close.

Section 13. Counterparts. This Agreement and each Pricing Agreement may be executed by any one or more of the parties hereto and thereto in any number of counterparts, each of which shall be deemed to be an original, but all such respective counterparts shall together constitute one and the same instrument.



If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Trust a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement among the Underwriters, the Trust and the Company in accordance with its terms.

Very truly yours,

SOUTHWEST GAS CORPORATION

By: /S/ EDWARD A. JANOV

---

Title: Vice President/Finance

SOUTHWEST GAS CAPITAL II

By: Southwest Gas Corporation, as Sponsor

By: /S/ KENNETH J. KENNY

---

Title: Treasurer

CONFIRMED AND ACCEPTED,  
as of the date first above written:

UBS Securities LLC

As Representative of the several Underwriters  
named in Schedule A hereto

By: /S/ RON YANAGI

---

Authorized Signatory  
Ron Yanagi  
Executive Director

By: /S/ TODD MOHONEY

---

Authorized Signatory  
Todd Mohoney  
Associate Director

Underwriter	Number of Preferred Securities to be Purchased
UBS Securities LLC	731,200
A.G. Edwards & Sons, Inc.	731,200
Merrill Lynch, Pierce, Fenner & Smith Incorporated	731,200
U.S. Bancorp Piper Jaffray Inc.	731,200
KBC Financial Products USA Inc.	731,200
ABN AMRO Incorporated	20,000
Banc of America Securities LLC	20,000
BB&T Investment Services, Inc.	20,000
Deutsche Bank Securities Inc.	20,000
Fahnestock & Co. Inc.	20,000
Goldman, Sachs & Co.	20,000
HSBC Securities (USA) Inc.	20,000
J.P. Morgan Securities Inc.	20,000
Lehman Brothers Inc.	20,000
McDonald Investments Inc.	20,000
Quick & Reilly, Inc.	20,000
SunTrust Capital Markets, Inc.	20,000
Wells Fargo Securities, LLC	20,000
Advest, Inc.	12,000
C.L. King & Associates, Inc.	12,000
Doley Securities, Inc.	12,000
Ferris, Baker Watts Incorporated	12,000
Morgan Keegan & Company, Inc.	12,000
Raymond James & Associates, Inc.	12,000
Southwest Securities, Inc.	12,000
Total	4,000,000

Pursuant to Section 5(g) of the Agreement, the accountants shall furnish letters to the Representative to the effect that:

(i) they are independent certified public accountants with respect to the Company within the meaning of the 1933 Act and the 1933 Act Regulations;

(ii) in their opinion, the financial statements and financial statement schedules audited by them and included or incorporated by reference in the Registration Statement or the Prospectus comply as to form in all material respects with the applicable accounting requirements of the 1933 Act and the 1934 Act Regulations or the 1934 Act and the 1934 Act Regulations, as applicable;

(iii) they have made a review in accordance with standards established by the American Institute of Certified Public Accountants of the unaudited condensed statements of income, consolidated balance sheets and consolidated statements of cash flows included in the Prospectus or included in the Company's Quarterly Reports on Form 10-Q incorporated by reference in the Prospectus;

(iv) on the basis of limited procedures, not constituting an examination in accordance with generally accepted auditing standards, consisting of a reading of the unaudited financial statements and other information referred to below, a reading of the latest available interim financial statements of the Company, inspection of the minute books of the Company since the date of the latest audited financial statements included or incorporated by reference in the Prospectus, inquiries of officials of the Company responsible for financial and accounting matters and such other inquiries and procedures as may be specified in such letter, nothing came to their attention that caused them to believe that:

(A) (i) the unaudited condensed statements of income, balance sheets and statements of cash flows included in the Prospectus or included or incorporated by reference in the Company's Quarterly Reports on Form 10-Q incorporated by reference in the Prospectus do not comply as to form in all material respects with the applicable accounting requirements of the 1934 Act and the 1934 Act Regulations or (ii) any material modifications should be made to the unaudited condensed consolidated statements of income, consolidated balance sheets and consolidated statements of cash flows included in the Prospectus or included in the Company's Quarterly Reports on Form 10-Q incorporated by reference in the Prospectus for them to be in conformity with generally accepted accounting principles;

(B) any other unaudited income statement data and balance sheet items included in the Prospectus do not agree with the corresponding items in the unaudited consolidated financial statements from which such data and items were derived, and any such unaudited data and items were not determined on a basis substantially consistent with the basis for the corresponding amounts in the

audited consolidated financial statements included or incorporated by reference in the Company's Annual Report on Form 10-K for the most recent fiscal year;

(C) the unaudited financial statements that were not included in the Prospectus but from which were derived the unaudited condensed financial statements referred to in clause (A) and any unaudited income statement data and balance sheet items included in the Prospectus and referred to in clause (B) were not determined on a basis substantially consistent with the basis for the audited financial statements included or incorporated by reference in the Company's Annual Report on Form 10-K for the most recent fiscal year;

(D) any unaudited pro forma consolidated condensed financial statements included or incorporated by reference in the Prospectus do not comply as to form in all material respects with the applicable accounting requirements of the 1933 Act and the 1933 Act Regulations or the pro forma adjustments have not been properly applied to the historical amounts in the compilation of those statements;

(E) as of a specified date not more than five days prior to the date of such letter, there have been any changes in the consolidated capital stock or any increase in the consolidated long-term debt of the Company, including current maturities, or any decreases in net current assets or stockholder's equity or other items specified by the Representative, or any increases in any items specified by the Representative, in each case as compared with amounts shown in the latest balance sheet included or incorporated by reference in the Prospectus, except in each case for changes, increases or decreases that the Prospectus discloses have occurred or may occur or that are described in such letter; and

(F) for the period from the date of the latest financial statements included or incorporated by reference in the Prospectus to the specified date referred to in clause (E) there were any decreases in consolidated net sales or other items specified by the Representative, or any increases in any items specified by the Representative, in each case as compared with the comparable period of the preceding year and with any other period of corresponding length specified by the Representative, except in each case for increases or decreases that the Prospectus discloses have occurred or may occur or that are described in such letter; and

(vii) in addition to the audit referred to in their report or reports included or incorporated by reference in the Prospectus and the limited procedures, inspection of minute books, inquiries and other procedures referred to in paragraphs (iii) and (vi) above, they have carried out certain specified procedures, not constituting an audit in accordance with generally accepted auditing standards, with respect to certain amounts, percentages and financial information specified by the Representative that are derived from the general accounting records of the Company and its subsidiaries, which appear in the Prospectus (excluding documents incorporated by reference), or in Part II of, or in exhibits and schedules to, the Registration Statement specified by the Representative or

in documents incorporated by reference in the Prospectus specified by the Representative, and have compared certain of such amounts, percentages and financial information with the accounting records of the Company and its subsidiaries and have found them to be in agreement.

**AMENDED AND RESTATED  
TRUST AGREEMENT FOR SOUTHWEST GAS CAPITAL II**

among

SOUTHWEST GAS CORPORATION  
(as Sponsor)

BNY MIDWEST TRUST COMPANY  
(as Property Trustee)

and

THE BANK OF NEW YORK (DELAWARE)  
(as Delaware Trustee)

Dated as of  
August 25, 2003

Southwest Gas Capital II

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

Trust Indenture Act Section	Trust Agreement Section
ss.310(a)(1)	7.07
(a)(2)	7.07
(a)(3)	7.09
(a)(4)	2.07(a)(ii)
(b)	7.08
ss.311(a)	7.13
(b)	7.13
ss.312(a)	5.07
(b)	5.07
(c)	5.07
ss.313(a)	7.14
(b)	7.14
(c)	7.14
(d)	7.14
ss.314(a)	7.15
(b)	Not Applicable
(c)(1)	7.16, 7.17
(c)(2)	7.16, 7.17
(c)(3)	Not Applicable
(d)	Not Applicable
(e)	7.17
ss.315(a)	7.01(a), 7.03(a)
(b)	7.02, 10.08
(c)	7.01(a)
(d)	7.01, 7.03
(e)	Not Applicable
ss.316(a)	Not Applicable
(a)(1)(A)	Not Applicable
(a)(1)(B)	Not Applicable
(a)(2)	Not Applicable
(b)	Not Applicable
(c)	Not Applicable
ss.317(a)(1)	Not Applicable
(a)(2)	Not Applicable
(b)	5.09
ss.318(a)	10.10

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



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AMENDED AND RESTATED TRUST AGREEMENT of Southwest Gas Capital II (the "Trust"), dated as of August 25, 2003, among (i) Southwest Gas Corporation, a California corporation (the "Sponsor"), (ii) BNY Midwest Trust company, a trust company organized under the laws of the State of Illinois, as trustee (the "Property Trustee"), (iii) The Bank of New York (Delaware), a state bank chartered under the laws of the State of Delaware, whose address in Delaware is P.O. Box 6973, White Clay Center, Route 273, Newark, Delaware 19714, as Delaware trustee (the "Delaware Trustee") (the Property Trustee and the Delaware Trustee are referred to collectively as the "Trustees"), and (iv) the several Holders, as hereinafter defined.

WITNESSETH:

WHEREAS, the Sponsor and the Delaware Trustee have heretofore duly declared and established a statutory trust pursuant to the Delaware Statutory Trust Act by entering into a Trust Agreement, dated as of June 23, 2003 (the "Original Trust Agreement"), and by executing and filing with the Secretary of State of the State of Delaware a Certificate of Trust on June 23, 2003, a form of which is attached hereto as Exhibit A; and

WHEREAS, the Sponsor, the Property Trustee and the Delaware Trustee desire to amend and restate the Original Trust Agreement in its entirety as set forth herein to provide for, among other things, (i) the issuance of the Common Trust Securities, as hereinafter defined, by the Trust to the Sponsor, (ii) the issuance and sale of the Preferred Trust Securities, as hereinafter defined, by the Trust pursuant to the Underwriting Agreement, as hereinafter defined, and (iii) the acquisition by the Trust from the Sponsor of the Trust Debt Securities, as hereinafter defined.

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

## **ARTICLE I DEFINED TERMS**

### **1.01. Definitions**

"Act" has the meaning specified in Section 6.08.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Bankruptcy Event" means, with respect to any Person, the occurrence of any of the following events:

- (a) Such Person, pursuant to or within the meaning of any Bankruptcy Law:

- (i) commences a voluntary case or proceeding;
  - (ii) consents to the entry of an order for relief against it in an involuntary case or proceeding;
  - (iii) consents to the appointment of a Custodian, as hereinafter defined, of it or for all or substantially all of its property, and such Custodian is not discharged within 60 days;
  - (iv) makes a general assignment for the benefit of its creditors; or
  - (v) admits in writing its inability to pay its debts generally as they become due; or
- (b) A court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
- (i) is for relief against such Person in an involuntary case or proceeding;
  - (ii) appoints a Custodian of such Person for all or substantially all of its properties;
  - (iii) orders the liquidation of such Person;
  - (iv) and in each case the order or decree remains unstayed and in effect for 60 days.

“Bankruptcy Laws” means Title 11 of the United States Code, or similar federal or state law for the relief of debtors.

“Board of Directors” means the Board of Directors of the Sponsor or any committee thereof duly authorized to act on behalf of such Board.

“Board Resolution” means (i) a copy of a resolution certified by the Secretary or an Assistant Secretary of the Sponsor to have been duly adopted by the Sponsor’s Board of Directors to be in full force and effect on the date of such certification or (ii) a certificate signed by the authorized officer or officers of the Sponsor to whom the Board of Directors has delegated its authority, and in each case, delivered to the Trustees.

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

“Business Day” means a day other than (a) a Saturday or Sunday, or (b) a day on which banking institutions in The City of New York, the city of Chicago or the State of California are required by law or executive order to remain closed.

“Certificate Depository Agreement” means the agreement among the Trust, the Property

Trustee and The Depository Trust Company, as the initial Clearing Agency, dated as of the Closing Date, relating to the Book-Entry Preferred Trust Securities Certificates, as the same may be amended and supplemented from time to time.

“Clearing Agency” means an organization registered as a “clearing agency” pursuant to Section 17A of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder. The Depository Trust Company will be the initial Clearing Agency.

“Closing Date” means the date of delivery of the Preferred Trust Securities under the Underwriting Agreement, which date is also the date of execution and delivery of this Trust Agreement.

“Code” means the Internal Revenue Code of 1986, as amended.

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

“Common Trust Security” means an undivided beneficial interest in the assets of the Trust, having a Liquidation Amount of \$25 and having the terms provided therefor in this Trust Agreement, any Annex hereto and the certificate representing such interest, including the right to receive Distributions and a Liquidation Distribution as provided herein.

“Common Trust Securities Certificate” means a certificate evidencing ownership of Common Trust Securities, substantially in the form attached hereto as Exhibit B.

“Corporate Trust Office” means the principal corporate trust office of the Property Trustee located in the State of Illinois which at the date hereof is 2 North LaSalle Street, Suite 1020, Chicago, Illinois 60602.

“Creditor” has the meaning specified in Section 2.03.

“Custodian” means any receiver, trustee, assignee, liquidator, sequestrator, custodian or similar official under any Bankruptcy Law.

“Definitive Preferred Trust Securities Certificates” means certificates representing Preferred Trust Securities issued in certificated, fully registered form as described in Section 5.12.

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

“Delaware Trustee” means the entity identified as the “Delaware Trustee” in the preamble to this Trust Agreement solely in its capacity as Delaware Trustee of the Trust and not in its individual capacity, or its successor in interest in such capacity, or any successor trustee appointed as herein provided.

“Sponsor” has the meaning specified in the preamble to this Trust Agreement.

“Distribution Date” has the meaning specified in Section 4.01(a).

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

“Event of Default” means the occurrence of a Trust Debt Security Event of Default (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body).

“Expiration Date” has the meaning specified in Section 8.01.

“Extension Period” means the period or periods in which pursuant to the Indenture payments of interest on the Trust Debt Securities are deferred by extending the interest payment periods thereof.

“Guarantee” means the Guarantee Agreement executed and delivered by the Sponsor to BNY Midwest Trust Company, a trust company organized under the laws of the State of Illinois, as trustee thereunder, contemporaneously with the execution and delivery of this Trust Agreement, for the benefit of the Holders of the Preferred Trust Securities, as amended from time to time.

“Indenture” means the Indenture, dated as of August 25, 2003, between Southwest Gas Corporation and the Trust Debt Security Trustee, as trustee thereunder, as amended or supplemented from time to time.

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

“Like Amount” means (a) with respect to a redemption of Trust Securities, Trust Securities having an aggregate Liquidation Amount equal to the aggregate principal amount of Trust Debt Securities to be repaid in accordance with the Indenture and (b) with respect to a distribution of Trust Debt Securities to Holders of Trust Securities in connection with a dissolution of the Trust, Trust Debt Securities having an aggregate principal amount equal to the aggregate Liquidation Amount of the Trust Securities in exchange for which such Trust Debt Securities are distributed.

“Liquidation Amount” means the liquidation amount of \$25 per Trust Security.

“Liquidation Date” means the date on which Trust Debt Securities are to be distributed to Holders of Trust Securities in connection with a dissolution of the Trust pursuant to Section 8.04(a).

“Liquidation Distribution” has the meaning specified in Section 8.04(d).



“1940 Act” means the Investment Company Act of 1940, as amended.

“Officers’ Certificate” means a certificate signed by two of the following persons: the Chief Executive Officer, any Vice President, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Sponsor.

“Opinion of Counsel” means a written opinion of counsel, who may be counsel for the Trust or the Sponsor or an Affiliate of the Sponsor, but not an employee of any thereof.

“Original Trust Agreement” has the meaning specified in the recitals to this Trust Agreement.

“Outstanding”, when used with respect to Trust Securities, means, as of the date of determination, all Trust Securities represented by Trust Securities Certificates theretofore executed and delivered under this Trust Agreement, except:

(a) Trust Securities represented by Trust Securities Certificates theretofore cancelled by the Delaware Trustee or delivered to the Delaware Trustee for cancellation;

(b) Trust Securities for whose redemption money in the necessary amount has been theretofore deposited with the Property Trustee or any Paying Agent for the Holders of such Trust Securities; provided that, if such Trust Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Trust Agreement;

(c) Trust Securities which have been paid or Trust Securities represented by Trust Securities Certificates in exchange for or in lieu of which other Trust Securities Certificates have been executed and delivered pursuant to Section 5.05, other than any such Trust Securities Certificates in respect of which there shall have been presented to the Property Trustee proof satisfactory to it that such Trust Securities Certificates are held by a protected purchaser; and

(d) as provided in Section 8.04(c);

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

“Paying Agent” means the Property Trustee and any co-paying agent appointed pursuant to Section 5.09.

“Payment Account” means a segregated non-interest-bearing corporate trust account maintained by the Property Trustee in its trust department for the benefit of the Securityholders in which all amounts paid to the Property Trustee in respect of the Trust Debt Securities or the Guarantee will be held and from which the Property Trustee or such other Paying Agent shall make payments to the Securityholders in accordance with Article 4.

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

“Preferred Trust Security” means a Preferred Trust Security issued by the Trust, and having an undivided beneficial interest in the assets of the Trust, having a Liquidation Amount of \$25 and having terms provided therefor in this Trust Agreement, any Annex hereto and the certificate representing such interest, including the right to receive Distributions and a Liquidation Distribution as provided herein.

“Preferred Trust Securities Certificate” means a certificate evidencing ownership of one or more Preferred Trust Securities, substantially in the form attached hereto as Exhibit C.

“Property Trustee” means the commercial bank or trust company identified as the “Property Trustee” in the preamble to this Trust Agreement solely in its capacity as Property Trustee of the Trust and not in its individual capacity, or its successor in interest in such capacity, or any successor property trustee appointed as herein provided.

“Redemption Date” means, with respect to any Trust Security to be redeemed, the date fixed for such redemption by or pursuant to this Trust Agreement; it being understood that each Trust Debt Security Redemption Date and the stated maturity date of the Trust Debt Securities shall be a Redemption Date for a Like Amount of Trust Securities.

“Redemption Price” means, with respect to any Trust Security, 100% of the Liquidation Amount of such Trust Security plus accumulated and unpaid Distributions thereon to the Redemption Date.

“Responsible Officer” means, when used with respect to the Property Trustee, any vice president, assistant vice president, senior trust officer, trust officer, assistant trust officer or other officer associated with the corporate trust department of the Property Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“Securities Register” and “Securities Registrar” have the respective meanings specified in Section 5.04.

“Securityholder” or “Holder” means a Person in whose name a Trust Security or Securities is registered in the Securities Register. Any such Person is a beneficial owner within the meaning of the Delaware Statutory Trust Act.

“Successor Securities” has the meaning specified in Section 9.01.

“Trust” means the Delaware statutory trust continued hereby and identified on the cover page to this Trust Agreement.

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

“Trust Debt Security Event of Default” means an “Event of Default” as defined in the Indenture with respect to the Trust Debt Securities.

“Trust Debt Security Redemption Date” means “Redemption Date” as defined in the Indenture with respect to the Trust Debt Securities.

“Trust Debt Security Trustee” means BNY Midwest Trust Company, a trust company organized under the laws of the State of Illinois, in its capacity as trustee under the Indenture, or any successor thereto, appointed in accordance with the terms and provisions of the Indenture.

“Trust Debt Securities” means the Sponsor’s 7.70% Junior Subordinated Debentures due 2043, issued pursuant to the Indenture.

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

“Trust Property” means (a) the Trust Debt Securities, (b) any cash on deposit in, or owing to, the Payment Account and (c) all proceeds and rights in respect of the foregoing and any other property and assets for the time being held or deemed to be held by the Property Trustee pursuant to the trusts of this Trust Agreement.

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

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

“Underwriting Agreement” means the Underwriting Agreement, dated August 20, 2003, among the Trust, the Sponsor and the Underwriters named therein.

**1.02. Other Definitions.** For all purposes of this Trust Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) each term defined in this Article I has the meaning assigned to it in this Article I and includes the plural as well as the singular;
- (b) each of the other terms used herein that is defined in the Trust Indenture Act, either directly or by reference therein, has the meaning assigned to it therein;
- (c) unless the context otherwise requires, any reference to an “Article” or a “Section” refers to an Article or a Section, as the case may be, of this Trust Agreement; and
- (d) the words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section or other subdivision.

**ARTICLE II  
CONTINUATION OF TRUST**

**2.01. Name.** The Trust created and continued hereby shall be known as “Southwest Gas Capital II” as such name may be modified from time to time by the Delaware Trustee following written notice to the Holders of Trust Securities and the other Trustees, in which name the Trustees may conduct the business of the Trust, make and execute contracts and other instruments on behalf of the Trust and sue and be sued.

**2.02. Office of Delaware Trustee; Principal Place of Business.** The address of the Delaware Trustee in the State of Delaware is P.O. Box 6973, White Clay Center, Route 273, Newark, Delaware 19714 or such other address in the State of Delaware as the Delaware Trustee may designate by written notice to the Securityholders and the Sponsor. The principal place of business of the Trust is 5241 Spring Mountain Road, P.O. Box 98510, Las Vegas, Nevada 89193.

**2.03. Initial Contribution of Trust Property; Expenses of Trust.**

(a) The Property Trustee acknowledges receipt in trust from the Sponsor in connection with the Original Trust Agreement of the sum of \$10, which constituted the initial Trust Property.

(b) The Sponsor shall be responsible for and shall pay for all obligations (other than with respect to the Trust 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 and sale of the Preferred Trust Securities, the fees and expenses (including reasonable counsel fees and expenses) of the Trustees as provided in Section 7.06, the costs and expenses of accountants, attorneys, statistical or bookkeeping services, expenses for printing and engraving and computing or accounting equipment, Paying Agent(s), Securities Registrar, duplication, travel and telephone and other telecommunications expenses and costs and expenses incurred in connection with the disposition of Trust assets).

(c) The Sponsor will 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.

(d) The Sponsor's obligations under this Section 2.03 shall be for the benefit of, and shall be enforceable by, the Property Trustee and any Person to whom any such obligations, costs, expenses and taxes are owed (a "Creditor") whether or not such Creditor has received notice hereof. The Property Trustee and any such Creditor may enforce the Sponsor's obligations under this Section 2.03 directly against the Sponsor and the Sponsor irrevocably waives any right or remedy to require that the Property Trustee or any such Creditor take any action against the Trust or any other Person before proceeding against the Sponsor. The Sponsor agrees to execute such additional agreements as may be necessary or desirable in order to give full effect to the provisions of this Section 2.03.

(e) The Sponsor shall make no claim upon the Trust Property for the payment of such expenses.

**2.04. Issuance of Trust Securities.** The Sponsor, on behalf of the Trust and pursuant to the Original Trust Agreement, executed and delivered the Underwriting Agreement. Contemporaneously with the execution and delivery of this Trust Agreement, the Delaware Trustee, on behalf of the Trust, shall execute in accordance with Section 5.02 and deliver to the Underwriters named in the Underwriting Agreement one or more Book-Entry Preferred Trust Securities Certificates, registered in the name of the nominee of the initial Clearing Agency, representing 4,000,000 Preferred Trust Securities having an aggregate Liquidation Amount of \$100,000,000, against receipt by the Sponsor, on behalf of the Trust, of the aggregate purchase price of such Preferred Trust Securities of \$100,000,000, which amount the Sponsor shall promptly deliver to the Trust. Contemporaneously therewith, the Delaware Trustee, on behalf of the Trust, shall execute in accordance with Section 5.02 and deliver to the Sponsor a Common Trust Securities Certificate, registered in the name of the Sponsor, representing 124,000 Common Trust Securities having an aggregate Liquidation Amount of \$3,100,000, and in satisfaction of the purchase price of such Common Trust Securities the Sponsor shall deliver to the Property Trustee the sum of \$3,100,000. The Trust Securities may have such additional or different terms specified in an Annex hereto.

**2.05. Purchase of Trust Debt Securities.** Contemporaneously with the execution and delivery of this Trust Agreement (i) the Property Trustee, on behalf of the Trust, shall purchase \$103,100,000 aggregate principal amount of Trust Debt Securities from the Sponsor, registered in the name of the Property Trustee and (ii) in satisfaction of the purchase price for such Trust Debt Securities, the Property Trustee, on behalf of the Trust, shall deliver to the Sponsor the sum of \$103,100,000.

**2.06. Declaration of Trust.** The exclusive purposes and functions of the Trust are (a) to issue and sell Trust Securities and use the proceeds from such sale to acquire the Trust Debt Securities and to hold, transfer, sell and otherwise dispose of the Trust Debt Securities in accordance with this Trust Agreement, (b) to maintain the status of the Trust as a grantor trust for United States Federal income tax purposes, and (c) except as otherwise limited herein, to engage in only those activities necessary, convenient or incidental thereto. The Sponsor hereby appoints the Trustees as trustees of the Trust, to have all the rights, powers and duties to the extent set forth herein, and the Trustees hereby accept such appointment. The Property Trustee hereby declares that it will hold the Trust Property in trust upon and subject to the conditions set forth

herein for the benefit of the Securityholders. The Delaware Trustee shall have all rights, powers and duties set forth herein.

**2.07. Authorization to Enter into Certain Transactions.**

(a) The Trustees shall conduct the affairs of the Trust in accordance with the terms of this Trust Agreement. Subject to the limitations set forth in paragraph (b) of this Section, and in accordance with the following provisions (i) and (ii), the Trustees shall have the authority to enter into all transactions and agreements determined by the Trustees to be appropriate in exercising the authority, express or implied, otherwise granted to the Trustees under this Trust Agreement, and to perform all acts in furtherance thereof, including without limitation, the following:

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

(A) executing and delivering the Trust Securities on behalf of the Trust;

(B) causing the Trust to enter into, and executing, delivering and performing on behalf of the Trust, the Certificate Depository Agreement and such other agreements as may be necessary or desirable in connection with the purposes and function of the Trust, including the appointment of a successor depository;

(C) assisting in registering the Preferred Trust Securities under the Securities Act of 1933, as amended, and under state securities or blue sky laws, and qualifying this Trust Agreement as a trust indenture under the Trust Indenture Act;

(D) assisting in the listing of the Preferred Trust Securities upon such securities exchange or exchanges as the Sponsor shall determine and the registration of the Preferred Trust Securities under the Securities Exchange Act of 1934, as amended, and the preparation and filing of all periodic and other reports and other documents pursuant to the foregoing;

(E) to the extent provided in this Trust Agreement, dissolving, liquidating and terminating the Trust in accordance with the terms of this Trust Agreement, and executing and filing the certificate of cancellation with the Secretary of State of the State of Delaware, if necessary;

(F) sending notices or assisting the Property Trustee in sending notices and other information regarding the Trust Securities and the Trust Debt Securities to Securityholders in accordance with this Trust Agreement; and

(G) taking any action incidental to the foregoing as is necessary or advisable or as the Delaware Trustee may from time to time determine is necessary or advisable to give effect to the terms of this Trust Agreement for the benefit of the Securityholders (without consideration of the effect of any such action on any particular Securityholder).

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

- (A) establishing and maintaining the Payment Account and appointing Paying Agents (subject to Section 5.09);
- (B) receiving payment of the purchase price of the Trust Securities;
- (C) receiving and holding the Trust Debt Securities;
- (D) collecting interest, premium, if any, and principal payments on the Trust Debt Securities and depositing them in the Payment Account;
- (E) making Distributions and other payments to the Securityholders in respect of the Trust Securities;
- (F) exercising all of the rights, powers and privileges of a holder of the Trust Debt Securities;
- (G) sending notices of defaults, redemptions, Extension Periods, liquidations and other information regarding the Trust Securities and the Trust Debt Securities to the Securityholders in accordance with this Trust Agreement;
- (H) to the extent provided in this Trust Agreement, dissolving, liquidating and terminating the Trust, including distributing the Trust Property in accordance with the terms of this Trust Agreement, and executing and filing the certificate of cancellation with the Secretary of State of the State of Delaware, if necessary;
- (I) after an Event of Default, taking any action incidental to the foregoing as is necessary or advisable or as the Property Trustee may from time to time determine is necessary or advisable to give effect to the terms of this Trust Agreement and protect and conserve the Trust Property for the benefit of the Securityholders (without consideration of the effect of any such action on any particular Securityholder); and
- (J) registering transfers and exchanges of the Preferred Trust Securities in accordance with this Trust Agreement (but only if at such time the Property Trustee shall be the Securities Registrar).

(b) So long as this Trust Agreement remains in effect, the Trust (or the Trustees acting on behalf of the Trust) shall not undertake any business, activities or transaction except as expressly provided herein or contemplated hereby. In particular, the Trustees acting on behalf of the Trust shall not (i) acquire any assets or investments (other than the Trust Debt Securities), reinvest the proceeds derived from investments, possess any power or otherwise act in such a way as to vary the Trust Property or engage in any activities not authorized by this Trust Agreement, (ii) sell, assign, transfer, exchange, mortgage, pledge, set-off or otherwise dispose of any of the Trust Property or interests therein, including to Securityholders, except as expressly

provided herein, (iii) take any action that would cause the Trust to fail or cease to qualify as a grantor trust for United States Federal income tax purposes, (iv) incur any indebtedness for borrowed money or incur any other obligations, (v) issue any securities or other evidences of beneficial ownership of, or beneficial interests in, the Trust other than the Trust Securities, or (vi) take or consent to any action that would result in the placement of a Lien on any of the Trust Property. The Delaware Trustee shall defend all claims and demands of all Persons at any time claiming any Lien on any of the Trust Property adverse to the interest of the Trust or the Securityholders in their capacity as Securityholders.

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

(i) preparing for filing with the Commission and executing on behalf of the Trust a registration statement on Form S-3 in relation to the Preferred Trust Securities, including any amendments thereto;

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

(iii) preparing for filing and executing on behalf of the Trust an application to the New York Stock Exchange or any other national stock exchange or The Nasdaq Stock Market for listing upon notice of issuance of any Preferred Trust Securities;

(iv) preparing for filing with the Commission and executing on behalf of the Trust a registration statement on Form 8-A relating to the registration of the Preferred Trust Securities under Section 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended, including any amendments thereto;

(v) negotiating the terms of, and executing and delivering, the Underwriting Agreement providing for the sale of the Preferred Trust Securities; and

(vi) taking any other actions necessary or desirable to carry out any of the foregoing activities.

(d) Notwithstanding anything herein to the contrary, the Delaware Trustee is authorized and directed to conduct the affairs of the Trust and to operate the Trust so that (i) the Trust will not be deemed to be an "investment company" required to be registered under the 1940 Act, or taxed as a corporation or a partnership for United States Federal income tax



purposes, (ii) the Trust will qualify as a grantor trust for United States Federal income tax purposes, and (iii) the Trust Debt Securities will be treated as indebtedness of the Sponsor for United States Federal income tax purposes. In this connection, the Sponsor and the Delaware Trustee are authorized to take any action, not inconsistent with applicable law, the Certificate of Trust, as amended from time to time, or this Trust Agreement, that each of the Sponsor and the Delaware Trustee determines in their discretion to be necessary or desirable for such purposes.

**2.08. Assets of Trust.** The assets of the Trust shall consist of the Trust Property.

**2.09. Title to Trust Property.** Legal title to all Trust Property shall be vested at all times in the Property Trustee (in its capacity as such) and shall be held and administered by the Property Trustee for the benefit of the Securityholders in accordance with this Trust Agreement.

### **ARTICLE III PAYMENT ACCOUNT**

**3.01. Payment Account.**

(a) On or prior to the Closing Date, the Property Trustee shall establish the Payment Account. All monies and other property deposited or held from time to time in the Payment Account shall be held by the Property Trustee for the exclusive benefit of the Securityholders. The Property Trustee shall have exclusive control of the Payment Account for the purpose of making deposits in and withdrawals from the Payment Account in accordance with this Trust Agreement; provided that any Paying Agent shall have the right of withdrawal with respect to the Payment Account solely for the purpose of making the payments contemplated under Article IV.

(b) The Property Trustee shall deposit in the Payment Account, promptly upon receipt, all payments of principal of or premium, if any, or interest on the Trust Debt Securities and any amounts paid to the Property Trustee pursuant to the Guarantee. Amounts held in the Payment Account shall not be invested pending distribution thereof.

### **ARTICLE IV DISTRIBUTIONS; REDEMPTION**

**4.01. Distributions.**

(a) Distributions on the Trust Securities shall be cumulative, and will accumulate whether or not there are funds of the Trust available for the payment of Distributions. Distributions shall accumulate from August 25, 2003 and, except during an Extension Period for the Trust Debt Securities pursuant to the Indenture, shall be payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year, commencing on September 30, 2003. If any date on which Distributions are otherwise payable on the Trust Securities is not a Business Day, then the payment of such Distributions shall be made on the next succeeding day which 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, payment of such Distributions shall be made on the immediately preceding Business Day, in each case with

the same force and effect as if made on such date (each date on which Distributions are payable in accordance with this Section 4.01(a) is referred to as a "Distribution Date").

Within two Business Days after receipt by the Property Trustee of notice of an Extension Period pursuant to Section 4.01 of the Indenture, the Property Trustee shall give notice thereof to the Securityholders by first class mail, postage prepaid.

The Trust Securities represent undivided beneficial interests in the Trust Property, and, subject to Sections 4.03 and 4.06 hereof, all Distributions will be made pro rata on each of the Trust Securities. Distributions on the Trust Securities shall be payable: (i) on Book-Entry Preferred Trust Securities, in immediately available funds to the Clearing Agency; (ii) on Preferred Trust securities not in book-entry form with the Clearing Agency, by check mailed to the address of the holder thereof; and (iii) on the Common Trust Securities, in any manner specified by the Sponsor. During an Extension Period for the Trust Debt Securities, the rate per annum at which Distributions on the Trust Securities are then accumulating shall be increased by an amount such that the aggregate amount of Distributions that accumulate on all Trust Securities during any such Extension Period is equal to the aggregate amount of interest (including interest payable on unpaid interest at the rate per annum referred to above, compounded quarterly) that accrues during any such Extension Period on the Trust Debt Securities.

(b) Distributions on the Trust Securities shall be made from the Payment Account by the Property Trustee or any Paying Agent and shall be payable on each Distribution Date only to the extent that the Trust has funds then available in the Payment Account for the payment of such Distributions.

(c) Distributions on the Trust Securities on each Distribution Date shall be payable to the Holders thereof as they appear on the Securities Register for the Trust Securities on the relevant record date, which shall be one Business Day prior to such Distribution Date; provided, however, that in the event that the Preferred Trust Securities are not in book-entry-only form, the relevant record date shall be the 15th day preceding such Distribution Date, whether or not a Business Day.

#### **4.02. Redemption.**

(a) Upon receipt by the Trust of a notice of redemption of Trust Debt Securities, the Trust will call for redemption a Like Amount of Outstanding Trust Securities on the Trust Debt Security Redemption Date and will call for redemption all Outstanding Trust Securities on the stated maturity date of the Trust Debt Securities, in each case, at the Redemption Price.

(b) Notice of redemption shall be given by the Property Trustee by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date to each Holder of Trust Securities to be redeemed, at such Holder's address appearing in the Securities Register. All notices of redemption shall state:

- (i) the Redemption Date;
- (ii) the Redemption Price;

(iii) the CUSIP number;

(iv) the place or places where Trust Securities Certificates are to be surrendered for payment of the Redemption Price;

(v) that on the Redemption Date the Redemption Price will become payable upon each such Trust Security to be redeemed and that Distributions thereon will cease to accumulate on and after such date; and

(vi) if less than all of the Outstanding Trust Securities are to be redeemed, the identification and total Liquidation Amount of the particular Trust Securities to be redeemed.

(c) The Trust Securities redeemed on each Redemption Date shall be redeemed at the Redemption Price with the proceeds from the contemporaneous redemption or payment at maturity of Trust Debt Securities. Redemptions of the Trust Securities shall be made and the Redemption Price shall be payable on each Redemption Date only to the extent that the Trust has funds then available in the Payment Account for the payment of such Redemption Price.

(d) If the Trust, by action of the Property Trustee, gives a notice of redemption in respect of any Preferred Trust Securities, then, on the Redemption Date, subject to Section 4.02(c), the Property Trustee will irrevocably deposit with the Paying Agent funds sufficient to pay the Redemption Price for the Preferred Trust Securities being redeemed on such date and will give the Paying Agent irrevocable instructions and authority to pay the Redemption Price to the Holders of such Preferred Trust Securities upon surrender of their Preferred Trust Securities Certificates. Notwithstanding the foregoing, Distributions payable on or prior to the Redemption Date for any Trust Securities called for redemption shall be payable to the Holders of such Trust Securities as they appear on the Securities Register for the Trust Securities on the record dates for the related Distribution Dates. If notice of redemption shall have been given and funds irrevocably deposited as required, then upon the date of such deposit, all rights of Securityholders holding Trust Securities so called for redemption will cease, except the right of such Securityholders to receive the Redemption Price, but without interest, and such Trust Securities will cease to be Outstanding. In the event that any date on which any Redemption Price is payable is not a Business Day, then payment of the Redemption Price payable on such date will be made on the next succeeding day which 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 will be made on the immediately preceding Business Day, in each case, with the same force and effect as if made on such date. In the event that payment of the Redemption Price in respect of any Trust Securities called for redemption is improperly withheld or refused, and not paid either by the Trust or by the Sponsor pursuant to the Guarantee, Distributions on such Trust Securities will continue to accumulate, at the then applicable rate, from the Redemption Date originally established by the Trust for such Trust Securities to the date such Redemption Price is actually paid, in which case the actual payment date will be the date fixed for redemption for purposes of calculating the Redemption Price.

(e) If less than all the Outstanding Trust Securities are to be redeemed on a Redemption Date, then the aggregate Liquidation Amount of Trust Securities to be redeemed

shall be allocated to the Common Trust Securities and the Preferred Trust Securities pro rata based on the aggregate Liquidation Amount of each of the Outstanding Common Trust Securities and the Outstanding Preferred Trust Securities in relation to the aggregate Liquidation Amount of all of the Outstanding Trust Securities. The particular Preferred Trust Securities to be redeemed shall be selected by the Property Trustee from the Outstanding Preferred Trust Securities not previously called for redemption, by such method as the Property Trustee shall deem appropriate. The Property Trustee shall promptly notify the Securities Registrar in writing of the Preferred Trust Securities selected for redemption. If fewer than all of the Trust Securities represented by a Trust Securities Certificate are redeemed, the Delaware Trustee shall execute for the Holder a new Trust Securities Certificate representing the unredeemed Trust Securities. For all purposes of this Trust Agreement, unless the context otherwise requires, all provisions relating to the redemption of Preferred Trust Securities shall relate, in the case of any Preferred Trust Securities redeemed or to be redeemed only in part, to the portion of the Liquidation Amount of Preferred Trust Securities which has been or is to be redeemed.

**4.03. Subordination of Common Trust Securities.**

(a) Payment of Distributions on, and the Liquidation, Distribution and Redemption Price of, the Trust Securities, as applicable, shall be made pro rata based on the Liquidation Amount of the Trust Securities; provided, however, that if on any applicable date, an Event of Default shall have occurred and be continuing, no payment of any Distribution on, or Liquidation, Distribution and Redemption Price of, any Common Trust Security, and no other payment on account of the Common Trust Securities, shall be made unless payment in full in cash of all accumulated and unpaid Distributions on all Outstanding Preferred Trust Securities for all distribution periods terminating on or prior thereto, or in the case of payment of the Liquidation, Distribution and Redemption Price, the full amount of such Liquidation, Distribution and Redemption Price applicable to all Outstanding Preferred Trust Securities then outstanding or then being redeemed, as the case may be, shall have been made or provided for, and all funds immediately available to the Property Trustee shall first be applied to the payment in full in cash of all Distributions on, or the Liquidation, Distribution and Redemption Price of, Preferred Trust Securities then due and payable.

(b) In the case of the occurrence of any Event of Default, the Holder of Common Trust Securities will be deemed to have waived any right to act with respect thereto until the effect thereof has been cured, waived or otherwise eliminated. Until any such Event of Default has been so cured, waived or otherwise eliminated, the Property Trustee shall act solely on behalf of the Holders of the Preferred Trust Securities and not the Holder of the Common Trust Securities, and only the Holders of the Preferred Trust Securities will have the right to direct the Property Trustee to act on their behalf.

**4.04. Payment Procedures.** Payments of Distributions pursuant to Section 4.01 in respect of the Preferred Trust Securities shall be made by check mailed to the address of the Holder thereof as such address shall appear on the Securities Register or, if the Preferred Trust Securities are held by a Clearing Agency, such Distributions shall be made to the Clearing Agency by wire transfer in immediately available funds. Payments of Distributions pursuant to Section 4.01 in respect of the Common Trust Securities shall be made in such manner as shall be mutually agreed between the Property Trustee and the Holder of the Common Trust Securities.

Payment of the Redemption Price or Liquidation Distribution of the Trust Securities shall be made in immediately available funds upon surrender of the Preferred Trust Securities Certificate representing such Preferred Trust Securities at the Corporate Trust Office of the Property Trustee.

**4.05. Tax Returns and Reports.** The Depositor shall prepare (or cause to be prepared) and file all Federal, State and local tax and information returns and reports required to be filed by or in respect of the Trust, including the appropriate Internal Revenue Service form, if any, required to be filed in respect of the Trust in each taxable year of the Trust. Notwithstanding the foregoing, the Delaware Trustee shall prepare and furnish (or cause to be prepared and furnished) to each Securityholder the related Internal Revenue Service forms, if any (including a Form 1099 OID, or any successor form, if and to the extent necessary). The Trustees shall comply with United States Federal withholding and backup withholding tax laws and information reporting requirements with respect to any payments to Securityholders under the Trust Securities.

**4.06. Payments under Indenture.** Any amount payable hereunder to any Holder of Preferred Trust Securities shall be reduced by the amount of any corresponding payment such Holder has directly received pursuant to Section 6.07 of the Indenture or pursuant to the Guarantee. Notwithstanding the provisions hereunder to the contrary, Securityholders acknowledge that any Holder of Preferred Trust Securities that receives payment under Section 6.07 of the Indenture may receive amounts greater than the amount such Holder may be entitled to receive pursuant to the other provisions of this Trust Agreement.

## **ARTICLE V TRUST SECURITIES CERTIFICATES**

**5.01. Initial Ownership.** Upon the creation of the Trust and the contribution by the Sponsor pursuant to Section 2.03 and until the issuance of the Trust Securities, and at any time during which no Trust Securities are outstanding, the Sponsor shall be the sole beneficial owner of the Trust.

**5.02. Trust Securities Certificates.** The Trust Securities Certificates shall be issued representing one or more Preferred Trust Securities. Preferred Trust Securities Certificates representing fractional interests shall not be issued. The Trust Securities Certificates shall be executed on behalf of the Trust by manual or facsimile signature of the Delaware Trustee. Trust Securities Certificates bearing the manual signature of an individual who was, at the time when such signature shall have been affixed, authorized to sign on behalf of the Trust, shall be validly issued and entitled to the benefits of this Trust Agreement, notwithstanding that such individual shall have ceased to be so authorized prior to the delivery of such Trust Securities Certificates or did not hold such office at the date of delivery of such Trust Securities Certificates. A transferee of a Trust Securities Certificate shall become a Securityholder, and shall be entitled to the rights and subject to the obligations of a Securityholder hereunder, upon due registration of such Trust Securities Certificate in such transferee's name pursuant to Section 5.04.

**5.03. Delivery of Trust Securities Certificates.** On the Closing Date, the Delaware Trustee shall cause Trust Securities Certificates, in an aggregate Liquidation Amount as provided

in Sections 2.04 and 2.05, to be executed on behalf of the Trust as provided in Section 5.02 and delivered to or upon a written order of the Sponsor signed by its Chairman of the Board, its Chief Executive Officer, any Vice President or the Chief Financial Officer, without further corporate action by the Sponsor, in authorized denominations. The written order of the Sponsor shall be accompanied by an Officers' Certificate and an Opinion of Counsel.

**5.04. Registration of Transfer and Exchange of Preferred Trust Securities Certificates.** A registrar appointed by the Sponsor (the "Securities Registrar") shall keep or cause to be kept, at the office or agency maintained pursuant to Section 5.08, a register (the "Securities Register") in which, subject to such reasonable regulations as it may prescribe, the Securities Registrar shall provide for the registration of Trust Securities Certificates (subject to Section 5.10 in the case of the Common Trust Securities Certificates) and registration of transfers and exchanges of Preferred Trust Securities Certificates as herein provided. The Property Trustee shall be the initial Securities Registrar; any successor Securities Registrar shall be appointed by the Delaware Trustee.

Upon surrender for registration of transfer of any Preferred Trust Securities Certificate at the office or agency maintained pursuant to Section 5.08, the Delaware Trustee shall execute and deliver, in the name of the designated transferee or transferees, one or more new Preferred Trust Securities Certificates representing the same number of Preferred Trust Securities dated the date of execution by the Delaware Trustee. At the option of a Holder, Preferred Trust Securities Certificates may be exchanged for other Preferred Trust Securities Certificates upon surrender of the Preferred Trust Securities Certificates to be exchanged at the office or agency maintained pursuant to Section 5.08. The Securities Registrar shall not be required to register the transfer of any Preferred Trust Securities that have been called for redemption or after the Liquidation Date.

Preferred Trust Securities presented or surrendered for registration of transfer or exchange shall be accompanied by a written instrument of transfer in form satisfactory to the Delaware Trustee and the Securities Registrar duly executed by the Holder or such Holder's attorney duly authorized in writing. Each Preferred Trust Securities Certificate surrendered for registration of transfer or exchange shall be cancelled and subsequently disposed of by the Property Trustee in accordance with its customary practice.

No service charge shall be made for any registration of transfer or exchange of Preferred Trust Securities, but the Securities Registrar may require payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer or exchange of Preferred Trust Securities other than an exchange not involving any transfer.

**5.05. Mutilated, Destroyed, Lost or Stolen Trust Securities Certificates.** If (a) any mutilated Trust Securities Certificate shall be surrendered to the Securities Registrar, or if the Securities Registrar shall receive evidence to its satisfaction of the destruction, loss or theft of any Trust Securities Certificate, and (b) there shall be delivered to the Securities Registrar and the Delaware Trustee such security or indemnity as may be reasonably required by them to hold the Securities Registrar and the Trust harmless, then in the absence of notice that such Trust Securities Certificate shall have been acquired by a protected purchaser, the Delaware Trustee, on behalf of the Trust shall execute and make available for delivery, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Trust Securities

Certificate, a new Trust Securities Certificate of like tenor. In connection with the issuance of any new Trust Securities Certificate under this Section, the Delaware Trustee or the Securities Registrar may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith. Any duplicate Trust Securities Certificate issued pursuant to this Section shall constitute conclusive evidence of an undivided beneficial interest in the assets of the Trust, as if originally issued, whether or not the lost, stolen or destroyed Trust Securities Certificate shall be found at any time.

**5.06. Persons Deemed Securityholders.** Prior to due presentation of a Trust Security Certificate for registration of transfer, the Delaware Trustee or the Securities Registrar shall treat the Person in whose name any Trust Securities Certificate shall be registered in the Securities Register as the owner and Holder of such Trust Securities Certificate for the purpose of receiving Distributions and for all other purposes whatsoever, and neither the Trustees nor the Securities Registrar shall be bound by any notice to the contrary.

**5.07. Access to List of Securityholders' Names and Addresses.** In the event that the Property Trustee is no longer the Securities Registrar, the Delaware Trustee or the Sponsor shall furnish or cause to be furnished (a) to the Property Trustee, quarterly not later than 10 days prior to a Distribution Date, a list, in such form as the Property Trustee may reasonably require, of the names and addresses of the Securityholders as of the most recent record date and (b) to the Property Trustee, promptly after receipt by the Delaware Trustee or the Sponsor of a request therefor from the Property Trustee in order to enable the Paying Agent to pay Distributions in accordance with Section 4.01 hereof), in each case to the extent such information is in the possession or control of the Delaware Trustee or the Sponsor and is not identical to a previously supplied list or has not otherwise been received by the Property Trustee. The rights of Securityholders to communicate with other Securityholders with respect to their rights under this Trust Agreement or under the Trust Securities, and the corresponding rights of the Property Trustee shall be as provided in the Trust Indenture Act. Each Holder, by receiving and holding a Trust Securities Certificate, shall be deemed to have agreed not to hold the Sponsor, the Property Trustee or the Delaware Trustee accountable by reason of the disclosure of its name and address, regardless of the source from which such information was derived.

**5.08. Maintenance of Office or Agency.** The Property Trustee shall maintain in Chicago, Illinois, an office or offices or agency or agencies where Preferred Trust Securities may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Trustees in respect of the Trust Securities Certificates may be served. The Property Trustee shall give prompt written notice to the Sponsor and to the Securityholders of any change in the location of the Securities Register or any such office or agency, which shall initially be at the Corporate Trust Office of the Property Trustee.

**5.09. Appointment of Paying Agent.** The Paying Agent shall make Distributions to Securityholders from the Payment Account and shall report the amounts of such Distributions to the Property Trustee and the Delaware Trustee. Any Paying Agent shall have the revocable power to withdraw funds from the Payment Account for the purpose of making Distributions. The Delaware Trustee may revoke such power and remove the Paying Agent, provided that such revocation and removal with respect to the sole Paying Agent shall not become effective until the appointment of a successor. The Paying Agent shall initially be the Property Trustee, and any

co-paying agent chosen by the Property Trustee and acceptable to the Delaware Trustee and the Sponsor. Any Person acting as Paying Agent shall be permitted to resign as Paying Agent upon 30 days' written notice to the Delaware Trustee and the Sponsor, and, if applicable, the Property Trustee, provided that such resignation with respect to the sole Paying Agent shall not become effective until the appointment of a successor. In the event that the Property Trustee shall no longer be the Paying Agent or a successor Paying Agent shall resign or its authority to act be revoked, the Delaware Trustee shall appoint a successor that is acceptable to the Property Trustee (in the case of any other Paying Agent) and the Sponsor to act as Paying Agent (which shall be a bank or trust company and have a combined capital and surplus of at least \$50,000,000). The Delaware Trustee shall cause such successor Paying Agent or any additional Paying Agent appointed by the Delaware Trustee to execute and deliver to the Trustees an instrument in which such successor Paying Agent or additional Paying Agent shall agree with the Trustees that as Paying Agent, such successor Paying Agent or additional Paying Agent will hold all sums, if any, held by it for payment to the Securityholders in trust for the benefit of the Securityholders entitled thereto until such sums shall be paid to such Securityholders. The Paying Agent shall return all of such sums remaining unclaimed to the Property Trustee and upon removal of a Paying Agent such Paying Agent shall also return such sums in its possession to the Property Trustee. The provisions of Sections 7.01, 7.03 and 7.06 shall apply to the Property Trustee also in its role as Paying Agent, for so long as the Property Trustee shall act as Paying Agent and, to the extent applicable, to any other Paying Agent appointed hereunder. Any reference in this Trust Agreement to the Paying Agent shall include any co-paying agent unless the context requires otherwise.

**5.10. No Transfer of Common Trust Securities by Sponsor.** To the fullest extent permitted by law, any attempted transfer of the Common Trust Securities shall be void. The Trustee shall cause each Common Trust Securities Certificate issued to the Sponsor to contain a legend stating "TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THIS CERTIFICATE, AND THE COMMON TRUST SECURITIES REPRESENTED HEREBY, ARE NOT TRANSFERABLE". By execution of this Trust Agreement, the Sponsor agrees to the foregoing provisions.

**5.11. Book-Entry Preferred Trust Securities Certificates; Common Trust Securities Certificate.**

(a) The Preferred Trust Securities, upon original issuance on the Closing Date, will not be engraved but will be issued in the form of one or more printed or typewritten Book-Entry Preferred Trust Securities Certificates, to be delivered to The Depository Trust Company, the initial Clearing Agency, by, or on behalf of, the Trust. Such Book-Entry Preferred Trust Securities Certificate or Certificates shall initially be registered on the Securities Register in the name of Cede & Co., the nominee of the initial Clearing Agency.

(b) A single Common Trust Securities Certificate representing the Common Trust Securities shall be issued to the Sponsor in the form of a definitive Common Trust Securities Certificate.

**5.12. Definitive Preferred Trust Securities Certificates.** If (a) the Sponsor advises the Trustees in writing that the Clearing Agency is no longer willing or able to properly



discharge its responsibilities with respect to the Preferred Trust Securities Certificates or the Clearing Agency is no longer registered or in good standing under the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation, and the Sponsor is unable to locate a qualified successor within 60 calendar days, (b) the Sponsor, in its sole discretion, advises the Trustees in writing that it elects to terminate the book-entry system through the Clearing Agency or (c) an Event of Default occurs and is continuing, then the Trustee shall issue Definitive Preferred Trust Securities Certificates. Upon surrender to the Trustee of the Book-Entry Preferred Trust Securities Certificates by the Clearing Agency, accompanied by registration instructions, the Trustee shall execute and deliver the Definitive Preferred Trust Securities Certificates in accordance with the instructions of the Clearing Agency. Neither the Securities Registrar nor the Trustees shall be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be protected in relying on, such instructions. The Definitive Preferred Trust Securities Certificates shall be printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Trustee, as evidenced by the execution thereof by the Trustee.

**5.13. Rights of Securityholders.** The Securityholders shall not have any right or title to the Trust Property other than the undivided beneficial interest in the assets of the Trust conferred by their Trust Securities and they shall have no right to call for any partition or division of property, profits or rights of the Trust except as described below. The Trust Securities shall be personal property giving only the rights specifically set forth therein and in this Trust Agreement. The Preferred Trust Securities shall have no preemptive or similar rights and when issued and delivered to Securityholders against payment of the purchase price therefor will be fully paid and nonassessable by the Trust. The Holders of the Preferred Trust 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.

## **ARTICLE VI ACTS OF SECURITYHOLDERS; MEETINGS; VOTING**

### **6.01. Limitations on Voting Rights.**

(a) Except as provided herein and in the Indenture and as otherwise required by law, no Holder of Trust Securities shall have any right to vote or in any manner otherwise control the administration, operation and management of the Trust or the obligations of the parties hereto, nor shall anything herein set forth, or contained in the terms of the Trust Securities Certificates, be construed so as to constitute the Securityholders from time to time as partners or members of an association.

(b) The Trustees shall not (i) direct the time, method and place of conducting any proceeding for any remedy available to the Trust Debt Security Trustee or executing any trust or power conferred on the Trust Debt Security Trustee with respect to such Trust Debt Securities, (ii) waive any past default which may be waived under Section 6.04 of the Indenture, (iii) exercise any right to rescind or annul an acceleration of the principal of all the Trust Debt Securities or (iv) consent to any amendment or modification of the Indenture, where such consent shall be required, without, in each case, obtaining the prior consent of the Holders of a

majority in aggregate Liquidation Amount of all Outstanding Preferred Trust Securities; provided, however, that where such consent under the Indenture would require the consent of each holder of Trust Debt Securities affected thereby, no such consent shall be given by the Property Trustee without the prior written consent of the Holder of each Outstanding Preferred Trust Security. The Trustees shall not revoke any action previously authorized or approved by a vote of the Holders of Preferred Trust Securities, except by a subsequent vote of the Holders of Preferred Trust Securities. The Property Trustee shall notify all Holders of the Preferred Trust Securities of any notice received from the Trust Debt Security Trustee as a result of the Trust being the holder of the Trust Debt Securities. In addition to obtaining the consent of the Holders of the Preferred Trust Securities, prior to taking any of the foregoing actions, the Trustees shall, at the expense of the Sponsor, be provided with an Opinion of Counsel, which shall be nationally recognized independent counsel experienced in such matters to the effect that the Trust will not be classified as an association taxable as a corporation or partnership for United States Federal income tax purposes on account of such action and will continue to be classified as a grantor trust for United States Federal income tax purposes.

(c) Subject to Section 10.02(c) hereof, if any proposed amendment to the Trust Agreement provides for, or the Trustees otherwise propose to effect, (i) any action that would adversely affect in any material respect the powers, preferences or special rights of the Preferred Trust Securities, whether by way of amendment to this Trust Agreement or otherwise, or (ii) the dissolution or liquidation of the Trust, other than pursuant to the terms of this Trust Agreement, then the Holders of Outstanding Preferred Trust 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 the Holders of a majority in aggregate Liquidation Amount of the Outstanding Preferred Trust Securities.

**6.02. Notice of Meetings.** Notice of all meetings of the Holders of the Preferred Trust Securities, stating the time, place and purpose of the meeting, shall be given by the Property Trustee pursuant to Section 10.08 to each Preferred Trust Securityholder of record, at his/her registered address, at least 15 days and not more than 90 days before the meeting. At any such meeting, any business properly before the meeting may be so considered whether or not stated in the notice of the meeting. Any adjourned meeting may be held as adjourned without further notice.

**6.03. Meetings of Holders of Preferred Trust Securities.** No annual meeting of Securityholders is required to be held. The Delaware Trustee, however, shall call a meeting of Securityholders to vote on any matter upon the written request of the Holders of at least 25% of the aggregate Liquidation Amount of the Outstanding Preferred Trust Securities and the Delaware Trustee or the Property Trustee may, at any time in their discretion, call a meeting of Holders of the Preferred Trust Securities to vote on any matters as to which the Holders of the Preferred Trust Securities are entitled to vote.

Holders of a majority of the aggregate Liquidation Amount of the Outstanding Preferred Trust Securities, present in person or by proxy, shall constitute a quorum at any meeting of Securityholders.

If a quorum is present at a meeting, an affirmative vote of the Holders of a majority of the

aggregate Liquidation Amount of the Outstanding Preferred Trust Securities present, either in person or by proxy, at such meeting shall constitute the action of the Securityholders, unless this Trust Agreement requires a greater number of affirmative votes.

**6.04. Voting Rights.** A Securityholder shall be entitled to one vote for each Trust Security in respect of any matter as to which such Securityholder is entitled to vote.

**6.05. Proxies, etc.** At any meeting of Securityholders, any Securityholder entitled to vote thereat may vote by proxy, provided that no proxy shall be voted at any meeting unless it shall have been placed on file with the Delaware Trustee, or with such other officer or agent of the Trust as the Delaware Trustee may direct, for verification prior to the time at which such vote shall be taken. Pursuant to a resolution of the Property Trustee, proxies may be solicited in the name of the Property Trustee or one or more officers of the Property Trustee. Only Securityholders of record shall be entitled to vote. When Trust Securities are held jointly by several Persons, any one of them may vote at any meeting in person or by proxy in respect of such Trust Securities, but if more than one of them shall be present at such meeting in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote shall not be received in respect of such Trust Securities. A proxy purporting to be executed by or on behalf of a Securityholder shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger. No proxy shall be valid more than three years after its date of execution.

**6.06. Securityholder Action by Written Consent.** Any action which may be taken by Securityholders at a meeting may be taken without a meeting if Holders of the proportion of the Outstanding Preferred Trust Securities required to approve such action shall consent to the action in writing.

**6.07. Record Date for Voting and Other Purposes.** For the purposes of determining the Securityholders who are entitled to notice of and to vote at any meeting or by written consent, or for the purpose of any other action, the Delaware Trustee may from time to time fix a date, not more than 90 days prior to the date of any meeting of Securityholders, as a record date for the determination of the identity of the Securityholders for such purposes.

**6.08. Acts of Securityholders.** Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Trust Agreement to be given, made or taken by Securityholders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Securityholders in person or by an agent duly appointed in writing; and, except as otherwise expressly provided herein, such action shall become effective when such instrument or instruments are delivered to the Delaware Trustee. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Securityholders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Trust Agreement and (subject to Section 7.02) conclusive, if made in the manner provided in this Section.

The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or

other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him/her the execution thereof. Where such execution is by a signer acting in a capacity other than his/her individual capacity, such certificate or affidavit shall also constitute sufficient proof of his/her authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which any Trustee receiving the same deems sufficient.

The ownership of Preferred Trust Securities shall be proved by the Securities Register.

Any request, demand, authorization, direction, notice, consent, waiver or other act of the Securityholder of any Trust Security shall bind every future Securityholder of the same Trust Security and the Securityholder of every Trust Security issued upon the registration of transfer thereof or in exchange thereof or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustees or the Trust in reliance thereon, whether or not notation of such action is made upon such Trust Security.

Without limiting the foregoing, a Securityholder entitled hereunder to take any action hereunder with regard to any particular Trust Security may do so with regard to all or any part of the Liquidation Amount of such Trust Security or by one or more duly appointed agents, each of which may do so pursuant to such appointment with regard to all or any part of such Liquidation Amount.

If any dispute shall arise between the Securityholders and the Delaware Trustee or among such Securityholders or Trustees with respect to the authenticity, validity or binding nature of any request, demand, authorization, direction, consent, waiver or other Act of such Securityholder or Trustee under this Article VI, then the determination of such matter by the Property Trustee shall be conclusive with respect to such matter.

**6.09. Inspection of Records.** Upon reasonable prior written notice to the Delaware Trustee and the Property Trustee, the records of the Trust shall be open to inspection by Securityholders during normal business hours for any purpose reasonably related to such Securityholder's interest as a Securityholder.

## **ARTICLE VII THE TRUSTEES**

### **7.01. Certain Duties and Responsibilities.**

(a) The duties and responsibilities of the Trustees shall be as provided by this Trust Agreement and, in the case of the Property Trustee, also by the Trust Indenture Act. The Property Trustee, other than during the occurrence and continuance of an Event of Default, undertakes to perform only such duties as are specifically set forth in this Trust Agreement and, upon an Event of Default, must exercise the same degree of care and skill as a prudent person would exercise or use in the conduct of his/her own affairs. The Trustees shall have all the privileges, rights and immunities provided by the Delaware Statutory Trust Act. Notwithstanding the foregoing, no provision of this Trust Agreement shall require the Trustees to expend or risk their own funds or otherwise incur any financial liability in the performance of

any of their duties hereunder, or in the exercise of any of their rights or powers, if they shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. Whether or not therein expressly so provided, every provision of this Trust Agreement relating to the conduct or affecting the liability of or affording protection to the Trustees shall be subject to the provisions of this Section. Nothing in this Trust Agreement shall be construed to release the Property Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct. To the extent that, at law or in equity, the Delaware Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Trust or to the Securityholders, the Delaware Trustee shall not be liable to the Trust or to any Securityholder for the Delaware Trustee's good faith reliance on the provisions of this Trust Agreement. The provisions of this Trust Agreement, to the extent that they restrict the duties and liabilities of the Delaware Trustee otherwise existing at law or in equity, are agreed by the Sponsor and the Securityholders to replace such other duties and liabilities of the Delaware Trustee.

(b) All payments made by the Property Trustee or any other Paying Agent in respect of the Trust Securities shall be made only from the income and proceeds from the Trust Property. Each Securityholder, by its acceptance of a Trust Security, agrees that (i) it will look solely to the income and proceeds from the Trust Property to the extent available for distribution to it as herein provided and (ii) the Trustees are not personally liable to it for any amount distributable in respect of any Trust Security or for any other liability in respect of any Trust Security. This Section 7.01(b) does not limit the liability of the Trustees expressly set forth elsewhere in this Trust Agreement or, in the case of the Property Trustee, in the Trust Indenture Act.

**7.02. Notice of Defaults; Direct Action by Securityholders.** Within 90 days after the occurrence of any Event of Default actually known to a Responsible Officer of the Property Trustee, the Property Trustee shall transmit, in the manner and to the extent provided in Section 10.08, notice of such Event of Default to the Securityholders, the Delaware Trustee and the Sponsor, unless such Event of Default shall have been cured or waived. If the Property Trustee has failed to enforce its rights under this Trust Agreement or the Indenture to the fullest extent permitted by law and subject to the terms of this Trust Agreement and the Indenture, any Securityholder may institute a legal proceeding directly to enforce the Property Trustee's rights under this Trust Agreement or the Indenture with respect to Trust Debt Securities having an aggregate principal amount equal to the aggregate Liquidation Amount of the Preferred Trust Securities of such Securityholder without first instituting a legal proceeding against the Property Trustee or any other Person. To the extent that any action under the Indenture is entitled to be taken by the holders of at least a specified percentage of the principal amount of the outstanding Trust Debt Securities, Holders of at least the same percentage of the Liquidation Amount of the Outstanding Preferred Trust Securities may also take such action in the name of the Trust if such action has not been taken by the Property Trustee. To the fullest extent permitted by law, the foregoing shall be in addition to and not in limitation of any direct rights provided to the Holders of the Preferred Trust Securities against the Trust Debt Security Issuer under the terms of the Indenture, including the right, without any notice or other demand on the Property Trustee, to institute suit for the enforcement of any payment of the principal of and any premium and interest on Trust Debt Securities as provided in Section 6.07 of the Indenture.

**7.03. Certain Rights of Property Trustee.** Subject to the provisions of Section 7.01:

(a) the Property Trustee may conclusively rely and shall be protected in acting or refraining from acting in good faith upon any resolution, Opinion of Counsel, certificate, written representation of a Holder or transferee, certificate of auditors or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, appraisal, bond, Trust Debt Security, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) if, other than during the occurrence and continuance of an Event of Default, (i) in performing its duties under this Trust Agreement, the Property Trustee is required to decide between alternative courses of action, or (ii) in construing any of the provisions in this Trust Agreement, the Property Trustee finds the same ambiguous or inconsistent with any other provisions contained herein, or (iii) the Property Trustee is unsure of the application of any provision of this Trust Agreement, then, except as to any matter as to which the Holders of the Preferred Trust Securities are entitled to vote under the terms of this Trust Agreement, the Property Trustee shall deliver a notice to the Sponsor requesting written instructions of the Sponsor as to the course of action to be taken. The Property Trustee shall take such action, or refrain from taking such action, as the Property Trustee shall be instructed in writing to take, or to refrain from taking, by the Sponsor; provided, however, that if the Property Trustee does not receive such instructions of the Sponsor within ten Business Days after it has delivered such notice, or such reasonably shorter period of time set forth in such notice (which to the extent practicable shall not be less than two Business Days), it may, but shall be under no duty to, take or refrain from taking such action not inconsistent with this Trust Agreement as it shall deem advisable and in the best interests of the Securityholders, in which event the Property Trustee shall have no liability except for its own negligent action, its own negligent failure to act or its own willful misconduct;

(c) the Property Trustee may consult with counsel or other experts of its selection and the advice or opinion of such counsel or other experts with respect to legal matters or advice within the scope of such experts' area of expertise shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

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

(e) the Property Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond, debenture, note or other evidence of indebtedness or other paper or document, but the Property Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit at the expense of

the Sponsor and, to the extent permitted by law, shall incur no liability of any kind by reason of such inquiry or investigation;

(f) the Property Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through its agents or attorneys and the Property 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;

(g) whenever in the administration of this Trust Agreement, 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 be herein specifically prescribed) may, in the absence of bad faith on its part, conclusively rely upon an Officers' Certificate;

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

(i) the Property Trustee shall not be deemed to have notice of any Default or an Event of Default unless a Responsible Officer of the Property Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Property Trustee at the Corporate Trust Office and such notice references the Trust Securities and this Trust Agreement;

(j) the rights, privileges, protections, immunities and benefits given to the Property Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Property Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder; and

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

**7.04. Not Responsible for Recitals or Issuance of Securities.** The recitals contained herein and in the Trust Securities Certificates shall be taken as the statements of the Trust, and the Trustees do not assume any responsibility for their correctness. The Trustees shall not be accountable for the use or application by the Sponsor of the proceeds of the Trust Debt Securities.

The Property Trustee makes no representations as to the value or condition of the property of the Trust or any part thereof. The Property Trustee makes no representations as to the validity or sufficiency of this Trust Agreement or the Trust Securities.

**7.05. May Hold Securities.** Any Trustee or any other agent of any Trustee or the Trust, in its individual or any other capacity, may become the owner or pledgee of Trust Securities and, subject to Sections 7.08 and 7.13 and except as provided in the definition of the

term Outstanding in Article I, may otherwise deal with the Trust with the same rights it would have if it were not a Trustee or such other agent.

**7.06. Compensation; Indemnity; Fees.** The Sponsor agrees:

(a) to pay to the Trustees from time to time such compensation as shall have been agreed in writing with the Sponsor for all services rendered by them hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(b) except as otherwise expressly provided herein, to reimburse the Trustees upon request for all reasonable expenses, disbursements and advances incurred or made by the Trustees in accordance with any provision of this Trust Agreement (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as shall have been caused by its own negligence or its own wilful misconduct (or, in the case of the Delaware Trustee, any such expense, disbursement or advance as shall have been caused by his/her own gross negligence); and

(c) to indemnify each of the Trustees or any predecessor Trustee for, and to hold the Trustees harmless against, any and all loss, damage, claims, liability, penalty or expense including taxes (other than taxes based on the income of such Trustee) incurred without its own negligence or its wilful misconduct (or, in the case of the Delaware Trustee, incurred without gross negligence or willful misconduct), arising out of or in connection with the acceptance or administration of this Trust Agreement, including the costs and expenses of defending itself against any claim (whether by the Sponsor, any Holder or any other person) or liability in connection with the exercise or performance of any of its powers or duties hereunder.

No Trustee may claim any Lien or charge on any Trust Property as a result of any amount due pursuant to this Section 7.06.

The provisions of this Section 7.06 shall survive the termination of this Trust Agreement and the resignation or removal of the Trustees.

**7.07. Corporate Property Trustee Required; Eligibility of Trustees.**

(a) There shall at all times be a Property Trustee hereunder. The Property Trustee shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least \$50,000,000. If any such Person publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Property Trustee with respect to the Trust Securities shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

(b) There shall at all times be a Delaware Trustee. The Delaware Trustee shall either be (i) a natural person who is at least 21 years of age and a resident of the State of Delaware or (ii) a legal entity with its principal place of business in the State of Delaware and



that otherwise meets the requirements of applicable Delaware law that shall act through one or more persons authorized to bind such entity.

**7.08. Conflicting Interests.** If the Property Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Property Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Trust Agreement.

**7.09. Co-Trustees and Separate Trustee.** Unless an Event of Default shall have occurred and be continuing, at any time or times, for the purpose of meeting the legal requirements of the Trust Indenture Act or of any jurisdiction in which any part of the Trust Property may at the time be located, the Sponsor and the Delaware Trustee (and if more than one Delaware Trustee, by agreed action of the majority of such Trustees) shall have power (i) to appoint, and upon the written request of the Delaware Trustee the Sponsor shall for such purpose join with the Delaware Trustee in the execution, delivery, and performance of all instruments and agreements necessary or proper to appoint one or more Persons approved by the Property Trustee either to act as co-trustee, jointly with the Property Trustee, of all or any part of such Trust Property, or to the extent required by law to act as separate trustee of any such property, in either case with such powers as may be provided in the instrument of appointment, and (ii) to vest in such Person or Persons in the capacity aforesaid, any property, title, right or power deemed necessary or desirable, subject to the other provisions of this Section. If the Sponsor does not join in such appointment within 15 days after the receipt by it of a request so to do, or in case an Event of Default has occurred and is continuing, the Property Trustee alone shall have power to make such appointment. Any co-trustee or separate trustee appointed pursuant to this Section shall either be (i) a natural person who is at least 21 years of age and a resident of the United States or (ii) a legal entity with its principal place of business in the United States that shall act through one or more persons authorized to bind such entity.

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

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

(a) The Trust Securities shall be executed and delivered and all rights, powers, duties, and obligations hereunder in respect of the custody of securities, cash and other personal property held by, or required to be deposited or pledged with, the Trustees specified hereunder, shall be exercised, solely by such Trustees and not by such co-trustee or separate trustee.

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

unqualified to perform such act, in which event such rights, powers, duties and obligations shall be exercised and performed by such co-trustee or separate trustee.

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

(d) No co-trustee or separate trustee hereunder shall be personally liable by reason of any act or omission of the Property Trustee, or any other trustee hereunder.

(e) The Property Trustee shall not be liable by reason of any act of a co-trustee or separate trustee.

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

**7.10. Resignation and Removal; Appointment of Successor.** No resignation or removal of any Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 7.11.

Subject to the immediately preceding paragraph, any Trustee may resign at any time with respect to the Trust Securities by giving written notice thereof to the Securityholders.

Unless an Event of Default shall have occurred and be continuing, any Trustee may be removed at any time by Act of the Holder of the Common Trust Securities. If an Event of Default shall have occurred and be continuing, the Property Trustee may be removed at such time only by Act of the Holders of a majority in Liquidation Amount of the Outstanding Preferred Trust Securities, delivered to such Trustee (in its individual capacity and on behalf of the Trust); the Delaware Trustee may be removed at any time by the Holder of Common Trust Securities only.

If the instrument of acceptance by the successor Trustee required by Section 7.11 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation or removal, the Trustee may petition, at the expense of the Sponsor, any court of competent jurisdiction for the appointment of a successor Trustee.

If any Trustee shall resign, be removed or become incapable of acting as Trustee, or if a vacancy shall occur in the office of any Trustee for any cause, at a time when no Event of Default shall have occurred and be continuing, the Holder of Common Trust Securities, by Act of the Holder of Common Trust Securities delivered to the retiring Trustee, shall promptly appoint a successor Trustee or Trustees and the Trust, and the retiring Trustee shall comply with

the applicable requirements of Section 7.11. If the Property Trustee shall resign, be removed or become incapable of continuing to act as the Property Trustee at a time when an Event of Default has occurred and is continuing, the Holders of Preferred Trust Securities, by Act of the Securityholders of a majority in Liquidation Amount of the Outstanding Preferred Trust Securities delivered to the retiring Trustee, shall promptly appoint a successor Trustee or Trustees, and such successor Trustee shall comply with the applicable requirements of Section 7.11. If any Delaware Trustee shall resign, be removed or become incapable of acting as Delaware Trustee at a time when no Event of Default shall have occurred and be continuing, the Holder of Common Trust Securities shall appoint a successor Delaware Trustee. If no successor Trustee shall have been so appointed by the Holder of Common Trust Securities or the Holders of Preferred Trust Securities and accepted appointment in the manner required by Section 7.11, any Securityholder who has been a Securityholder of Trust Securities for at least six months may, on behalf of himself and all others similarly situated, may petition any court of competent jurisdiction for the appointment of a successor Trustee.

The Property Trustee shall give notice of each resignation and each removal of a Trustee and each appointment of a successor Trustee to all Securityholders in the manner provided in Section 10.08 and shall give notice to the Sponsor. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office if it is the Property Trustee.

Notwithstanding the foregoing or any other provision of this Trust Agreement, in the event any Delaware Trustee who is a natural person dies or becomes, in the opinion of the Sponsor, incompetent or incapacitated, the vacancy created by such death, incompetence or incapacity may be filled by (a) the unanimous act of the remaining Delaware Trustees if there are at least two of them or (b) otherwise by the Sponsor (with the successor in each case being a Person who satisfies the eligibility requirements for Delaware Trustee, set forth in Section 7.07).

**7.11. Acceptance of Appointment by Successor.** In case of the appointment hereunder of a successor Trustee, the retiring Trustee and each successor Trustee shall execute and deliver to the Trust and the retiring Trustee an amendment hereto wherein each successor Trustee shall accept such appointment and which (a) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee and (b) shall add to or change any of the provisions of this Trust Agreement 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 amendment shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee and upon the execution and delivery of such amendment the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee and the Trust; but, on request of the Trust or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all Trust Property, all proceeds thereof and money held by such retiring Trustee hereunder.

Upon request of any such successor Trustee, the Trust shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all

such rights, powers and trusts referred to in the first or second preceding paragraph, as the case may be.

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.

**7.12. Merger, Conversion, Consolidation or Succession to Business.** Any Person into which any of the Trustees may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which such Trustee shall be a party, or any Person succeeding to all or substantially all the corporate trust business of such Trustee, shall be the successor of such Trustee hereunder, provided such Person shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

**7.13. Preferential Collection of Claims Against Sponsor or Trust.** If and when the Property Trustee shall be or become a creditor (whether directly or indirectly, secured or unsecured) of the Sponsor or the Trust (or any other obligor upon the Trust Debt Securities or the Trust Securities), including under the terms of Section 7.05 hereof, the Property Trustee shall be subject to and shall take all actions necessary in order to comply with the provisions of the Trust Indenture Act regarding the collection of claims against the Sponsor or Trust (or any such other obligor).

**7.14. Reports by Property Trustee.** The Property Trustee shall transmit to Holders such reports concerning the Property Trustee and its actions under this Trust Agreement 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 Property Trustee shall, within 60 days after each May 31 following the date of this Trust Agreement deliver to Holders a brief report, dated as of such May 31, which complies with the provisions of such Section 313(a).

A copy of each such report shall, at the time of such transmission to Holders, be filed by the Property Trustee with each stock exchange upon which any Preferred Trust Securities are then listed, with the Commission and with the Trust. The Trust will promptly notify the Property Trustee when any Preferred Trust Securities are listed on any stock exchange.

**7.15. Reports to Property Trustee.** The Sponsor and the Delaware Trustee on behalf of the Trust shall provide to the Property Trustee such documents, reports and information as required by Section 314 of the Trust Indenture Act (if any) and the compliance certificate required by Section 314(a) of the Trust Indenture Act in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act.

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

**7.16. Evidence of Compliance with Conditions Precedent.** The Sponsor and the Delaware Trustee on behalf of the Trust shall provide to the Property Trustee evidence of compliance with the conditions precedent, if any, provided for in this Trust Agreement that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act.

**7.17. Statements Required in Officers' Certificate.**

Each Officers' Certificate with respect to compliance with a covenant or condition provided for in this Trust Agreement shall include:

- (a) a statement that each Person making such Officers' Certificate or Opinion of Counsel has read such covenant or condition;
- (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such Officers' Certificate or Opinion of Counsel are based;
- (c) a statement that, in the opinion of each such Person, such Person has made such examination or investigation as is necessary to enable such Person to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) a statement that, in the opinion of such Person, such covenant or condition has been complied with; provided, however, that with respect to matters of fact not involving any legal conclusion, an Opinion of Counsel may rely on an Officers' Certificate or certificates of public officials.

**7.18. Number of Trustees.**

(a) The number of Trustees shall be two, one of which must be a Delaware Trustee. The Holder of all of the Common Trust Securities by written instrument may increase the number of Delaware Trustees to more than one, and, if so increased, may decrease the number of Delaware Trustees to no less than one. During any period in which the number of Delaware Trustees is more than one, the Delaware Trustees shall act by majority vote.

(b) If a Trustee ceases to hold office for any reason and, with respect to the Delaware Trustee, the number of Delaware Trustees is not reduced as permitted by Section 7.18(a), or if the number of Delaware Trustees is increased pursuant to Section 7.18(a), a vacancy shall occur. The vacancy shall be filled with a Trustee appointed in accordance with Section 7.10.

(c) The death, dissolution, termination, resignation, retirement, removal, bankruptcy, incompetence or incapacity to perform the duties of a Trustee shall not operate to annul, dissolve or terminate the Trust. Whenever a vacancy shall occur, until such vacancy is filled by the appointment of an Delaware Trustee in accordance with Section 7.10, the Delaware Trustees in office, regardless of their number (and notwithstanding any other provision of this Trust Agreement), shall have all the powers granted to the Delaware Trustee and shall discharge all the duties imposed upon the Delaware Trustees by this Trust Agreement.

**7.19. Delegation of Power.**

(a) Any Delaware Trustee may, by power of attorney consistent with applicable law, delegate to any natural person over the age of 21 his/her power for the purpose of executing any documents contemplated in Section 2.07(a), including any registration statement or amendment thereto filed with the Commission, or making any other governmental filing; and

(b) the Delaware Trustees shall have power to delegate from time to time to such of their number, if there is more than one Delaware Trustee, or to the Sponsor the doing of such things and the execution of such instruments either in the name of the Trust or the names of the Delaware Trustees or otherwise as the Delaware 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.

**7.20. Voting.** Except as otherwise provided in this Trust Agreement, the consent or vote of the Trustees shall be approved by the Delaware Trustee or, if more than one, by a majority of the Delaware Trustees.

**ARTICLE VIII  
DISSOLUTION AND LIQUIDATION**

**8.01. Dissolution Upon Expiration Date.** Unless earlier dissolved, the Trust shall automatically dissolve on December 31, 2055 (the “Expiration Date”).

**8.02. Early Termination.** The earliest to occur of any of the following events is an “Early Termination Event”:

(a) the occurrence of a Bankruptcy Event in respect of, or the dissolution or liquidation of, the Sponsor or an acceleration of the maturity of the Trust Debt Securities pursuant to Section 6.02 of the Indenture;

(b) upon the election of the Sponsor to dissolve the Trust and cause the distribution of a Like Amount of Trust Debt Securities to the Holders of the Trust Securities in accordance with their terms;

(c) the redemption of all of the Trust Securities; and

(d) an order for dissolution of the Trust shall have been entered by a court of competent jurisdiction.

The election of the Sponsor pursuant to Section 8.02(b) shall be made by the Sponsor giving written notice to the Trustees not less than 30 days prior to the date of distribution of the Trust Debt Securities. Such notice shall specify the date of distribution of the Trust Debt Securities and shall be accompanied by an Opinion of Counsel, which shall be nationally recognized independent counsel experienced in such matters, that such event will not be a taxable event to the Holders of the Trust Securities for Federal income tax purposes.

**8.03. Termination.** The respective obligations and responsibilities of the Trustees and the Trust shall terminate upon the latest to occur of the following: (a) the distribution by the Property Trustee to Securityholders upon the winding up of the Trust pursuant to Section 8.04 of all amounts required to be distributed hereunder upon the final payment of the Trust Securities; (b) the payment of any expenses owed by the Trust; and (c) the discharge of all administrative duties of the Delaware Trustee, including the performance of any tax reporting obligations with respect to the Trust or the Securityholders and the filing of the Certificate of Cancellation with the Secretary of State of the State of Delaware.

**8.04. Winding Up.**

(a) If an Early Termination Event specified in clause (a) or (d) of Section 8.02 occurs or upon the Expiration Date, the Trust shall be wound up by the Trustees as expeditiously as the Trustees determine to be possible by distributing, after satisfaction of liabilities to creditors of the Trust as provided by applicable law, to each Securityholder a Like Amount of Trust Debt Securities, subject to Section 8.04(d). If an Early Termination Event specified in clause (b) of Section 8.02 occurs, the Trust shall be liquidated by the Trustee on the date of distribution of the Trust Debt Securities specified by the Sponsor in its notice delivered pursuant to Section 8.02. Notice of liquidation shall be given by the Property Trustee by first-class mail, postage prepaid, mailed not later than 30 nor more than 60 days prior to the Liquidation Date to each Holder of Trust Securities at such Holder's address appearing in the Securities Register. All notices of liquidation shall:

(i) state the Liquidation Date;

(ii) state that from and after the Liquidation Date, the Trust Securities will no longer be deemed to be Outstanding and any Trust Securities Certificates not surrendered for exchange will be deemed to represent a Like Amount of Trust Debt Securities; and

(iii) provide such information with respect to the mechanics by which Holders may exchange Trust Securities Certificates for certificates evidencing Trust Debt Securities, or, if Section 8.04(d) applies, receive a Liquidation Distribution, as the Delaware Trustee or the Property Trustee shall deem appropriate.

(b) In order to effect the winding up of the Trust and distribution of the Trust Debt Securities to Securityholders, the Property Trustee, either itself acting as exchange agent or through the appointment of a separate exchange agent, shall establish such procedures as it shall deem appropriate to effect the distribution of Trust Debt Securities in exchange for the Outstanding Trust Securities Certificates.

(c) Except where Section 8.02(c) applies, on or after the Liquidation Date, (i) the Trust Securities will no longer be deemed to be Outstanding, (ii) certificates representing a Like Amount of Trust Debt Securities will be issued to Holders of Trust Securities Certificates, upon surrender of such certificates to the Delaware Trustee or its agent for exchange, (iii) the Sponsor shall use its best efforts to have the Trust Debt Securities listed on the New York Stock

Exchange or such other exchange as the Preferred Trust Securities are then listed and shall take any reasonable action necessary to effect the distribution of the Trust Debt Securities, (iv) any Trust Securities Certificates not so surrendered for exchange will be deemed to represent a Like Amount of Trust Debt Securities, accruing interest at the rate then borne by the Trust Debt Securities from the last Distribution Date on which a Distribution was made on such Trust Certificates until such certificates are so surrendered (and until such certificates are so surrendered, no payments of interest or principal will be made to Holders of Trust Securities Certificates with respect to such Trust Debt Securities) and (v) all rights of Securityholders holding Trust Securities will cease, except the right of such Securityholders to receive Trust Debt Securities upon surrender of Trust Securities Certificates.

(d) In the event that, notwithstanding the other provisions of this Section 8.04, whether because of an order for dissolution entered by a court of competent jurisdiction or otherwise, distribution of the Trust Debt Securities in the manner provided herein is determined by the Property Trustee not to be practical, the Trust Property shall be liquidated, and the Trust shall be terminated, by the Property Trustee in such manner as the Property Trustee determines. In such event, Securityholders will be entitled to receive out of the assets of the Trust available for distribution to Securityholders, after satisfaction of liabilities to creditors of the Trust as provided by applicable law, an amount equal to the Liquidation Amount per Trust Security plus accumulated and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"). If, upon any such dissolution, the Liquidation Distribution can be paid only in part because the Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then, subject to the next succeeding sentence, the amounts payable by the Trust on the Trust Securities shall be paid on a pro rata basis (based upon Liquidation Amounts). The Holder of the Common Trust Securities will be entitled to receive Liquidation Distributions upon any such dissolution pro rata (determined as aforesaid) with Holders of Preferred Trust Securities, except that, if an Event of Default has occurred and is continuing, the Preferred Trust Securities shall have a priority over the Common Trust Securities, and no Liquidation Distribution will be paid to the Holders of the Common Trust Securities unless and until receipt by all Holders of the Preferred Trust Securities of the entire Liquidation Distribution payable in respect thereof.

#### **ARTICLE IX MERGERS, ETC.**

**9.01. Mergers, Consolidations, Amalgamations or Replacements of the Trust.** The Trust may not merge with or into, consolidate, amalgamate, or be replaced by, or convey, transfer or lease its properties and assets as an entirety or substantially as an entirety to any corporation or other entity, except as described below. The Trust may, at the request of the Sponsor, with the consent of the Delaware Trustee and without the consent of the Holders of the Trust Securities, merge with or into, consolidate, amalgamate, or be replaced by, a trust organized as such under the laws of any State; provided, that (i) such successor entity either (a) expressly assumes all of the obligations of the Trust with respect to the Trust Securities or (b) substitutes for the Trust Securities other securities having substantially the same terms as the Trust Securities (the "Successor Securities") so long as the Successor Securities rank the same as the Trust Securities rank with respect to the payment of Distributions and payments upon liquidation, redemption and otherwise, (ii) the Sponsor expressly appoints a trustee of such



successor entity possessing the same powers and duties as the Property Trustee as the holder of the Trust Debt Securities, (iii) such of the Successor Securities that correspond to the Preferred Trust Securities (the "Preferred Successor Securities") are listed, or any Preferred Successor Securities will be listed upon notification of issuance, on any national securities exchange or other organization on which the Trust Securities are then listed or quoted, (iv) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not cause the Preferred Trust Securities (including any Preferred Successor Securities) to be downgraded, placed under surveillance or review or withdrawn by any nationally recognized statistical rating organization, (v) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the Holders of the Trust Securities (including any Successor Securities) in any material respect, (vi) such successor entity has a purpose substantially similar to that of the Trust, (vii) prior to such merger, consolidation, amalgamation, replacement, transfer or lease, the Sponsor and the Property Trustee have received an Opinion of Counsel, which shall be nationally recognized independent counsel experienced in such matters, to the effect that (a) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the Holders of the Trust Securities (including any Successor Securities) in any material respect, and (b) following such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, neither the Trust nor such successor entity will be required to register as an investment company under the 1940 Act and the Trust (or the successor entity) will continue to be classified as a grantor trust for United States federal income tax purposes and (viii) the Sponsor or any permitted successor assignee owns all of the common trust 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 Guarantee and this Trust Agreement. Notwithstanding the foregoing, the Trust shall not, except with the consent of all Holders of the Trust Securities, merge with or into, consolidate, amalgamate, or be replaced by or convey, transfer or lease its properties and assets substantially as an entirety to, any other entity or permit any other entity to consolidate, amalgamate, merge with or into, or replace it if such consolidation, conversion, amalgamation, merger, 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 each Holder of Trust Securities not to be treated as owning an undivided beneficial ownership interest in the Trust Debt Securities.

**ARTICLE X  
MISCELLANEOUS PROVISIONS**

**10.01. Limitation of Rights of Securityholders.** The death, dissolution or incapacity of any Person having an interest, beneficial or otherwise, in Trust Securities shall not operate to terminate this Trust Agreement, nor entitle the legal representatives or heirs of such Person or any Securityholder for such Person, to claim an accounting, take any action or bring any proceeding in any court for a partition or winding-up of the arrangements contemplated hereby, nor otherwise affect the rights, obligations and liabilities of the parties hereto or any of them.

**10.02. Amendment.**

(a) This Trust Agreement may be amended from time to time by the Trustees and the Sponsor, without the consent of any Securityholders, to cure any ambiguity, defect or

inconsistency or make any other change which does not adversely affect in any material respect the interests of any Holder of Preferred Trust Securities. Notice of any amendments of this Trust Agreement pursuant to Section 10.02(a) shall be given to the Securityholders.

(b) Except as provided in Section 10.02(a) and 10.02(c) hereof, any provision of this Trust Agreement may be amended by the Trustees and the Sponsor with the consent of Holders of a majority of the aggregate Liquidation Amount of the Outstanding Preferred Trust Securities.

(c) In addition to and notwithstanding any other provision in this Trust Agreement, without the consent of each affected Securityholder (such consent being obtained in accordance with Section 6.03 or 6.06 hereof), this Trust Agreement may not be amended to (i) change the amount, timing or currency of any Distribution or Liquidation Distribution on the Trust Securities or otherwise adversely affect the method of payment of any Distribution or Liquidation Distribution required to be made in respect of the Trust Securities as of a specified date; (ii) change the redemption provisions of the Trust Securities; (iii) restrict the right of a Securityholder to institute suit for the enforcement of any such payment contemplated in (i) or (ii) above on or after the related date; (iv) modify the first sentence of Section 2.06 hereof; (v) authorize or issue any beneficial interest in the Trust other than as contemplated by this Trust Agreement as of the date hereof; (vi) change the conditions precedent for the Sponsor to elect to dissolve the Trust and distribute the Trust Debt Securities to Holders of Preferred Trust Securities as set forth in Section 8.02; or (vii) affect the limited liability of any Holder of Preferred Trust Securities, and, notwithstanding any other provision herein, without the unanimous consent of the Securityholders (such consent being obtained in accordance with Section 6.03 or 6.06 hereof), paragraphs (b) and (c) of this Section 10.02 may not be amended.

(d) Notwithstanding any other provisions of this Trust Agreement, no amendment to this Trust Agreement shall be made without receipt by the Trust of an Opinion of Counsel, which shall be nationally recognized independent counsel experienced in such matters, to the effect that such amendment will not affect the Trust's status as a grantor trust for United States Federal income tax purposes or its exemption from regulation as an "investment company" under the 1940 Act.

(e) Notwithstanding anything in this Trust Agreement to the contrary, without the consent of the Sponsor, this Trust Agreement may not be amended in a manner which imposes any additional obligation on the Sponsor.

(f) In the event that any amendment to this Trust Agreement is made, the Delaware Trustee shall promptly provide to the Sponsor a copy of such amendment.

(g) In executing any amendment to the Trust Agreement, the Property Trustee shall be entitled to receive, and (subject to Section 8.01) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such amendment is authorized or permitted by this Trust Agreement. Except as contemplated by Section 7.11, the Trustee may, but shall not be obligated to, enter into any amendment to this Trust Agreement which affects the Trustee's own rights, duties or immunities under this Trust Agreement or otherwise.

**10.03. Severability.** In case any provision in this Trust Agreement or in the Trust Securities Certificates shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**10.04. Governing Law.** THIS TRUST AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF EACH OF THE SECURITYHOLDERS, THE TRUST, THE DEPOSITOR AND THE TRUSTEES WITH RESPECT TO THIS TRUST AGREEMENT AND THE TRUST SECURITIES SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

**10.05. Payments Due on Non-Business Day.** If the date fixed for any payment on any Trust Security shall be a day which is not a Business Day, then such payment need not be made on such date but may be made on the next succeeding day which is a Business Day (except as otherwise provided therein, with the same force and effect as though made on the date fixed for such payment), and no interest shall accumulate thereon for the period after such date to the date of payment on such succeeding day.

**10.06. Successors and Assigns.** This Trust Agreement shall be binding upon and shall inure to the benefit of any successor to the Trust or successor Trustee or both, including any successor by operation of law. Except in connection with a consolidation, merger or sale involving the Sponsor that is permitted under Article V of the Indenture and pursuant to which the assignee agrees in writing to perform the Sponsor's obligations hereunder, the Sponsor shall not assign its obligations hereunder.

**10.07. Headings.** The Article and Section headings are for convenience only and shall not affect the construction of this Trust Agreement.

**10.08. Reports, Notices and Demands.** Any report, notice, demand or other communication which by any provision of this Trust Agreement is required or permitted to be given or served to or upon any Securityholder or the Sponsor may be given or served in writing by deposit thereof, first-class postage prepaid in the United States mail, hand delivery or facsimile transmission, in each case, addressed, (a) in the case of a Holder of a Preferred Trust Security, to such Holder of a Preferred Trust Security as such Securityholder's name and address may appear on the Securities Register; and (b) in the case of the Holder of a Common Trust Security or the Sponsor, to Southwest Gas Corporation, 5241 Spring Mountain Road, P.O. Box 98510, Las Vegas Nevada 89193-8510, Attention: Treasurer, facsimile no.: 702-364-8542. Such notice, demand or other communication to or upon a Securityholder shall be deemed to have been sufficiently given or made, for all purposes, upon hand delivery, mailing or transmission.

Any notice, demand or other communication which by any provision of this Trust Agreement is required or permitted to be given or served to or upon the Property Trustee or the Delaware Trustee shall be given in writing addressed (until another address is published by the Trust) as follows: (a) with respect to the Property Trustee to BNY Midwest Trust Company, 2 North LaSalle Street, Suite 1020, Chicago, Illinois 60602, Attention: Corporate Trust Administration; and (b) with respect to the Delaware Trustee, to The Bank of New York (Delaware), P.O. Box 6973, White Clay Center, Route 273, Newark, Delaware 19714. Such

notice, demand or other communication to or upon the Property Trustee shall be deemed to have been sufficiently given or made only upon actual receipt of the writing by the Property Trustee.

**10.09. Agreement Not to Petition.** Each of the Trustees and the Sponsor agree for the benefit of the Securityholders that, until at least one year and one day after the Trust has been terminated in accordance with Article VIII, they shall not file, or join in the filing of, a petition against the Trust under any Bankruptcy Law or otherwise join in the commencement of any proceeding against the Trust under any Bankruptcy Law. In the event the Sponsor or any of the Trustees takes action in violation of this Section 10.09, the Property Trustee agrees, for the benefit of Securityholders, that at the expense of the Sponsor, it shall file an answer with the bankruptcy court or otherwise properly contest the filing of such petition by the Sponsor or any of the Trustees, as applicable, against the Trust or the commencement of such action and raise the defense that the Sponsor and each of the Trustees has agreed in writing not to take such action and should be stopped and precluded therefrom and such other defenses, if any, as counsel for the Property Trustee or the Trust may assert. The provisions of this Section 10.09 shall survive the termination of this Trust Agreement.

**10.10. Trust Indenture Act; Conflict with Trust Indenture Act.**

(a) This Trust Agreement is subject to the provisions of the Trust Indenture Act that are required to be part of this Trust Agreement and shall, to the extent applicable, be governed by such provisions.

(b) The Property Trustee shall be the only Trustee which is a trustee for the purposes of the Trust Indenture Act.

(c) If any provision hereof limits, qualifies or conflicts with another provision hereof which is required to be included in this Trust Agreement by any of the provisions of the Trust Indenture Act, such required provision shall control. If any provision of this Trust Agreement modifies or excludes any provision of the Trust Indenture Act which may be so modified or excluded, the latter provision shall be deemed to apply to this Trust Agreement as so modified or excluded, as the case may be.

(d) The application of the Trust Indenture Act to this Trust Agreement shall not affect the nature of the Trust Securities as equity securities representing undivided beneficial interests in the assets of the Trust.

**10.11. Acceptance of Terms of Trust Agreement, Guarantee and Indenture.** THE RECEIPT AND ACCEPTANCE OF A TRUST SECURITY OR ANY INTEREST THEREIN BY OR ON BEHALF OF A SECURITYHOLDER OR ANY BENEFICIAL OWNER, WITHOUT ANY SIGNATURE OR FURTHER MANIFESTATION OF ASSENT, SHALL CONSTITUTE THE UNCONDITIONAL ACCEPTANCE BY THE SECURITYHOLDER AND ALL OTHERS HAVING A BENEFICIAL INTEREST IN SUCH TRUST SECURITY OF ALL THE TERMS AND PROVISIONS OF THIS TRUST AGREEMENT AND AGREEMENT TO THE SUBORDINATION PROVISIONS AND OTHER TERMS OF THE GUARANTEE AND THE INDENTURE, AND SHALL CONSTITUTE THE AGREEMENT OF THE TRUST, SUCH SECURITYHOLDER AND SUCH OTHERS THAT THE TERMS

AND PROVISIONS OF THIS TRUST AGREEMENT SHALL BE BINDING, OPERATIVE AND EFFECTIVE AS BETWEEN THE TRUST AND SUCH SECURITYHOLDER AND SUCH OTHERS.

SOUTHWEST GAS CORPORATION, as  
Depositor

By: \_\_\_\_\_

Name:  
Title:

BNY MIDWEST TRUST COMPANY, as Property  
Trustee

By: \_\_\_\_\_

Name:  
Title:

THE BANK OF NEW YORK (DELAWARE), as  
Delaware Trustee

By: \_\_\_\_\_

Name:  
Title:

**EXHIBIT A**

**CERTIFICATE OF TRUST  
OF  
SOUTHWEST GAS CAPITAL II**

THIS CERTIFICATE OF TRUST of Southwest Gas Capital II (the "Trust"), dated June 23, 2003, is being duly executed and filed by the undersigned, as trustees, to form a statutory trust under the Delaware Statutory Trust Act (12 Del. C. §§3801, et seq.) (the "Act").

(i) Name. The name of the statutory trust being formed hereby is Southwest Gas Capital II.

(ii) Delaware Trustee. The name and business address of the trustee of the Trust in the State of Delaware are The Bank of New York (Delaware), P.O. Box 6973, White Clay Center, Route 273, Newark, Delaware 19714.

(iii) Counterparts. This Certificate of Trust may be executed in one or more counterparts, all of which together shall constitute one and the same instrument.

(iv) Effective Date. This Certificate of Trust shall be effective as of its filing with the Secretary of State of Delaware.

IN WITNESS WHEREOF, the undersigned, being the trustees of the Trust, have executed this Certificate of Trust as of the date first above written in accordance with Section 3811(a) of the Act.

THE BANK OF NEW YORK (DELAWARE), as  
Trustee

By: \_\_\_\_\_

Name:

Title:

GREGORY J. PETERSON, as Trustee

\_\_\_\_\_

Gregory J. Peterson

ROBERT M. JOHNSON, as Trustee

\_\_\_\_\_

Robert M. Johnson

**EXHIBIT B**

THIS CERTIFICATE IS NOT TRANSFERABLE

Certificate Number \_\_\_

Number of Common Securities 124,000

Certificate Evidencing Common Trust Securities  
of  
Southwest Gas Capital II

124,000 Common Trust Securities  
(liquidation amount \$25 per Common Trust Security)

Southwest Gas Capital II, a statutory trust created under the laws of the State of Delaware (the "Trust"), hereby certifies that Southwest Gas Corporation (the "Holder") is the registered holder of One-Hundred Twenty-Four Thousand (124,000) common trust securities of the Trust representing undivided beneficial interests in the assets of the Trust and designated as the 7.70% Common Trust Securities (liquidation amount \$25 per Common Trust Security) (the "Common Trust Securities"). In accordance with Section 5.10 of the Trust Agreement (as defined below), this certificate is, and the Common Trust Securities are, not transferable and any attempted transfer hereof shall be void. The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Common Trust Securities are set forth in, and this certificate and the Common Trust Securities represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Amended and Restated Trust Agreement of the Trust dated as of August 25, 2003, as the same may be amended from time to time (the "Trust Agreement"). The Trust will furnish a copy of the Trust Agreement to the Holder without charge upon written request to the Trust at its principal place of business or registered office.

Upon receipt of this certificate, the Holder is bound by the Trust Agreement and is entitled to the benefits thereunder.

This Certificate shall be governed by and construed in accordance with the laws of the State of Delaware without regard to the conflict of laws principles thereof.



IN WITNESS WHEREOF, the Delaware Trustee of the Trust has executed this certificate this 25th day of August, 2003.

SOUTHWEST GAS CAPITAL II

By: \_\_\_\_\_

Name:

Title:

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EXHIBIT C

Certificate Number \_\_\_

Number of Preferred Trust Securities

CUSIP NO. 844891 20 0

Certificate Evidencing Preferred Trust Securities  
of  
Southwest Gas Capital II

4,000,000 Preferred Trust Securities,

(liquidation amount \$25 per Preferred Trust Security)

Southwest Gas Capital II, a statutory trust created under the laws of the State of Delaware (the "Trust"), hereby certifies that Cede & Co. (the "Holder") is the registered holder of Four Million (4,000,000) Preferred Trust Securities of the Trust representing undivided beneficial interests in the assets of the Trust and designated the Southwest Gas Capital II 7.70% Preferred Trust Securities (liquidation amount \$25 per Preferred Trust Security) (the "Preferred Trust Securities"). The Preferred Trust Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer as provided in Section 5.04 of the Trust Agreement (as defined below). The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred Trust Securities are set forth in, and this certificate and the Preferred Trust Securities represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Amended and Restated Trust Agreement of the Trust dated as of August 25, 2003, as the same may be amended from time to time (the "Trust Agreement"). The Holder is entitled to the benefits of the Guarantee Agreement entered into by Southwest Gas Corporation, a California corporation, and BNY Midwest Trust Company as guarantee trustee, dated as of August 25, 2003 (the "Guarantee") to the extent provided therein, together with the obligations of Southwest Gas Corporation under the Trust Agreement, the Trust Debt Securities (as defined in the Trust Agreement) and the Indenture related to such Deferrable Interest Subordinated Debt Securities. The Trust will furnish a copy of the Trust Agreement and the Guarantee to the Holder without charge upon written request to the Trust at its principal place of business or registered office.

Upon receipt of this certificate, the Holder is bound by the Trust Agreement and is entitled to the benefits thereunder.

This Certificate shall be governed by and construed in accordance with the laws of the State of Delaware without regard to the conflict of laws principles thereof.

IN WITNESS WHEREOF, the Delaware Trustee of the Trust has executed this certificate this 25th day of August, 2003.

SOUTHWEST GAS CAPITAL II

By: \_\_\_\_\_  
Name:  
Title:

*[To be added if this security is a book-entry security:]*

[This Preferred Trust Security is a Book-Entry Preferred Trust Securities Certificate within the meaning of the Trust Agreement previously referred to and is registered in the name of The Depository Trust Company (the "Depository") or a nominee of the Depository. This Preferred Trust Security is exchangeable for Preferred Trust Securities registered in the name of a person or entity other than the Depository or its nominee only in the limited circumstances described in the Trust Agreement and no transfer of this Preferred Trust Security (other than a transfer of this Preferred Trust Security as a whole by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository) may be registered except in limited circumstances.

Unless this Preferred Trust Security is presented by an authorized representative of The Depository Trust Company, a New York corporation, (55 Water Street, New York), to Southwest Gas Capital II or its agent for registration of transfer, exchange or payment, and any Preferred Trust 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. or to such other entity as is requested by an authorized representative of The Depository Trust Company, ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY A PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.]

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers to:  
(Insert assignee's social security or tax identification number)  
(Insert address and zip code of assignee)

\_\_\_\_\_ Preferred Trust Securities represented by this Preferred Trust Securities Certificate and irrevocably appoints agent to transfer said Preferred Trust Securities on the books of the Trust. The agent may substitute another to act for him or her.

Date:

Signature:

(Sign exactly as your name appears on the other side of this Preferred Trust Security Certificate)

Guarantee Agreement

between

SOUTHWEST GAS CORPORATION

(as Guarantor)

and

BNY MIDWEST TRUST COMPANY

(as Guarantee Trustee)

Dated as of

August 25, 2003.

CROSS-REFERENCE TABLE\*

Section of Trust Indenture Act of 1939, as amended	Section of Guarantee Agreement
310(a)	4.01(a)
310(b)	4.01(c)
310(c)	Inapplicable
311(a)	2.01(d)
311(b)	2.01(d)
311(c)	Inapplicable
312(a)	2.01(c)
312(b)	2.01(d)
313	2.02
314(a)	2.04
314(b)	Inapplicable
314(c)	2.04
314(d)	Inapplicable
314(e)	1.01, 2.05, 3.02
314(f)	2.01, 3.02
315(a)	3.01(d)
315(b)	2.07
315(c)	3.01
315(d)	3.01(d)
316(a)	1.01, 2.06, 5.04
316(b)	5.03
316(c)	8.02
317(a)	Inapplicable
317(b)	Inapplicable
318(a)	2.01(b)
318(b)	2.01
318(c)	2.01(a)

\* This Cross-Reference Table does not constitute part of the Guarantee Agreement and shall not affect the interpretation of any of its terms or provisions.

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GUARANTEE AGREEMENT

This GUARANTEE AGREEMENT, dated as of August 25, 2003, is executed and delivered by Southwest Gas Corporation, a California corporation (the "Guarantor"), to BNY Midwest Trust Company, a trust company duly organized and existing under the laws of the State of Illinois, as trustee (the "Guarantee Trustee"), for the benefit of the Holders (as defined herein) from time to time of the Preferred Trust Securities (as defined herein) of Southwest Gas Capital II, a Delaware statutory trust (the "Issuer").

WHEREAS, pursuant to an Amended and Restated Trust Agreement for Southwest Gas Capital II (the "Trust Agreement"), dated as of August 25, 2003 among the Trustees named therein, the Guarantor, as Sponsor, and the Holders from time to time of undivided beneficial interests in the assets of the Issuer, the Issuer is issuing \$100,000,000 aggregate liquidation amount of its 7.70% Preferred Trust Securities (liquidation amount \$25 per preferred trust security) (the "Preferred Trust Securities") representing undivided beneficial interests in the assets of the Issuer and having the terms set forth in the Trust Agreement;

WHEREAS, the Preferred Trust Securities will be issued by the Issuer and the proceeds thereof, together with the proceeds from the sale by the Issuer of its Common Trust Securities, will be used to purchase the Trust Debt Securities (as defined in the Trust Agreement) of the Guarantor which will be deposited with BNY Midwest Trust Company, as Property Trustee under the Trust Agreement, as Trust Property (as defined in the Trust Agreement); and

WHEREAS, as incentive for the Holders to purchase the Preferred Trust Securities, the Guarantor desires irrevocably and unconditionally to agree, to the extent set forth herein, to pay to the Holders of the Preferred Trust Securities the Guarantee Payments (as defined herein) and to make certain other payments on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the purchase by each Holder of the Preferred Trust 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 of the Preferred Trust Securities.

**ARTICLE I  
DEFINITIONS**

**Section 1.01. Definitions.** As used in this Guarantee Agreement, each of the terms set forth below shall, unless the context otherwise requires, have the following meaning. Each capitalized or otherwise defined term used but not otherwise defined herein shall have the meaning assigned to such terms in the Trust Agreement as in effect on the date hereof.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.



“Common Trust Securities” means the securities representing undivided beneficial interests in the assets of the Issuer and having the rights provided therefor in the Trust Agreement.

“Event of Default” means a default by the Guarantor on any of its payment or other obligations under this Guarantee Agreement; provided, that except with respect to a default resulting from a failure to pay any Guarantee Payment, the Guarantor shall have received notice of default and shall not have cured such default within 60 days after receipt of such notice.

“Guarantee Payments” means the following payments or Distributions (as defined in the Trust Agreement), without duplication, with respect to the Preferred Trust Securities, to the extent not paid or made by or on behalf of the Issuer: (i) any accumulated and unpaid Distributions required to be paid on the Preferred Trust Securities, to the extent the Issuer shall have funds available therefor, (ii) the redemption price, including all accumulated and unpaid Distributions to the date of redemption (the “Redemption Price”), with respect to the Preferred Trust Securities called for redemption by the Issuer, to the extent the Issuer shall have funds available therefor, and (iii) upon a voluntary or involuntary termination, winding-up or liquidation of the Issuer, unless the Trust Debt Securities are distributed to the Holders, the lesser of (a) the aggregate of the liquidation amount of \$25 per Preferred Trust Security plus accumulated and unpaid Distributions on the Preferred Trust Securities to the date of payment, to the extent the Issuer shall have funds available therefor and (b) the amount of assets of the Issuer remaining available for distribution to the Holders in liquidation of the Issuer (in either case, the “Liquidation Distribution”). If an Event of Default (as defined in the Indenture) has occurred and is continuing, the rights of the holders of the Common Trust Securities to receive payments under the Guarantor’s guarantee agreement with respect thereto are subordinated to the rights of holders of Preferred Trust Securities to receive Guarantee Payments under this Guarantee Agreement.

“Guarantee Trustee” means BNY Midwest Trust Company, until a Successor Guarantee Trustee (as defined below) 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 a Person in whose name a Preferred Trust Security is registered in the Securities Register; provided, however, that in determining whether the holders of the requisite percentage of Preferred Trust Securities have given any request, notice, consent or waiver hereunder, “Holder” shall not include the Guarantor, the Guarantee Trustee or any Affiliate of the Guarantor or the Guarantee Trustee.

“Indenture” means the Indenture dated as of August 25, 2003, between Southwest Gas Corporation and BNY Midwest Trust Company, as trustee thereunder.

“List of Holders” has the meaning specified in Section 2.01(c).

“Majority in liquidation amount of the Preferred Trust Securities” means, except as provided by the Trust Indenture Act, a vote by the Holders, of more than 50% of the aggregate liquidation amount of all then outstanding Preferred Trust Securities issued by the Issuer.

“Officers’ Certificate” means a certificate signed by the Chief Executive Officer, any Vice President, the Chief Financial Officer, any Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Guarantor.

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

“Responsible Officer” means, with respect to the Guarantee Trustee, any Vice President, any Assistant Vice President, any Trust Officer or Assistant Trust Officer or any other officer of the Corporate Trust Department of the Guarantee Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer’s knowledge of and familiarity with the particular subject.

“Senior Indebtedness” means Senior Indebtedness as defined in the Indenture.

“Successor Guarantee Trustee” means a successor Guarantee Trustee possessing the qualifications to act as Guarantee Trustee under Section 4.01.

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

## **ARTICLE II TRUST INDENTURE ACT**

### **Section 2.01. Trust Indenture Act; Application.**

(a) This Guarantee Agreement is subject to the provisions of the Trust Indenture Act that are required to be part of this Guarantee Agreement and shall, to the extent applicable, be governed by such provisions.

(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.

(c) The Guarantor shall furnish or cause to be furnished to the Guarantee Trustee (i) semiannually, on or before June 30 and December 31 of each year, 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 a date not more than 15 days prior to the delivery thereof, and (ii) at such other times as the Guarantee Trustee may request in writing, within 30 days after the receipt by the Guarantor of any such request, a List of Holders as of a date not more than 15 days prior to the time such list is furnished, in each case to the extent such information is in the possession or control of the Guarantor and is not identical to a previously supplied List of Holders or has not otherwise been received by the Guarantee Trustee in its capacity as such. The Guarantee Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

(d) The Guarantee Trustee shall comply with its obligations under Sections 311(a), Section 311(b) and Section 312(b) of the Trust Indenture Act.

**Section 2.02. Reports by Guarantee Trustee.** Within 60 days after December 31 of each year, 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 and in the manner provided by Section 313 of the Trust Indenture Act. The Guarantee Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

**Section 2.03. Periodic Reports to Guarantee Trustee.** The Guarantor shall provide to the Guarantee Trustee, the Securities and Exchange Commission and the Holders such documents, reports and information, if any, as required by Section 314 of the Trust Indenture Act and the compliance certificate required by Section 314 of the Trust Indenture Act in the form and manner and at the times required by Section 314 of the Trust Indenture Act.

**Section 2.04. Evidence of Compliance with Conditions Precedent.** The Guarantor shall provide to the Guarantee Trustee such evidence of compliance with such conditions precedent, if any, provided for in this Guarantee Agreement that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Each Officers' Certificate and Opinion of Counsel delivered with respect to compliance with a condition or covenant provided for in this Guarantee Agreement shall include:

- (a) a statement that each officer signing the Officers' Certificate or Opinion of Counsel has read the covenant or condition and the definition relating thereto;
- (b) a brief statement of the nature and scope of the examination or investigation undertaken by each officer in rendering the Officers' Certificate or Opinion of Counsel and upon which the statements contained therein are based;
- (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.

**Section 2.05. Events of Default; Waiver.** The Holders of a Majority in liquidation amount of the Preferred Trust 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 therefrom.

**Section 2.06. Event of Default; Notice.**

(a) The Guarantee Trustee shall, within 90 days after the occurrence of an Event of Default, transmit by mail, first class postage prepaid, to the Holders, notices of all Events of Default known to the Guarantee Trustee, unless such defaults have been cured before

the giving of such notice, provided, that, except in the case of a default in the payment of a Guarantee Payment, 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 determines that the withholding of such notice is in the interests of the Holders.

(b) The Guarantee Trustee shall not be deemed to have knowledge of any Event of Default unless the Guarantee Trustee shall have received written notice, or a Responsible Officer charged with the administration of the Trust Agreement shall have obtained written notice, of such Event of Default.

**ARTICLE III**  
**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 for the benefit of the Holders, and the Guarantee Trustee shall not transfer this Guarantee Agreement to any Person except a Holder exercising his or her rights pursuant to Section 5.04(iv) or to a Successor Guarantee Trustee on acceptance by such Successor Guarantee Trustee of its appointment to act as Successor Guarantee Trustee. The right, title and interest of the Guarantee Trustee shall automatically vest in any Successor Guarantee Trustee upon acceptance by such Successor Guarantee Trustee of its appointment hereunder and such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered pursuant to the appointment of such Successor Guarantee Trustee.

(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) The Guarantee Trustee, before the occurrence of any 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 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 and is continuing (and has not been cured or waived pursuant to Section 2.05), 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 in the conduct of his or her own affairs.

(d) 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 any Event of Default and after the curing or waiving of all such Events of Default that may have occurred:

(A) the duties and obligations of the 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

(B) in the absence of bad faith on the part of the Guarantee Trustee, the Guarantee Trustee may 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 of 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;

(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 the Preferred Trust 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 the Guarantee Trustee shall have reasonable grounds for believing that the repayment of such funds or liability is not reasonably assured to it under the terms of this Guarantee Agreement or reasonable indemnity against such risk or liability is not reasonably assured to it.

**Section 3.02. Certain Rights of Guarantee Trustee.**

(a) Subject to the provisions of Section 3.01:

(i) The Guarantee Trustee may rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed, sent or presented by the proper party or parties.

(ii) Any direction or act of the Guarantor contemplated by this Guarantee Agreement shall be sufficiently evidenced by an Officers' Certificate unless otherwise prescribed herein.

(iii) Whenever, in the administration of this Guarantee Agreement, the Guarantee Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting to take 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 from the Guarantee Trustee, shall be promptly delivered by the Guarantor.

(iv) The Guarantee Trustee may consult with legal counsel, and the written advice or Opinion of Counsel with respect to legal matters shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be taken by it hereunder in good faith and in accordance with such advice or opinion. Such legal counsel may be legal counsel to the Guarantor or any of its Affiliates and may be one of its employees. The Guarantee Trustee shall have the right at any time to seek instructions concerning the administration of this Guarantee Agreement from any court of competent jurisdiction.

(v) The 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 provided to the Guarantee Trustee such reasonable indemnity as would satisfy a reasonable person in the position of the Guarantee 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 Section 3.02(a)(v) shall be taken to relieve the Guarantee Trustee, upon the occurrence of an Event of Default, of its obligation to exercise the rights and powers vested in it by this Guarantee Agreement.

(vi) The Guarantee Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Guarantee Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.

(vii) The Guarantee Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through its agents or attorneys, and the Guarantee Trustee shall not be responsible for any misconduct or negligence on the part of any such agent or attorney appointed with due care by it hereunder.

(viii) Whenever in the administration of this Guarantee Agreement the Guarantee Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Guarantee Trustee (A) may request instructions from the Holders, (B) may refrain from enforcing such remedy or right or taking such other action until such instructions are received, and (C) shall be protected in acting in accordance with such instructions.

(b) No provision of this Guarantee Agreement shall be deemed to impose any duty or obligation on the Guarantee Trustee to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it in any jurisdiction in which it shall be illegal, or in which the Guarantee Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts or to exercise any such right, power, duty or obligation. No permissive power or authority available to the Guarantee Trustee shall be construed to be a duty to act in accordance with such power and authority.

**Section 3.03. Indemnity.** The Guarantor agrees to indemnify the Guarantee Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence or willful misconduct on the part of the Guarantee Trustee, arising out of or in connection with the acceptance or administration of this Guarantee Agreement, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The Guarantee Trustee will not claim or exact any lien or charge on any Guarantee Payments as a result of any amount due to it under this Guarantee Agreement.

#### **ARTICLE IV GUARANTEE TRUSTEE**

**Section 4.01. Guarantee Trustee; Eligibility.**

(a) There shall at all times be a Guarantee Trustee which shall:

(i) not be an Affiliate of the Guarantor; and

(ii) be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least fifty million U.S. dollars (\$50,000,000), and shall be a corporation meeting the requirements of Section 310(a) of the Trust Indenture Act. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority, then, for the purposes of this Section and to the extent permitted by the Trust Indenture Act, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) If at any time the Guarantee Trustee shall cease to be eligible to so act under Section 4.01(a), the Guarantee Trustee shall immediately resign in the manner and with the effect set out in Section 4.02(c).

(c) If the Guarantee Trustee has or shall acquire any “conflicting interest” within the meaning of Section 310(b) of the Trust Indenture Act, the Guarantee Trustee and Guarantor shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act. In determining whether the Guarantee Trustee has a “conflicting interest” within the meaning of Section 310(b)(1) of the Trust Indenture Act, the provisions contained in the proviso to Section 310(b)(1) of the Trust Indenture Act and the Guarantee Trustee’s Statement of Eligibility on Form T-1 shall be deemed incorporated herein.

**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 until new, eligible guarantee trustee has been appointed (a “Successor Guarantee Trustee”) and has accepted such appointment and assumed the applicable obligations hereunder by written instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor.

(c) The Guarantee Trustee may resign from office (without need for prior or subsequent accounting) by an instrument in writing executed by the Guarantee Trustee and delivered to the Guarantor, which resignation shall not take effect until a Successor Guarantee Trustee has been appointed and has accepted such appointment by instrument in writing executed by such Successor Guarantee Trustee and delivered to the Guarantor and the resigning Guarantee Trustee.

(d) 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 an instrument of resignation, the resigning Guarantee Trustee may petition, at the expense of the Guarantor, any court of competent jurisdiction for appointment of a Successor Guarantee Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Guarantee Trustee.

## **ARTICLE V GUARANTEE**

**Section 5.01. Guarantee.** The Guarantor irrevocably and unconditionally agrees to pay in full to the Holders of the Outstanding Preferred Trust Securities the Guarantee Payments (without duplication of amounts theretofore paid by or on behalf of the Issuer pursuant to the Trust Agreement or by the Guarantor pursuant to the Indenture), 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 and Demand.** The Guarantor hereby waives notice of acceptance of the 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 Guarantee Trustee, 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.

**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 Trust 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 results from an Extension Period on the Trust Debt Securities as so provided in the Indenture), Redemption Price, Liquidation Distribution or any other sums payable under the terms of the Preferred Trust Securities or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the Preferred Trust Securities;



(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 Trust Securities, or any action on the part of the Issuer granting indulgence or extension of any kind;

(d) the voluntary or involuntary liquidation, termination, 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 Trust Securities;

(f) the settlement or compromise of any obligation guaranteed hereby or hereby incurred; or

(g) to the extent permitted by law, any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Section 5.03 that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances.

There shall be no obligation of the Holders to give notice to, or obtain the consent of, the Guarantor with respect to the happening of any of the foregoing.

**Section 5.04. Rights of Holders.** The Guarantor expressly acknowledges that: (i) this Guarantee Agreement will be deposited with the 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) the Holders of a Majority in liquidation amount of the Preferred Trust 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 exercise or direct the exercise of any trust or power conferred upon the Guarantee Trustee under this Guarantee Agreement; and (iv) if the Guarantee Trustee has failed to enforce this Guarantee Agreement as above provided, 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 Guarantee Trustee, the Issuer or any other Person.

**Section 5.05. Guarantee of Payment.** This Guarantee Agreement creates a guarantee of payment and not of collection. This Guarantee Agreement will not be discharged except by payment of the Guarantee Payments in full (without duplication of amounts theretofore paid by the Issuer) or upon distribution of Trust Debt Securities to Holders as provided in the Trust Agreement.

**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 and shall have the right to waive payment by the Issuer pursuant to Section 5.01; 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 Trust Securities and that the Guarantor shall be liable as principal and as debtor hereunder to make Guarantee Payments pursuant to the terms of this Guarantee Agreement notwithstanding the occurrence of any event referred to in subsections (a) through (g), inclusive, of Section 5.03 hereof.

## ARTICLE VI COVENANTS AND SUBORDINATION

**Section 6.01. Ranking.** 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, except those made pari passu or subordinate by their terms, (ii) pari passu with the most senior preferred or preference stock now or hereafter issued by the Guarantor and with any guarantee now or hereafter entered into by the Guarantor in respect of any preferred or preference stock of any Affiliate of the Guarantor and (iii) senior to the Guarantor's Common Trust Securities.

**Section 6.02. Limitation of Transactions.** So long as any Preferred Trust Securities remain outstanding, if (i) there shall have occurred an Event of Default, (ii) there shall have occurred an event of default under the Indenture or (iii) the Guarantor has exercised its option to defer interest payments on the Trust Debt Securities by extending the interest payment period as provided therein, and such period or extension thereof shall be continuing, then (a) the Guarantor shall not declare or pay any dividend on, make any distribution or other payment with respect to, or redeem, purchase, acquire or make any liquidation payment with respect to any of its capital stock (other than (1) repurchases, redemptions or other acquisitions of shares of the Guarantor's capital stock in connection with the satisfaction by the Guarantor of its obligations under any employee benefit plans, (2) as a result of an exchange or conversion of one class or series of the Guarantor's capital stock for another class or series of the Guarantor's capital stock or (3) 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 being converted or exchanged), (b) the Guarantor shall not make any payment of interest, principal or premium, if any, on or repay, repurchase or redeem any debt securities issued by the Guarantor that rank pari passu with or junior to the Trust Debt Securities, (c) the Guarantor shall not make any guarantee payments with respect to the foregoing (other than pursuant to this Guarantee Agreement), and (d) the Guarantor shall not make any guarantee payments with respect to any outstanding preferred trust securities issued by any other trust sponsored by Guarantor.

In addition, so long as any Preferred Trust Securities remain outstanding, the Guarantor (i) will remain the sole direct or indirect owner of all the outstanding Common Trust Securities; provided that any permitted successor of the Guarantor under the Indenture may succeed to the Guarantor's ownership of the Common Trust Securities, (ii) will not take any action which would cause the Issuer to cease to be treated as a grantor trust for United States federal income

tax purposes, (iii) will cause the Issuer to remain a statutory trust and (iv) will not cause or permit the dissolution, winding-up, liquidation or termination of the Issuer, except, in the case of clauses (iii) and (iv) above, in connection with a distribution of the Trust Debt Securities, the redemption of all of the Trust Securities or mergers, consolidations or amalgamations, each as provided in the Trust Agreement.

## **ARTICLE VII TERMINATION**

**Section 7.01. Termination.** This Guarantee Agreement shall terminate and be of no further force and effect upon (i) full payment by the Issuer or the Guarantor, as the case may be, of the Redemption Price for all Preferred Trust Securities, (ii) the distribution of the Trust Debt Securities to the Holders in accordance with Article VIII of the Trust Agreement upon the dissolution of the Issuer or (iii) full payment by the Issuer or the Guarantor, as the case may be, of the amounts payable in accordance with the Trust Agreement upon the dissolution 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 Preferred Trust Securities or this Guarantee Agreement.

## **ARTICLE VIII MISCELLANEOUS**

**Section 8.01. Successors and Assigns.** All guarantees and agreements contained in this Guarantee Agreement shall bind the successors, assigns, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders of the Preferred Trust Securities then outstanding. The Guarantor may not consolidate with or merge with or into, or sell, convey, transfer or lease its properties and assets as an entirety or substantially as an entirety (either in one transaction or a series of transactions) to, any Person unless permitted under Article V of the Indenture. In connection with a consolidation, merger or sale involving the Guarantor that is permitted under Article V of the Indenture the Person formed by or surviving such consolidation or merger or to which such sale, conveyance, transfer or lease shall have been made, if other than the Guarantor, shall expressly assume all of the obligations of the Guarantor hereunder and under the Trust Agreement.

**Section 8.02. Amendments.** Except with respect to any changes which do not adversely affect the rights of the Holders in any material respect (in which case no consent of the Holders will be required), this Guarantee Agreement may only be amended with the prior approval of the Holders of a Majority in liquidation amount of the Preferred Trust Securities (excluding any Preferred Trust Securities held by the Guarantor or an affiliate thereof). The provisions of Article VI of the Trust Agreement concerning meetings of the Holders shall apply to the giving of such approval.

**Section 8.03. Notices.** Any notice, request or other communication required or permitted to be given hereunder shall be in writing and delivered, telecopied or mailed by first class mail, postage prepaid, 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:

Southwest Gas Corporation  
5241 Spring Mountain Road  
P.O. Box 98510  
Las Vegas, Nevada 89193-8510

(b) if given to the Issuer, in care of the Guarantee Trustee, at the Issuer's (and the Guarantee Trustee's) address set forth below or such other address as the Guarantee Trustee on behalf of the Issuer may give notice to the Holders:

Southwest Gas Capital II  
c/o Southwest Gas Corporation  
5241 Spring Mountain Road  
P.O. Box 98510  
Las Vegas, Nevada 89193-8510

with a copy to:

BNY Midwest Trust Company  
2 North LaSalle Street, Suite 1020  
Chicago, Illinois 60602

(c) if given to any Holder, at the address set forth in the Securities Register.

All notices hereunder shall be deemed to have been given when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid, except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

**Section 8.04. Benefit.** This Guarantee Agreement is solely for the benefit of the Holders and, subject to Section 3.01(a), is not separately transferable from the Preferred Trust Securities.

**Section 8.05. Interpretation.** In this Guarantee Agreement, unless the context otherwise requires:

(a) all references to "the Guarantee Agreement" or "this Guarantee Agreement" are to this Guarantee Agreement as modified, supplemented or amended from time to time;

(b) all references in this Guarantee Agreement to Articles and Sections are to Articles and Sections of this Guarantee Agreement unless otherwise specified;

(c) 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;

(d) a reference to the singular includes the plural and vice versa; and

(e) the masculine, feminine or neuter genders used herein shall include the masculine, feminine and neuter genders.

**Section 8.06. Governing Law.** THIS GUARANTEE AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AS APPLIED TO CONTRACTS MADE AND PERFORMED WITHIN THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICT OF LAW PRINCIPLES THEREOF.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

THIS GUARANTEE AGREEMENT is executed as of the day and year first above written.

SOUTHWEST GAS CORPORATION, as  
Guarantor

By: \_\_\_\_\_

Name:

Title:

BNY MIDWEST TRUST COMPANY, as  
Guarantee Trustee

By: \_\_\_\_\_

Name:

Title:

SOUTHWEST GAS CORPORATION

and

BNY MIDWEST TRUST COMPANY, as Trustee

INDENTURE

Dated as of August 25, 2003

Providing for the Issuance of  
Deferrable Interest Subordinated Debentures in Series

including

7.70% Junior Subordinated Debentures due 2043

Southwest Gas Corporation Indenture  
 Certain Sections of this Indenture relating to  
 Sections 310 through 318 of the  
 Trust Indenture Act of 1939

Trust Indenture Act Section	Indenture Section
ss.310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	Not Applicable
(a)(4)	Not Applicable
(a)(5)	Not Applicable
(b)	7.08; 7.10; 11.01
(c)	Not Applicable
ss.311(a)	7.11
(b)	7.11
(c)	Not Applicable
ss.312(a)	2.07
(b)	11.03
(c)	11.03
ss.313(a)	7.06
(b)(1)	Not Applicable
(b)(2)	7.06
(c)	7.06; 11.02
(d)	7.06
ss.314(a)	4.03; 11.02
(b)	Not Applicable
(c)(1)	2.02; 11.04; 11.05
(c)(2)	2.02; 11.04; 11.05
(c)(3)	Not Applicable
(d)	Not Applicable
(e)	11.05
(f)	Not Applicable
ss.315(a)	7.01(b)
(b)	7.05, 11.02
(c)	7.01(a)
(d)	7.01(c)
(e)	6.11
ss.316(a)(1)(A)	6.05
(a)(1)(B)	6.04
(a)(2)	Not Applicable
(a)(last sentence)	2.10
(b)	6.07
(c)	1.05
ss.317(a)(1)	6.08
(a)(2)	6.09
(b)	2.06



ss.318(a)	11.01
(b)	Not Applicable
(c)	11.01

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

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**Exhibit A**

Southwest Gas Corporation 7.70 % Junior Subordinated Debenture due 2043	A-1
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INDENTURE, dated as of August 25, 2003, by and between Southwest Gas Corporation, a corporation duly organized and existing under the laws of the State of California (the "Company"), and BNY Midwest Trust Company, a trust company duly organized and existing under the laws of the State of Illinois, as trustee (the "Trustee").

WHEREAS, the Company may from time to time create or establish one or more statutory trusts for the purpose of issuing undivided beneficial interests in the assets thereof (the "Trust Securities") and using the proceeds thereof to acquire the Company's Deferrable Interest Junior Subordinated Debentures.

WHEREAS, pursuant to an Amended and Restated Trust Agreement dated as of August 25, 2003 (the "Trust II Agreement") among the Company, as depositor, BNY Midwest Trust Company, as Property Trustee (the "Property Trustee II") and Bank of New York (Delaware), as Delaware Trustee, there has been declared and established Southwest Gas Capital II, a Delaware statutory trust ("Trust II").

WHEREAS, Trust II intends to issue its Trust Securities, including its 7.70% Preferred Trust Securities, representing undivided beneficial interests in the assets of Trust II, having a liquidation amount of \$25 per security and having terms provided therefor in the Trust II Agreement (the "Trust II Preferred Securities").

WHEREAS, the Company has authorized the issuance of its 7.70% Junior Subordinated Debentures due 2043 (the "Series II Trust Debt Securities") to be purchased by Trust II with the proceeds from the issuance and sale of its Trust Securities, and to provide therefor, the Company has duly authorized the execution and delivery of this Indenture.

WHEREAS, all things necessary to make the securities issued hereunder, when duly issued and executed by the Company and authenticated and delivered hereunder, the valid obligations of the Company, and to make this Indenture a valid and binding agreement of the Company, enforceable in accordance with its terms, have been done.

NOW THEREFORE:

Each of the Company and the Trustee, intending to be legally bound hereby, agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders (as hereinafter defined) of the securities issued hereunder, including the Series II Trust Debt Securities:

## **ARTICLE I DEFINITIONS AND INCORPORATION BY REFERENCE**

### **1.01 Definitions.**

"Affiliate" of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. When used with respect to any Person, "control" 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.

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

“Board of Directors” means the Board of Directors of the Company or any committee thereof duly authorized to act on behalf of such Board.

“Board Resolution” means (i) a copy of a resolution certified by the Secretary or the Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, or (ii) a certificate signed by the authorized officer or officers to whom the Board of Directors has delegated its authority, and in each case, delivered to the Trustee.

“Business Day” means any day that is not a Saturday, a Sunday or a day on which banking institutions in The City of New York, the city of Chicago or the State of California are authorized or required by law or executive order to close.

“Capital Stock” means any and all shares, interests, rights to purchase, warrants, options, participation or other equivalents of or interests in (however designated) corporate stock, including limited liability company membership interests.

“Common Trust Securities” means the Common Trust Securities of a Trust, representing undivided beneficial interests in the assets of such Trust.

“Company” means Southwest Gas Corporation, a California corporation, or any permitted successor thereto.

“Company Order” means a written request or order signed in the name of the Company by an Officer of the Company and delivered to the Trustee.

“Custodian” means any receiver, trustee, assignee, liquidator, sequestrator, custodian or similar official under any Bankruptcy Law.

“Default” means any event which is, or after notice or passage of time, or both, would be, an Event of Default pursuant to Section 6.01 hereof.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Extension Period”, with respect to any series of Trust Debt Securities, means the period during which the Company may elect to extend the interest payment period on such series of the Trust Debt Securities pursuant to Section 4.01(b) hereof; provided that no Extension Period shall extend beyond the Stated Maturity Date or the Redemption Date of any Trust Debt Security of such series.

“GAAP” means generally accepted accounting principles 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.

“Holder” means a Person in whose name a Trust Debt Security is registered on the Registrar’s books.

“Indenture” means this indenture, as amended or supplemented from time to time in accordance with the terms hereof, including the provisions of the TIA that are deemed to be a part hereof.

“Interest Payment Date”, when used with respect to the Trust Debt Securities of any series, means the stated maturity of any installment of interest on the Trust Debt Securities of that series.

“Issue Date”, with respect to a series of Trust Debt Securities, means the date on which the Trust Debt Securities of such series are originally issued.

“Legal Holiday” means any day other than a Business Day.

“Officer” means, with respect to any corporation, the Chairman of the Board, the Chief Executive Officer, the President, any Vice President, the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of such corporation.

“Officer’s Certificate” means a written certificate containing the applicable information specified in Sections 11.04 and 11.05 hereof, signed in the name of the Company by any one of its Officers, and delivered to the Trustee.

“Opinion of Counsel” means a written opinion containing the applicable information specified in Sections 11.04 and 11.05 hereof, by legal counsel who may be an employee of the Company.

“Paying Agent” means any Person authorized by the Company to pay the principal of and premium, if any, and interest on the Trust Debt Securities of any series on behalf of the Company.

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

“Predecessor Trust Debt Securities” of any particular Trust Debt Security means every previous Trust Debt Security evidencing all or a portion of the same debt as that evidenced by such particular Trust Debt Security; and for purposes of this definition, any Trust Debt Security authenticated and delivered under Section 2.09 hereof in exchange for or in lieu of a mutilated, destroyed, lost or stolen Trust Debt Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Trust Debt Security.



“Preferred Trust Securities” means the Preferred Trust Securities of a Trust, representing undivided beneficial interests in the assets of such Trust.

“Property Trustee II” means BNY Midwest Trust Company and its successors and assigns, as property trustee under the Trust II Agreement.

“Record Date”, with respect to any series of the Trust Debt Securities, means the Regular Record Date, the Special Record Date or any date set to determine the Holders of Trust Debt Securities of such series entitled to vote, consent, make a request or exercise any other right associated with such Trust Debt Securities.

“Redemption Date”, with respect to the Trust Debt Securities of any series to be redeemed, means the date specified for the redemption thereof in accordance with the terms thereof and pursuant to Article 3 of this Indenture.

“Redemption Price”, with respect to the Trust Debt Securities of any series to be redeemed, means the price at which such Trust Debt Security is to be redeemed in accordance with the terms thereof and pursuant to Article 3 of this Indenture.

“Regular Record Date”, with respect to an interest payment on the Trust Debt Securities of any series, means the date set forth in this Indenture or the supplemental indenture creating such series for the determination of Holders entitled to receive payment of interest on the next succeeding Interest Payment Date.

“Responsible Officer”, when used with respect to the Trustee, means any Vice President, any Assistant Vice President, any Trust Officer, or Assistant Trust Officer or any other officer of the Corporate Trust Department of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“SEC” or “Commission” means the Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, amended.

“Senior Indebtedness” means the principal of and premium, if any, and unpaid interest on (i) the Company’s indebtedness (including indebtedness of others guaranteed by the Company), whether outstanding on the date hereof or hereafter created, incurred, assumed or guaranteed, for money borrowed, unless in the instrument creating or evidencing the same or pursuant to which the same is outstanding it is provided that such indebtedness is not senior or prior in right of payment to the Trust Debt Securities, and (ii) renewals, extensions, modifications and refundings of any such indebtedness.

“Series II Trust Debt Securities “ means any of the Company’s 7.70% Junior Subordinated Debentures due 2043 issued under this Indenture.

“Special Record Date” for the payment of any Defaulted Interest on the Trust Debt Securities of any series means the date determined pursuant to Section 2.03 hereof.

“Stated Maturity Date”, with respect to any Trust Debt Security, means the date specified for such Trust Debt Security as the fixed date on which the principal of such Trust Debt Security is due and payable.

“Subsidiary” means any corporation, association, partnership, trust or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) the Company, (ii) the Company and one or more Subsidiaries, or (iii) one or more Subsidiaries.

“Successor” means the Person formed by or surviving such consolidation or merger or to which such sale, conveyance, transfer or lease shall have been made

“TIA” means the Trust Indenture Act of 1939, as amended and as in effect on the date of this Indenture; provided, however, that if the TIA is amended after such date, TIA means, to the extent required by any such amendment, the TIA as so amended.

“Trust” means any statutory trust created by the Company to issue Trust Securities and to use the proceeds from the sale thereof to purchase Trust Debt Securities.

“Trust Debt Securities” means any of the securities of any series issued, authenticated and delivered under this Indenture.

“Trust II” means Southwest Gas Capital II, a Delaware statutory trust created under the Delaware Statutory Trust Act, Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. ss. 3801, et seq.

“Trust II Agreement” means the Amended and Restated Trust Agreement dated as of August 25, 2003, among the Company, as Depositor, BNY Midwest Trust Company, as Property Trustee, and the Delaware Trustee named therein, as the same may be amended and modified from time to time.

“Trust II Preferred Securities Guarantee Agreement” means the Guarantee Agreement dated as of August 25, 2003 from the Company, as guarantor, to BNY Midwest Trust Company, as guarantee trustee, with respect to the Trust II Preferred Securities.

“Trust II Preferred Securities” means the undivided beneficial interests in the assets of Trust II, having a liquidation amount of \$25 per security and having terms provided therefor in the Trust II Agreement.

“Trust Securities” means the undivided beneficial interests in the assets of a Trust and includes the Preferred Trust Securities and the Common Trust Securities of such Trust.

“Trustee” means BNY Midwest Trust Company, until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, shall mean such successor.

“U.S. Government Obligations” means direct obligations (or certificates representing an ownership interest in such obligations) of the United States of America (including any agency or instrumentality thereof) for the payment of which the full faith and credit of the United States of America is pledged and which are not callable at the issuer’s option.

“Wholly Owned Subsidiary” means a Subsidiary all the Capital Stock of which (other than directors’ qualifying shares) is owned by the Company or another Wholly Owned Subsidiary.

**1.02 Other Definitions.**

<u>TERM</u>	<u>DEFINED IN SECTION</u>
“Act”	1.05
“Defaulted Interest”	2.03
“Depositary”	2.12
“global Trust Debt Security”	2.12
“Notice of Default”	6.01
“Register”	2.05
“Registrar”	2.05

**1.03 Incorporation by Reference of Trust Indenture Act.**

Whenever this Indenture refers to a provision of the TIA, such 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:

“indenture securities” means the Trust Debt 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 and any other obligor on the Trust Debt Securities.

All other TIA terms used in this Indenture that are defined by the TIA, defined by the TIA reference to another statute or defined by the SEC rule have the meanings assigned to them by such definitions.

**1.04 Rules of Construction.**

Unless the context otherwise requires:

- (1) Each capitalized 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) “including” means including, without limitation;
- (5) words in the singular include the plural, and words in the plural include the singular; and
- (6) “herein,” “hereof” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

#### **1.05 Acts of Holders and Holders of Preferred Trust Securities.**

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders or by holders of Preferred Trust Securities may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders or holders of Preferred Trust Securities, as applicable, in person or by an agent duly appointed in writing and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “Act” of Holders or holders of Preferred Trust Securities signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved in any manner which the Trustee deems sufficient.

(c) The ownership of Trust Debt Securities shall be proved by the Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Trust Debt Security shall bind every future Holder of the same Trust Debt Security and the Holder of every Trust Debt Security issued upon the registration transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Trust Debt Security.

(e) If the Company solicits from the Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may, at its option, by or pursuant to a resolution of its Board of Directors, fix in advance a Record Date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Company shall have no obligation to do so. If such a Record Date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given

before or after such Record Date, but only Holders of record at the close of business on such Record Date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of outstanding Trust Debt Securities have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the outstanding Trust Debt Securities shall be computed as of such Record Date.

**ARTICLE II**  
**TRUST DEBT SECURITIES; SERIES II TRUST DEBT SECURITIES**

**2.01 Issue of Trust Debt Securities Generally.**

The aggregate principal amount of any series of Trust Debt Securities which may be authenticated and delivered under this Indenture is limited to the aggregate liquidation amount of the Trust Securities of the Trust purchasing such Trust Debt Securities.

The Trust Debt Securities may be issued in one or more series as from time to time shall be authorized by the Board of Directors.

The Trust Debt Securities of each series and the Trustee's Certificate of Authentication shall be substantially in the forms to be attached as exhibits to the Indenture or supplemental indenture creating such series, but in the case of any series of Trust Debt Securities other than the Series II Trust Debt Securities, with such inclusions, omissions and variations as to letters, numbers or other marks of identification or designation and such legends or endorsements 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 securities exchange on which such Trust Debt Securities may be listed, or to conform to usage.

Other series of Trust Debt Securities may differ from the Series II Trust Debt Securities, and as and between series, in respect of any or all of the following matters:

- (a) designation;
- (b) Stated Maturity Date or Dates, which may be serial and the Company's option, if any, to change the Stated Maturity Date or Dates;
- (c) interest rate or method of determination of the interest rate;
- (d) the basis upon which interest shall be computed if other than a 360-day year composed of twelve 30-day months;
- (e) Interest Payment Dates and the Regular Record Dates therefor;
- (f) the maximum duration of the Extension Period;
- (g) Issue Date or Dates and interest accrual provisions;

- (h) authorized denominations;
- (i) the place or places for the payment of principal (and premium, if any) and interest;
- (j) the aggregate principal amount of Trust Debt Securities of such series which may be issued;
- (k) the optional and mandatory redemption provisions, if any;
- (l) provisions, if any, for any sinking or analogous fund;
- (m) the applicability to such series of the provisions of Article 10 hereof relating to subordination; and
- (n) any other provisions expressing or referring to the terms and conditions upon which the Trust Debt Securities of such series are to be issued under this Indenture which are not in conflict with the provisions of this Indenture;

in each case as determined by the Board of Directors and specified in the supplemental indenture creating such series.

## **2.02 Terms and Form of the Series II Trust Debt Securities.**

(a) The Series II Trust Debt Securities shall be designated “Southwest Gas Corporation, 7.70% Junior Subordinated Debentures due 2043.” The Series II Trust Debt Securities and the Trustee’s Certificate of Authentication shall be substantially in the form of Exhibit A attached hereto. The Series II Trust Debt Securities shall initially be issued to the Property Trustee II in definitive registered form in a principal amount equal to the aggregate principal amount of the Series II Trust Debt Securities. As contemplated by Section 8.04(c) of the Trust II Agreement, upon the occurrence of an Early Termination Event (as defined in the Trust II Agreement, except where Section 8.02(c) thereof applies), the Series II Trust Debt Securities will be presented to the Trustee by the Property Trustee in exchange for (i) if the Trust II Preferred Securities are then issued in book-entry-only form, a Like Amount (as defined in the Trust II Agreement) of a global Trust Debt Security issued to or on behalf of The Depository Trust Company as Depository in accordance with the provisions of Section 2.12 hereof and (ii) if any Trust II Preferred Securities are held in definitive registered form, a Like Amount of Trust Debt Securities in definitive registered form issued to the holder of such Trust II Preferred Securities, in the case of clause (i) or (ii), upon surrender of the certificates for the Trust II Preferred Securities to the Property Trustee. Any such certificates not so surrendered for exchange will be deemed to represent a Like Amount of the Series II Trust Debt Securities, accruing interest as provided in the Trust II Agreement, and until such certificates are so surrendered, no payments of interest or principal will be made with respect to such Series II Trust Debt Securities). Upon such exchange, the Trust Debt Securities in definitive registered form so exchanged shall be cancelled by the Trustee. The terms and provisions contained in the Series II Trust Debt Securities shall constitute, and are hereby expressly made, a part of this Indenture. The Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

(b) The aggregate principal amount of Series II Trust Debt Securities outstanding at any time may not exceed \$103,100,000 except as provided in Section 2.09 hereof. The Series II Trust Debt Securities shall be authenticated and delivered upon delivery to the Trustee of items specified in Section 2.04(d) hereof.

(c) The Stated Maturity Date of the Series II Trust Debt Securities is September 15, 2043.

(d) The Series II Trust Debt Securities shall bear interest at an annual rate of 7.70%. The Interest Payment Dates for the Series II Trust Debt Securities shall be March 31, June 30, September 30 and December 31 of each year, commencing September 30, 2003. In the event that any date on which interest is payable on the Series II Trust Debt Securities is not a Business Day, then payment of interest payable on such date will be made on the next day which 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 such date. The Regular Record Date for each Interest Payment Date for the Series II Trust Debt Securities shall be the 15th day (whether or not a Business Day) preceding the applicable Interest Payment Date, provided that if Trust II is the sole Holder of the Series II Trust Debt Securities or the Series II Trust Debt Securities are issued in book-entry-only form, the Regular Record Date shall be the close of business on the Business Day immediately preceding such Interest Payment Date.

Each Series II Trust Debt Security shall bear interest from its Issue Date or from the most recent Interest Payment Date to which interest has been paid or duly provided for with respect to such Series II Trust Debt Security; except that, so long as there is no existing Defaulted Interest (as defined in Section 2.03 hereof) or Extension Period on the Series II Trust Debt Securities, any Series II Trust Debt Security authenticated by the Trustee between the Regular Record Date for any Interest Payment Date and such Interest Payment Date shall bear interest from such Interest Payment Date. Each Series II Trust Debt Security shall be dated the date of its authentication.

Overdue principal of and interest on any Series II Trust Debt Security and interest which has been deferred pursuant to Section 4.01(b) hereof shall bear interest (to the extent that the payment of such interest shall be legally enforceable) at a rate per annum equal to the interest rate per annum payable on such Series II Trust Debt Security.

During any time that the Property Trustee II is the holder of the Series II Trust Debt Securities, the Company shall pay additional amounts on such Series II Trust Debt Securities as may be necessary in order that the Distribution (as defined in the Trust II Agreement) then due and payable by Trust II on its Preferred Trust Securities shall not be reduced as a result of any additional taxes, duties and other governmental charges of whatever nature (other than withholding taxes) to which Trust II has become subject.

(e) The Series II Trust Debt Securities shall be issuable only in registered form without coupons and only in denominations of \$25 and any integral multiple thereof.

(f) The maximum Extension Period for the Series II Trust Debt Securities shall be five years consisting of 20 consecutive quarterly periods.

### **2.03 Payment of Principal and Interest.**

Unless otherwise specified pursuant to Section 2.01(d), interest on the Trust Debt Securities shall be computed on the basis of a 360-day year composed of twelve 30-day months, and for any period shorter than thirty days, interest will be computed on the basis of the actual number of days elapsed in such period.

Unless otherwise provided with respect to a series of Trust Debt Securities,

(i) the principal and Redemption Price of and interest on each Trust Debt Security shall be payable in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts;

(ii) the principal and Redemption Price of any Trust Debt Security and interest payable on the Stated Maturity Date (if other than an Interest Payment Date) or Redemption Date shall be payable in immediately available funds upon surrender of such Trust Debt Security at the office or agency of any Paying Agent therefor; and

(iii) interest on any Trust Debt Security shall be paid on each Interest Payment Date therefor to the Holder thereof at the close of business on the Record Date therefor, such interest to be payable by check mailed to the address of the Person entitled thereto as such address appears on the Register; provided however, that (1) at the written request of the Holder of at least \$10,000,000 aggregate principal amount of Trust Debt Securities received by the Registrar not later than the Regular Record Date for such Interest Payment Date, interest accrued on such Trust Debt Security will be payable by wire transfer within the continental United States in immediately available funds to the bank account number of such Holder specified in such request and entered on the Register by the Registrar and (2) payments made in respect of global Trust Debt Securities shall be made in immediately available funds to the Depository.

Except as specified pursuant to Section 2.01 or Section 4.01(b) hereof, interest on any Trust Debt Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Trust Debt Security (or one or more Predecessor Trust Debt Securities) is registered at the close of business on the Regular Record Date for such interest. Any interest on any Trust Debt Security which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in Clause (1) and (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Trust Debt Securities (or their respective Predecessor Trust Debt



Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall, not less than 15 Business Days prior to the date of the proposed payment, notify the Trustee and the Paying Agent in writing of the amount of Defaulted Interest proposed to be paid on each Trust Debt Security and the date of the proposed payment, and at the same time the Company shall deposit with the Paying Agent 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 Paying Agent 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. The Special Record Date for the payment of such Defaulted Interest shall be the close of business on the tenth calendar day prior to the date of the proposed payment. The Trustee shall, in the name and at the expense of the Company, cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be given to the Holders thereof, not less than 7 calendar days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been given, such Defaulted Interest shall be paid to the Persons in whose names the Trust Debt Securities (or their respective Predecessor Trust Debt Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following Clause (2).

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

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

#### **2.04 Execution, Authentication and Delivery.**

(a) The Trust Debt Securities shall be executed on behalf of the Company by its Chairman, its President or one of its Vice Presidents, under its corporate seal imprinted or reproduced thereon and attested by its Secretary or one of its Assistant Secretaries. The signature of any such Officer on the Trust Debt Securities may be manual or facsimile.

(b) Trust Debt Securities bearing the manual or facsimile signatures of individuals who were at any time the proper Officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Trust Debt Securities or did not hold such offices at the date of such Trust Debt Securities.

(c) No Trust Debt Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Trust Debt Security a Certificate

of Authentication duly executed by the Trustee by manual signature of a Responsible Officer, and such Certificate of Authentication upon any Trust Debt Security shall be conclusive evidence, and the only evidence, that such Trust Debt Security has been duly authenticated and made available for delivery hereunder.

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

- (1) a Board Resolution approving the form or forms and terms of such Trust Debt Securities;
- (2) a Company Order requesting the authentication and delivery of such Trust Debt Securities and stating the identity of the Trust and the aggregate liquidation amount of the Trust Securities to be issued concurrently with such Trust Debt Securities;
- (3) unless previously delivered, this Indenture or a supplemental indenture hereto setting forth the form of such Trust Debt Securities and establishing the terms thereof;
- (4) the Trust Debt Securities of such series, executed on behalf of the Company in accordance with Section 2.04(a) hereof;
- (5) an Opinion of Counsel to the effect that:
  - (i) the form or forms of such Trust Debt Securities have been duly authorized by the Company and have been established in conformity with the provisions of this Indenture; and
  - (ii) such Trust Debt Securities, when authenticated and delivered by the Trustee and issued and delivered by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will have been duly issued under this Indenture and will constitute valid and legally binding obligations of the Company, entitled to the benefits provided by this Indenture, and enforceable in accordance with their terms, subject, as to enforcement to laws relating to or affecting generally the enforcement of creditors' rights, including, without limitation, bankruptcy and insolvency laws and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law); and
  - (iii) that this Indenture or any supplemental indenture referred to in clause (3) above has been duly authorized, executed and delivered by the Company and is a valid instrument legally binding upon the Company, enforceable in accordance with its terms, subject as to enforcement to laws relating to or affecting creditors' rights, including, without limitation, bankruptcy and insolvency laws and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law); and

(iv) that all consents, approvals and orders of any commission, governmental authority or agency required in connection with the issuance and delivery of such Trust Debt Securities have been obtained.

(e) an Officer's Certificate certifying that no Default or Event of Default has occurred and is continuing.

(f) The Trustee shall act as the initial authenticating agent. Thereafter, the Trustee may appoint an authenticating agent with the consent of the Company, which consent shall not be unreasonably withheld. An authenticating agent may authenticate Trust Debt Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. The Company shall pay any authenticating agent appointed by the Trustee reasonable compensation for its services. The provisions set forth in Section 7.02, Section 7.03, Section 7.04 and Section 7.07 hereof shall be applicable to any authenticating agent.

## **2.05 Registrar and Paying Agent.**

The Company shall maintain or cause to be maintained, within or outside the State of Illinois, an office or agency where the Trust Debt Securities may be presented for registration of transfer or for exchange ("Registrar"), a Paying Agent at whose office the Trust Debt Securities may be presented or surrendered for payment, and an office or agency where notices and demands to or upon the Company in respect of the Trust Debt Securities and this Indenture may be served. The Registrar shall keep a register (the "Register") of the Trust Debt Securities and of their transfer and exchange. The Company may have one or more co-Registrars and one or more additional Paying Agents. The term Registrar includes any additional registrar and the term Paying Agent includes any additional paying agent. The corporate office of the Trustee in Chicago, Illinois shall initially be the Registrar for each series of Trust Debt Securities and agent for service of notice or demands on the Company, and the Trustee shall initially be the Paying Agent for each series of Trust Debt Securities.

The Company shall enter into an appropriate agency agreement with any Registrar, Paying Agent or co-Registrar (if not the Company or the Trustee or an affiliate of the Trustee). The agreement shall implement the provisions of this Indenture that relate to such agent. The Company shall give prompt written notice to the Trustee and to the Holders of any change of location of such office or agency. If at any time the Company shall fail to maintain or cause to be maintained 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 address of the Trustee set forth in Section 11.02 hereof. The Company shall notify the Trustee of the name and address of any such agent. If the Company fails to maintain a Registrar, Paying Agent or agent for service of notices or demands, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.07 hereof. The Company or any Affiliate of the Company may act as Paying Agent, Registrar or co-Registrar or agent for service of notices and demands.

The Company may also from time to time designate one or more other offices or agencies where the Trust Debt Securities may be presented or surrendered for any or all such purposes and

may from time to time rescind such designations. The Company will give prompt written notice to the Trustee and to the Holders of any such designation or rescission and of any change in location of any such other office or agency.

#### **2.06 Paying Agent to Hold Money in Trust.**

Except as otherwise provided herein, prior to 10:00 a.m. on each due date of the principal of and premium (if any) and interest on any Trust Debt Security, the Company shall deposit with the Paying Agent a sum of money sufficient to pay such principal, premium (if any) and interest so becoming due. The Company shall require each Paying Agent (other than the Trustee or the Company) to agree in writing that such Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal of and premium (if any) and interest on the Trust Debt Securities and shall notify the Trustee of any Default by the Company in making any such payment. At any time during the continuance of any such Default, the Paying Agent shall, upon the request of the Trustee, forthwith pay to the Trustee all money so held in trust and account for any money disbursed by it. 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 money disbursed by it. Upon doing so, the Paying Agent shall have no further liability for the money so paid over to the Trustee. If the Company, a Subsidiary or an Affiliate of either of them acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund.

#### **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. If the Trustee is not the Registrar, the Company shall cause to be furnished to the Trustee on or before the Record Date for each Interest Payment Date and at such other times as the Trustee may request in writing, within five Business Days of such request, a list, in such form as the Trustee may reasonably require of the names and addresses of Holders.

#### **2.08 Transfer and Exchange.**

When Trust Debt Securities are presented to the Registrar or a co-Registrar with a request to register the transfer or to exchange them for an equal principal amount of Trust Debt Securities of the same series of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested if its reasonable requirements for such transactions are met. To permit registrations of transfer and exchanges, the Company shall execute and the Trustee shall authenticate Trust Debt Securities, all at the Registrar's request.

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

The Company shall not require payment of a service charge for any registration of transfer or exchange of Trust Debt Securities, but the Company may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges that may be imposed in

connection with the registration of the transfer or exchange of Trust Debt Securities from the Holder requesting such transfer or exchange (other than any exchange of a temporary Trust Debt Security for a definitive Trust Debt Security not involving any change in ownership).

The Company shall not be required to make, and the Registrar need not register, transfers or exchanges of (a) any Trust Debt Security for a period beginning at the opening of business 15 days before the mailing of a notice of redemption of Trust Debt Securities and ending at the close of business on the day of such mailing or (b) any Trust Debt Security selected, called or being called for redemption, except, in the case of any Trust Debt Security to be redeemed in part, the portion thereof not to be redeemed.

#### **2.09 Replacement Trust Debt Securities.**

If (a) any mutilated Trust Debt Security is surrendered to the Company or the Trustee, or (b) the Company and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Trust Debt Security, and there is delivered to the Company and the Trustee such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Company or the Trustee that such Trust Debt Security has been acquired by a bona fide purchaser, the Company shall execute in exchange for any such mutilated Trust Debt Security or in lieu of any such destroyed, lost or stolen Trust Debt Security, a new Trust Debt Security of the same series and of like tenor and principal amount, bearing a number not contemporaneously outstanding, and the Trustee shall authenticate and make such new Trust Debt Security available for delivery.

In case any such mutilated, destroyed, lost or stolen Trust Debt Security has become or is about to become due and payable, or is about to be redeemed by the Company pursuant to Article 3 hereof, the Company in its discretion may, instead of issuing a new Trust Debt Security, pay or purchase such Trust Debt Security, as the case may be.

Upon the issuance of any new Trust Debt Securities under this Section 2.09, 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) in connection therewith.

Every new Trust Debt Security issued pursuant to this Section 2.09 in lieu of any mutilated, destroyed, lost or stolen Trust Debt Security shall constitute an original additional contractual obligation of the Company (whether or not the mutilated, destroyed, lost or stolen Trust Debt Security shall be at any time enforceable) and shall be entitled to all benefits of this Indenture equally and ratably with any and all other Trust Debt Securities duly issued hereunder.

The provisions of this Section 2.09 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Trust Debt Securities.

#### **2.10 Outstanding Trust Debt Securities; Determinations of Holders' Action.**

Trust Debt Securities outstanding at any time are all the Trust Debt Securities authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation,

those mutilated, destroyed, lost or stolen Trust Debt Securities referred to in Section 2.09 hereof, those redeemed by the Company pursuant to Article 3 hereof, and those described in this Section 2.10 as not outstanding. A Trust Debt Security does not cease to be outstanding because the Company or a Subsidiary or Affiliate thereof holds the Trust Debt Security; provided, however, that in determining whether the Holders of the requisite principal amount of Trust Debt Securities have given or concurred in any request, demand, authorization, direction, notice, consent or waiver hereunder, Trust Debt Securities owned by the Company or a Subsidiary or Affiliate (other than any Trust so long as any of the Preferred Trust Securities of such Trust are outstanding) shall be disregarded and deemed not to be outstanding.

Subject to the foregoing, only Trust Debt Securities outstanding at the time of such determination shall be considered in any such determination (including determinations pursuant to Articles 3, 6 and 9).

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

If the Paying Agent (other than the Company) holds, in accordance with this Indenture, at the Stated Maturity Date or on a Redemption Date, money sufficient to pay the Trust Debt Securities payable on that date, then immediately on the Stated Maturity Date or such Redemption Date, as the case may be, such Trust Debt Securities shall cease to be outstanding, and interest, if any, on such Trust Debt Securities shall cease to accrue.

#### **2.11 Temporary Trust Debt Securities.**

The Company may execute temporary Trust Debt Securities, and upon the Company's Order, the Trustee shall authenticate and make such temporary Trust Debt Securities available for delivery. Temporary Trust Debt Securities shall be printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, in the same series and principal amount and of like tenor as the definitive Trust Debt Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the Officers of the Company executing such Trust Debt Securities may determine, as conclusively evidenced by their execution of such Trust Debt Securities.

After the preparation of definitive Trust Debt Securities, the temporary Trust Debt Securities shall be exchangeable for definitive Trust Debt Securities of the same series upon surrender of the temporary Trust Debt Securities at the office or agency of the Company designated for such purpose pursuant to Section 2.05 hereof, without charge to the Holders thereof. Upon surrender for cancellation of any one or more temporary Trust Debt Securities, the Company shall execute a like principal amount of definitive Trust Debt Securities of the same series of authorized denominations, and the Trustee, upon receipt of a Company Order, shall authenticate and make such Trust Debt Securities available for delivery in exchange therefor. Until so exchanged, the temporary Trust Debt Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Trust Debt Securities.

## 2.12 Book-Entry System.

In order to utilize a book-entry-only system for all or any portion of the Trust Debt Securities of any series, all or a portion of the Trust Debt Securities of any series may be issued in the form of one or more fully registered Trust Debt Securities of the same series for the aggregate principal amount of such Trust Debt Securities of each Issue Date, interest rate and Stated Maturity Date (a "global Trust Debt Security"), which global Trust Debt Security shall be registered in the name of the depository (the "Depository") selected by the Company or in the name of such Depository's nominee. Each global Trust Debt Security shall be delivered by the Trustee to the Depository or pursuant to the Depository's instruction.

Notwithstanding any other provision of this Section 2.12 or of Section 2.08 hereof, a global Trust Debt Security may be transferred in whole but not in part and in the manner provided in Section 2.08 hereof, only by a nominee of the Depository for such series, or by the Depository or any such nominee of a successor Depository for such series selected or approved by the Company or to a nominee of such successor Depository.

If (i) at any time the Depository for global Trust Debt Securities of any series of Trust Debt Securities notifies the Company that it is unwilling or unable to continue as Depository for such global Trust Debt Securities or if at any time the Depository for such global Trust Debt Securities shall no longer be registered or in good standing under the Exchange Act or other applicable statute or regulation, and a successor Depository for such global Trust Debt Securities 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, (ii) the Company determines in its sole discretion, that the Trust Debt Securities of any series shall no longer be represented by one or more global Trust Debt Securities and delivers to the Trustee an Officer's Certificate evidencing such determination or (iii) an Event of Default occurs and is continuing, then the provisions of this Section 2.12 shall no longer apply to the Trust Debt Securities of such series. In such event, the Company will execute and the Trustee, upon receipt of an Officer's Certificate evidencing such determination by the Company, will authenticate and deliver Trust Debt Securities of such series and of like tenor in definitive registered form, in authorized denominations, and in aggregate principal amount equal to the principal amount of the global Trust Debt Securities of such series in exchange for such global Trust Debt Securities. Upon the exchange of global Trust Debt Securities for such Trust Debt Securities in definitive registered form without coupons, in authorized denominations, the global Trust Debt Securities shall be cancelled by the Trustee. Such Trust Debt Securities in definitive registered form issued in exchange for global Trust Debt Securities pursuant to this Section 2.12 shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such Trust Debt Securities to the Persons in whose names such Trust Debt Securities are so registered.

Except as provided above, owners of beneficial interests in a global Trust Debt Security shall not be entitled to receive physical delivery of Trust Debt Securities in definitive form and will not be considered the Holders thereof for any purpose under this Indenture.

Members of or participants in the Depository shall have no rights under this Indenture with respect to any global Trust Debt Security held on their behalf by the Depository, and such

Depository or its nominee, as the case may be, may be treated by the Company, the Trustee, and any agent of the Company or the Trustee as the Holder of such global Trust Debt Securities for all purposes whatsoever. Notwithstanding the foregoing, 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 Depository or impair, as between the Depository and its members or participants, the operation of customary practices governing exercise of the rights of a Holder of any Trust Debt Security, including without limitation the granting of proxies or other authorization of participants to give or take any request, demand, authorization, direction, notice, consent, waiver or other action which a Holder is entitled to give or take under this Indenture.

### **2.13 Cancellation.**

All Trust Debt Securities surrendered for payment, redemption by the Company pursuant to Article 3 hereof or registration of transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly canceled by the Trustee. The Company may at any time deliver to the Trustee for cancellation any Trust Debt Securities previously authenticated and made available for delivery hereunder which the Company may have acquired in any manner whatsoever, and all Trust Debt Securities so delivered shall be promptly canceled by the Trustee. The Company may not reissue or issue new Trust Debt Securities to replace Trust Debt Securities it has paid or delivered to the Trustee for cancellation. No Trust Debt Securities shall be authenticated in lieu of or in exchange for any Trust Debt Securities canceled as provided in this Section 2.13, except as expressly permitted by this Indenture. All canceled Trust Debt Securities held by the Trustee shall be disposed of in accordance with its customary procedures.

## **ARTICLE III REDEMPTION**

### **3.01 Redemption: Notice to Trustee.**

(a) The Series II Trust Debt Securities are subject to redemption prior to maturity as provided therein.

(b) The redemption terms for any additional series of Trust Debt Securities shall be as specified in the supplemental indenture creating such series of Trust Debt Securities.

(c) If any or all of the Trust Debt Securities are to be redeemed pursuant to Section 3.01 (a) or (b) hereof, the Company shall deliver to the Trustee at least 45 days prior to the Redemption Date a Company Order specifying the series and principal amount of Trust Debt Securities to be redeemed and the Redemption Date and Redemption Price for such Trust Debt Securities. Such Company Order shall be accompanied by a Board Resolution authorizing such redemption. If the Trust Debt Securities of a series are held by a Trust, the Company shall also deliver a copy of such Company Order to the Property Trustee for such Trust.



### **3.02 Selection of Trust Debt Securities to be Redeemed.**

If less than all the outstanding Trust Debt Securities of a series are to be redeemed at any time, the Trustee shall select the Trust Debt Securities of such series to be redeemed by lot or by any other method the Trustee considers appropriate. The Trustee shall make the selection at least 30 but not more than 60 days before the Redemption Date from outstanding Trust Debt Securities of such series not previously called for redemption. Provisions of this Indenture that apply to Trust Debt Securities called for redemption also apply to portions of Trust Debt Securities called for redemption. The Trustee shall notify the Company promptly of the Trust Debt Securities or portions of Trust Debt Securities to be redeemed.

### **3.03 Notice of Redemption.**

At least 30 days but not more than 60 days before the Redemption Date, the Trustee, in the Company's name and at the Company's expense, shall mail or cause to be mailed a notice of redemption by first-class mail, postage prepaid, to each Holder of Trust Debt Securities to be redeemed at such Holder's last address as it appears in the Register.

The notice of redemption shall identify the Trust Debt Securities to be redeemed, including its CUSIP number, the provision of the Trust Debt Securities or this Indenture pursuant to which the Trust Debt Securities called for redemption are being redeemed and shall state:

- (1) the Redemption Date;
- (2) the Redemption Price;
- (3) the name and address of the Paying Agent;
- (4) that payment of the Redemption Price of Trust Debt Securities called for redemption will be made only upon surrender of such Trust Debt Securities to the Paying Agent;
- (5) if fewer than all the outstanding Trust Debt Securities of any series are to be redeemed, the identification and principal amounts of the particular Trust Debt Securities to be redeemed and that, on and after the Redemption Date, upon surrender of such Trust Debt Securities, a new Trust Debt Security or Trust Debt Securities of the same series and of like tenor and in a principal amount equal to the unredeemed portion thereof will be issued; and
- (6) that, unless the Company defaults in paying the Redemption Price of the Trust Debt Securities called for redemption, plus accrued interest thereon to the Redemption Date, interest will cease to accrue on such Trust Debt Securities on and after the Redemption Date.

Any notice of redemption given in the manner provided herein shall be conclusively presumed to have been given, whether or not such notice is actually received. Failure to mail any notice or defect in the mailed notice or the mailing thereof in respect of any Trust Debt Security shall not affect the validity of the redemption of any other Trust Debt Security.

### **3.04 Effect of Notice of Redemption.**

After notice of redemption has been given, Trust Debt Securities called for redemption shall become due and payable on the Redemption Date and at the Redemption Price and from and after the Redemption Date (unless the Company shall default in the payment of the Redemption Price and accrued interest), such Trust Debt Securities shall cease to bear interest. Upon the later of the Redemption Date and the date such Trust Debt Securities are surrendered to the Paying Agent, such Trust Debt Securities shall be paid the Redemption Price, plus accrued interest to the Redemption Date, provided that installments of interest on Trust Debt Securities with an Interest Payment Date which is on or prior to the Redemption Date shall be payable to the Holders of such Trust Debt Securities, or one or more Predecessor Trust Debt Securities, registered as such at the close of business on the Regular Record Dates therefor according to their terms and provisions.

### **3.05 Deposit of Redemption Price.**

Prior to 10:00 a.m. on the Redemption Date, the Company shall deposit with the Paying Agent (or if the Company or an Affiliate is the Paying Agent, shall segregate and hold in trust or cause such Affiliate to segregate and hold in trust) money sufficient to pay the Redemption Price of, and accrued interest on, all Trust Debt Securities to be redeemed on that Redemption Date. The Paying Agent shall return to the Company any money in excess of the amount sufficient to pay the Redemption Price of, and accrued interest on, all Trust Debt Securities to be redeemed and any interest accrued on the amount deposited pursuant to this Section 3.05.

### **3.06 Trust Debt Securities Redeemed in Part.**

Upon surrender of a Trust Debt Security that is redeemed in part, the Trustee shall authenticate for the Holder a new Trust Debt Security of the same series and in a principal amount equal to the unredeemed portion of such Trust Debt Security.

## **ARTICLE IV COVENANTS**

### **4.01 Payment of Trust Debt Securities.**

(a) The Company shall pay the principal of and premium, if any, and interest (including interest accruing during an Extension Period and/or on or after the filing of a petition in bankruptcy or reorganization relating to the Company, whether or not a claim for post-filing interest is allowed in such proceeding) on the Trust Debt Securities on or prior to the dates and in the manner provided in such Trust Debt Securities or pursuant to this Indenture. An installment of principal, premium, if any, or interest shall be considered paid on the applicable due date if on such date the Trustee or the Paying Agent holds, in accordance with this Indenture, money sufficient to pay all of such installment then due. With respect to any Trust Debt Security, the Company shall pay interest on overdue principal and interest on overdue installments of interest (including interest accruing during an Extension Period and/or on or after the filing of a petition in bankruptcy or reorganization relating to the Company, whether or not a claim for post-filing interest is allowed in such proceeding), to the extent lawful, at the rate per annum borne by such

Trust Debt Security, compounded quarterly. Interest on overdue interest shall accrue from the date such amounts become overdue.

(b) Notwithstanding the provisions of Section 4.01(a) hereof or any other provision herein to the contrary, the Company shall have the right in its sole and absolute discretion at any time and from time to time while the Trust Debt Securities of any series are outstanding, so long as no Event of Default with respect to such series of Trust Debt Securities has occurred and is continuing, to defer payments of interest by extending the interest payment period for such series of Trust Debt Securities for the Extension Period, if any, for such series of Trust Debt Securities, provided that such Extension Period shall not extend beyond the Stated Maturity Date or Redemption Date of any Trust Debt Security of such series, and provided further that at the end of each Extension Period the Company shall pay all interest then accrued and unpaid (together with interest thereon to the extent permitted by applicable law at the rate per annum then borne by such Trust Debt Securities). Prior to the termination of an Extension Period, the Company may shorten or may further extend the interest payment period for such series of Trust Debt Securities, provided that such Extension Period together with all such previous and further extensions may not exceed the maximum duration of the Extension Period for such series of Trust Debt Securities or extend beyond the Stated Maturity Date or Redemption Date of any Trust Debt Security of such series. The Company shall give the Trustee notice of the Company's election to begin an Extension Period for any series of Trust Debt Securities and any shortening or extension thereof at least one Business Day prior to the date the notice of the record or payment date of the related distribution on the Preferred Trust Securities issued by the Trust which is the Holder of the Trust Debt Securities of such series or the date payment of interest on such Trust Debt Securities is required to be given to any national securities exchange on which such Preferred Trust Securities or Trust Debt Securities are then listed or other applicable self-regulatory organization, but in any event not less than two Business Days prior to the Record Date fixed by the Company for the payment of such interest. The Company shall give or cause the Trustee to give notice (a form of which shall be provided by the Company to the Trustee) of the Company's election to begin an Extension Period to the Holders by first class mail, postage prepaid.

#### **4.02 Prohibition Against Dividends, etc.**

The Company shall not (a) declare or pay any dividend on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of its Capital Stock, (b) pay principal, interest or premium, if any, on, or repay, repurchase or redeem any debt securities that rank pari passu with or junior to the Trust Debt Securities or (c) make any guarantee payments with respect to any outstanding Preferred Trust Securities issued by any Trust, (i) during an Extension Period, (ii) if at such time there shall have occurred and is continuing any Default or Event of Default, or (iii) if the Company shall be in default with respect to its payment or other obligations under any Guarantee Agreement.

#### **4.03 SEC Reports.**

The Company shall file with the Trustee, within 15 days after it files them with the SEC, copies of its annual report and of 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) which the

Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act. If the Company is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company shall file with the Trustee such information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) which are specified in Sections 13 or 15(d) of the Exchange Act. The Company shall also comply with the provisions of Section 314(a) of the TIA. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to conclusively rely exclusively on Officer's Certificates).

#### **4.04 Compliance Certificates.**

(a) The Company shall deliver to the Trustee, within 90 days after the end of each of the Company's fiscal years, an Officer's Certificate stating whether or not the signer knows of any Default or Event of Default. Such certificate shall contain a certification from the principal executive officer, principal financial officer or principal accounting officer of the Company as to his or her knowledge of the Company's compliance with all conditions and covenants under this Indenture. For purposes of this Section 4.04(a), such compliance shall be determined without regard to any period of grace or requirement of notice provided under this Indenture. If such Officer does know of such a Default or Event of Default, the Officer's Certificate shall describe any such Default or Event of Default, and its status. Such Officer's Certificate need not comply with Sections 11.04 and 11.05 hereof.

(b) The Company shall deliver to the Trustee any information reasonably requested by the Trustee in connection with the compliance by the Trustee or the Company with the TIA.

#### **4.05 Further Instruments and Acts.**

The Company shall execute and deliver such further instruments and do such further acts as may be reasonably requested by the Trustee or as necessary or proper to carry out more effectively the purposes of this Indenture.

#### **4.06 Payments for Consents.**

Neither the Company nor any Subsidiary shall, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder of any Trust Debt Securities for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Trust Debt Securities unless such consideration is offered to be paid or agreed to be paid to all Holders of the Trust Debt Securities who so consent, waive or agree to amend in the time frame set forth in the documents soliciting such consent, waiver or agreement.

#### **4.07 Payment of Expenses of Trust.**

The Company covenants for the benefit of the Holders of the Trust Debt Securities to pay all of the obligations, costs and expenses of the applicable Trust in accordance with the

applicable Trust agreement and to pay the taxes of such Trust in accordance with such Trust agreement in order to permit such Trust to make distributions on and redemptions of its Preferred Trust Securities in accordance with their terms.

**ARTICLE V  
SUCCESSOR CORPORATION**

**5.01 When Company May Merge, Etc.**

The Company may not consolidate with or merge with or into, or sell, convey, transfer or lease its properties and assets as an entirety or substantially as an entirety (either in one transaction or a series of transactions) to, any Person unless:

(1) the Successor if other than the Company (a) is a corporation organized and existing under the laws of the United States of America or any State thereof or the District of Columbia, and (b) shall expressly assume by a supplemental indenture, executed and delivered to the Trustee, in form satisfactory to the Trustee, all the obligations of the Company under the Trust Debt Securities and the Indenture;

(2) immediately prior to and after giving effect to such transaction (and treating any Indebtedness which becomes an obligation of the Successor Person or any Subsidiary as a result of such transaction as having been incurred by such Person or such Subsidiary at the time of such transaction), no Default or Event of Default shall have occurred and be continuing; and

(3) the Company delivers to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, conveyance, transfer or lease and such supplemental indenture comply with this Indenture.

The Successor will be the successor to the Company, and will be substituted for, and may exercise every right and power and become the obligor on the Trust Debt Securities with the same effect as if the Successor had been named as the Company herein but, in the case of a sale, conveyance, transfer or lease of all or substantially all of the assets of the Company, the predecessor Company will not be released from its obligation to pay the principal of and premium, if any, and interest on the Trust Debt Securities.

**ARTICLE VI  
DEFAULTS AND REMEDIES**

**6.01 Events of Default.**

An "Event of Default" occurs with respect to the Trust Debt Securities of any series if one of the following shall have occurred and be continuing:

(1) The Company defaults in the payment, when due and payable, of (a) interest on any Trust Debt Security of that series and the default continues for a period of 30 days; provided, that during an Extension Period for the Trust Debt Securities of that series, failure to pay interest on the Trust Debt Securities of that series shall not constitute

a Default or Event of Default hereunder, or (b) the principal of or premium, if any, on any Trust Debt Securities of that series when the same becomes due and payable on the Stated Maturity Date thereof, upon acceleration, on any Redemption Date, or otherwise;

(2) The Company defaults in the performance of or fails to comply with any of its other covenants or agreements in the Trust Debt Securities of that series or this Indenture or in any supplemental indenture under which the Trust Debt Securities of that series may have been issued and such failure continues for 60 days after receipt by the Company of a "Notice of Default";

(3) The Company, pursuant to or within the meaning of any Bankruptcy Law:

(a) commences a voluntary case or proceeding;

(b) consents to the entry of an order for relief against it in an involuntary case or proceeding;

(c) consents to the appointment of a Custodian of it or for all or substantially all of its property, and such Custodian is not discharged within 60 days;

(d) makes a general assignment for the benefit of its creditors; or

(e) admits in writing its inability to pay its debts generally as they become due; or

(4) A court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(a) is for relief against the Company in an involuntary case or proceeding;

(b) appoints a Custodian of the Company for all or substantially all of its properties; or

(c) orders the liquidation of the Company,

and in each case the order or decree remains unstayed and in effect for 60 days.

The foregoing will constitute an Event of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

A Default under clause (2) above is not an Event of Default until (i) the Trustee provides a "Notice of Default" to the Company or the Holders of at least 25% in aggregate principal amount of the Trust Debt Securities of that series at the time outstanding or, if that series of Trust Debt Securities is held by a Trust, the holders of at least 25% in aggregate liquidation amount of

the outstanding Preferred Trust Securities of that Trust provide a “Notice of Default” to the Company and the Trustee and (ii) the Company does not cure such Default within the time specified in clause (2) above after receipt of such notice. Any such notice must specify the Default, demand that it be remedied and state that such notice is a “Notice of Default.”

#### **6.02 Acceleration.**

If any Event of Default with respect to the Trust Debt Securities of any series other than an Event of Default under clause (3) or (4) of Section 6.01 hereof occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of the Trust Debt Securities of that series then outstanding may declare the principal of all the Trust Debt Securities of that series due and payable, provided that in the case of a series of Trust Debt Securities then held by a Trust, if upon an Event of Default with respect to the Trust Debt Securities of that series the Trustee has or the Holders of at least 25% in aggregate principal amount of the Trust Debt Securities of that series have failed to declare the principal of the Trust Debt Securities of that series to be immediately due and payable, the holders of at least 25% in aggregate liquidation amount of the outstanding Preferred Trust Securities of that Trust shall have such right by a notice in writing to the Company and the Trustee. If an Event of Default specified in clause (3) or (4) of Section 6.01 hereof occurs, the principal of and interest on all the Trust Debt Securities shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holders. Upon such an acceleration, such principal, together with all interest accrued thereon, shall be due and payable immediately.

The Holders of a majority in aggregate principal amount of the Trust Debt Securities of that series at the time outstanding, in each case, by notice to the Trustee, may rescind such an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default with respect to such series of Trust Debt Securities have been cured or waived except nonpayment of principal or interest that has become due solely because of acceleration, provided that if the principal of a series of Trust Debt Securities has been declared due and payable by the holders of the Preferred Series of a Trust, no rescission of acceleration will be effective unless consented to by the holders of a majority in aggregate liquidation amount of the Preferred Trust Securities of that Trust. No such rescission shall affect any subsequent Default or impair any right consequent thereto.

#### **6.03 Other Remedies.**

If an Event of Default occurs and is continuing, the Trustee may, in its own name or as trustee of an express trust, institute, pursue and prosecute any proceeding, including, without limitation, any action at law or suit in equity or other judicial or administrative proceeding to collect the payment of principal of or premium, if any, or interest on the Trust Debt Securities of the series that is in default, to enforce the performance of any provision of the Trust Debt Securities of that series or this Indenture or to obtain any other available remedy.

The Trustee may maintain a proceeding even if it does not possess any of the Trust Debt Securities or does not produce any of the Trust Debt Securities in the proceeding. A delay or omission by the Trustee, any Holder or the holders of Preferred Trust Securities in exercising any right or remedy accruing upon an Event of Default shall not impair such right or remedy or

constitute a waiver of, or acquiescence in, such Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

#### **6.04 Waiver of Past Defaults.**

If a Default or Event of Default with respect to a series of Trust Debt Securities has occurred and is continuing, the Holders of a majority in aggregate principal amount of the Trust Debt Securities of that series at the time outstanding, or, if that series of Trust Debt Securities is held by a Trust, the holders of a majority in aggregate liquidation amount of the Preferred Trust Securities of that Trust, in each case by notice to the Trustee and the Company, may waive an existing Default or Event of Default and its consequences except a Default or Event of Default in the payment of the principal of or premium, if any, or interest on any Trust Debt Security of that series. When a Default or Event of Default is waived, it is deemed cured and shall cease to exist, but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any consequent right.

#### **6.05 Control by Majority.**

The Holders of a majority in aggregate principal amount of the Trust Debt Securities of each series affected or, if that series of Trust Debt Securities is held by a Trust, the holders of a majority in aggregate liquidation amount of the Preferred Trust Securities of that Trust, may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines in good faith is unduly prejudicial to the rights of other Holders or may involve the Trustee in personal liability. The Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, including withholding notice to the Holders of the Trust Debt Securities of continuing default (except in the payment of the principal of (other than any mandatory sinking fund payment) or premium, if any, or interest on any Trust Debt Securities) if the Trustee considers it in the interest of the Holders of the Trust Debt Securities to do so.

#### **6.06 Limitation on Suits.**

Except as provided in Section 6.07 hereof, no holder of Trust Debt Securities or holder of Preferred Trust Securities of the Trust which is the Holder of that series of Trust Debt Securities may pursue any remedy with respect to this Indenture or the Trust Debt Securities unless:

- (1) the Holders of Trust Debt Securities or the holders of such Preferred Trust Securities give to the Trustee written notice stating that an Event of Default with respect to the corresponding Trust Debt Securities is continuing;
- (2) the Holders of at least 25% in aggregate principal amount of the Trust Debt Securities of that series or the holders of at least 25% in aggregate liquidation amount of such Preferred Trust Securities make a written request to the Trustee to pursue a remedy;



(3) the Holders of Trust Debt Securities or the holders of such Preferred Trust Securities provide to the Trustee reasonable security and indemnity 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 notice, the request and the offer of security and indemnity; and

(5) during such 60 day period, the Holders of a majority in aggregate principal amount of the Trust Debt Securities of that series or the holders of a majority in aggregate liquidation amount of such Preferred Trust Securities do not give the Trustee a direction inconsistent with the request.

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

#### **6.07 Rights of Holders to Receive Payment.**

Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of the principal of and premium (if any) or interest on the Trust Debt Securities held by such Holder, on or after the respective due dates expressed in the Trust Debt Securities (in the case of interest, as the same may be extended pursuant to Section 4.01(b) hereof) or any Redemption Date, is absolute and unconditional and such right and the right to bring suit for the enforcement of any such payment on or after such respective dates shall not be impaired or affected adversely without the consent of such Holder. If the Trust Debt Securities of a series are then held by a Trust, each holder of Preferred Trust Securities of such Trust shall have the right to bring suit for the enforcement of any payment due in respect of Trust Debt Securities of such series based on a principal amount thereof equal to the aggregate liquidation amount of the Preferred Trust Securities of such holder.

#### **6.08 Collection Suit by Trustee.**

If an Event of Default described in Section 6.01(1) hereof occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company or any obligor on the Trust Debt Securities for the whole amount owing with respect to the Trust Debt Securities and the amounts provided for in Section 7.07 hereof.

#### **6.09 Trustee May File Proofs of Claim.**

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or its properties or assets, the Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise:

(1) to file and prove a claim for the whole amount of the principal of and premium, if any, and interest on the Trust Debt Securities and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and

advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceeding; and

(2) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any 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 the Trustee any amount due 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 hereof.

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 Trust Debt Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

#### **6.10 Priorities.**

If the Trustee collects any money pursuant to this Article 6, it shall, subject to Article 10 hereof, pay out the money in the following order:

- First: to the Trustee for amounts due under Section 7.07 hereof;
- Second: to Holders of Trust Debt Securities of the particular series in respect of which or for the benefit of which such money has been collected for amounts due and unpaid on such Trust Debt Securities for the principal amount, Redemption Price or interest, if any, as the case may be, ratably, without preference or priority of any kind, according to such amounts due and payable on such Trust Debt Securities; and
- Third: the balance, if any, to the Company.

Except as otherwise set forth in the Trust Debt Securities, the Trustee may fix a Record Date and payment date for any payment to Holders pursuant to this Section 6.10.

#### **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 Trustee, a court in its discretion may require the filing by any party litigant (other than the Trustee) 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 and expenses, 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 Company, the Trustee, a suit by a Holder of Trust Debt Securities or holder of Preferred Trust Securities pursuant to Section 6.07 hereof or a suit by Holders of Trust Debt Securities of more than 10% in aggregate principal amount of the Trust Debt Securities of any series or, if a series of Trust Debt Securities is held by a Trust, the holders of more than 10% in aggregate liquidation amount of the Preferred Trust Securities of that Trust.

## **6.12 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 or other law wherever enacted, now or at any time hereafter in force, that would prohibit or forgive the Company from paying all or any portion of the principal of or premium, if any, or interest on the Trust Debt Securities as contemplated herein or affect the covenants or the performance by the Company of its obligations under this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

## **ARTICLE VII TRUSTEE**

### **7.01 Duties of Trustee.**

(a) If an Event of Default occurs and is continuing with respect to the Trust Debt Securities of any series, the Trustee shall exercise the rights and powers vested in it by this Indenture with respect to that series and use the same degree of care and skill in its 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 Trust Debt Securities of any series, (i) the Trustee need perform only those duties with respect to that series that are specifically set forth in this Indenture or the TIA and no implied covenants or obligations shall be read into the Indenture against the Trustee; and (ii) 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, in the case of any certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

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

(i) this Section 7.01(c) does not limit the effect of Section 7.01(b) hereof;

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

(iii) 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 hereof.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to Section 7.01(a), (b), (c) and (e) and Section 7.02 hereof.

(e) The Trustee may refuse to perform any duty or exercise any right or power or extend or risk its own funds or otherwise incur any financial liability unless it receives security and indemnity reasonably satisfactory to it against any loss, liability or expense (including reasonable counsel fees).

(f) Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. Except as otherwise provided in Section 3.05 and Section 8.01 hereof, the Trustee shall not be liable for interest on any money held by it hereunder.

## **7.02 Rights of Trustee.**

(a) The Trustee may conclusively rely on any document (whether in original or facsimile form) reasonably 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 an Officer's Certificate and, if appropriate, an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate and Opinion of Counsel.

(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 reasonably believes to be authorized or within its rights or powers.

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

(f) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee reasonable security and indemnity satisfactory to it against the costs, expenses and liabilities (including reasonable counsel fees) which might be incurred by it in compliance with such request or direction.

(g) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company upon ten Business

Days advance written notice and during regular business hours and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(h) 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.

(i) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities and this Indenture.

(j) 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 each agent, custodian and other Person employed to act hereunder.

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

### **7.03 Individual Rights of Trustee.**

The Trustee in its individual or any other capacity may become the owner or pledgee of Trust Debt Securities and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent, Registrar or co-registrar may do the same with like rights. However, the Trustee must comply with Sections 7.10 and 7.11 hereof.

### **7.04 Trustee's Disclaimer.**

The recitals contained herein and in the Trust Debt Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representation as to the validity or sufficiency of this Indenture or of the Trust Debt Securities. The Trustee shall not be accountable for the use or application by the Company of the Trust Debt Securities or the proceeds thereof.

### **7.05 Notice of Defaults.**

If a Default occurs and is continuing with respect to the Trust Debt Securities of any series and if it is known to the Trustee, the Trustee shall mail to each Holder of a Trust Debt Security of that series notice of the Default within 90 days after it becomes known to the Trustee unless such Default shall have been cured or waived. Except in the case of a Default described in Section 6.01(1) hereof, the Trustee may withhold such notice if and so long as a committee of

its Trust Officers in good faith determines that the withholding of such notice is in the interests of the Holders of the Trust Debt Securities of that series. The Trustee shall not be charged with knowledge of any Default (except in the case of a Default under Section 6.01(1) hereof) unless a Responsible Officer assigned to the Corporate Trust Department of the Trustee shall have actual knowledge of the Default. The second sentence of this Section 7.05 shall be in lieu of the proviso to TIA Section 315(b). Said proviso is hereby expressly excluded from this Indenture, as permitted by the TIA.

#### **7.06 Reports by Trustee to Holders.**

Within 60 days after each May 15, beginning with the May 15 next following the date of this Indenture, the Trustee shall mail to each Holder, and such other holders that have submitted their names to the Trustee for such purpose, a brief report dated as of such May 15 in accordance with and to the extent required under TIA Section 313.

A copy of each report at the time of its mailing to Holders shall be filed with the Company, the SEC and any securities exchange on which the Trust Debt Securities are listed. The Company agrees to promptly notify the Trustee whenever the Trust Debt Securities become listed on any securities exchange and of any listing thereof.

#### **7.07 Compensation and Indemnity.**

The Company agrees:

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

(2) to reimburse the Trustee upon its request for reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses, and advances of its agents and counsel, provided that prior to any Event of Default, the Trustee shall only have one counsel), including all reasonable expenses and advances incurred or made by the Trustee in connection with any Event of Default or any membership on any creditors' committee, except any such expense or advance as may be caused by its own negligence or willful misconduct; and

(3) to indemnify the Trustee, its officers, directors and shareholders, for, and to hold it harmless against, any and all loss, claim, damage, liability or expense, including taxes (other than taxes based upon the income of the Trustee), incurred without negligence or willful misconduct on its part, arising out of or in connection with the acceptance or administration of this Trust, including the costs and expenses of defending itself against any claim (whether asserted by the Company, any Holder or any other person) or liability in connection with the exercise or performance of any of its powers or duties hereunder.

Before, after or during an Event of Default with respect to the Trust Debt Securities of a series, the Trustee shall have a claim and lien prior to the Trust Debt Securities of that series as to all property and funds held by it hereunder for any amount owing it for its fees and expenses or any predecessor Trustee pursuant to this Section 7.07, except with respect to funds held by the Trustee or any Paying Agent in trust for the payment of principal of or premium, if any, or interest on particular Trust Debt Securities pursuant to Section 2.06 or Section 8.01 hereof.

The Company's obligations pursuant to this Section 7.07 are not subject to Article 10 of this Indenture and shall survive the discharge of this Indenture and the removal or resignation of the Trustee. When the Trustee renders services or incurs expenses after the occurrence of a Default specified in Section 6.01 hereof, the compensation for services and expenses are intended to constitute expenses of administration under any Bankruptcy Law.

#### **7.08 Replacement of Trustee.**

The Trustee may resign at any time, by so notifying the Company in writing at least 30 days prior to the date of the proposed resignation; provided, however, no such resignation shall be effective until a successor Trustee has accepted its appointment pursuant to this Section 7.08. The Holders of at least a majority in aggregate principal amount of the Trust Debt Securities at the time outstanding may remove the Trustee by so notifying the Trustee in writing and may appoint a successor Trustee, which shall be subject to the consent of the Company unless an Event of Default has occurred and is continuing. The Trustee shall resign if:

- (1) the Trustee fails to comply with Section 7.10 hereof;
- (2) the Trustee is adjudged bankrupt or insolvent;
- (3) a receiver 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, the Company shall promptly appoint a successor Trustee. A 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 Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. Subject to payment of all amounts owing to the Trustee under Section 7.07 hereof and subject further to its lien under Section 7.07, the retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee. If a successor Trustee does not take office within one year after the retiring Trustee resigns or is removed, the retiring Trustee (at the expense of the Company), the Company or the Holders of at least a majority in aggregate principal amount of the Trust Debt Securities at the time outstanding may petition any court of competent jurisdiction for the appointment of a successor Trustee.

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

#### **7.09 Successor Trustee by Merger.**

If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to another corporation, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee.

#### **7.10 Eligibility: Disqualification.**

The Trustee shall at all times satisfy the requirements of TIA Sections 310(a)(1) and 310(a)(2). The Trustee (or any Affiliate thereof which has unconditionally guaranteed the obligations of the Trustee hereunder) shall have a combined capital and surplus of at least \$50,000,000 as set forth in its most recently published annual report of condition. The Trustee shall comply with TIA Section 310(b). In determining whether the Trustee has conflicting interests as defined in TIA Section 310(b)(1), the provisions contained in the proviso to TIA Section 310(b)(1) and the Trustee's Statement of Eligibility on Form T-1 shall be deemed incorporated herein.

#### **7.11 Preferential Collection of Claims Against Company.**

If and when the Trustee shall be or become a creditor of the Company, the Trustee shall be subject to the provisions of the TIA regarding the collection of claims against the Company.

### **ARTICLE VIII SATISFACTION AND DISCHARGE OF INDENTURE; DEFEASANCE OF CERTAIN OBLIGATIONS; UNCLAIMED MONEYS**

#### **8.01 Satisfaction and Discharge of Indenture.**

The Company shall be deemed to have paid and discharged the entire indebtedness on any series of the Trust Debt Securities outstanding on the date the Company has irrevocably deposited or caused to be irrevocably deposited with the Trustee or any Paying Agent as trust funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of the Trust Debt Securities of such series (1) cash (which may be held in an interest bearing account insured by the Federal Deposit Insurance Corporation) in an amount, or (2) U.S. Government Obligations, maturing as to principal and interest at such times and in such amounts as will ensure the availability of cash, or (3) a combination thereof, sufficient to pay the principal of and premium, if any, and interest on all Trust Debt Securities of such series then outstanding on the scheduled due dates therefor, provided that the following conditions shall have been met:

(A) no Default or Event of Default with respect to the Trust Debt Securities of such series has occurred and is continuing on the date of such deposit or occurs as a result of such deposit;

(B) the Company has delivered to the Trustee an Officer's Certificate certifying that there does not exist (i) a default in the payment of all or any portion of any Senior Indebtedness or (ii) any other default affecting Senior Indebtedness permitting its acceleration as the result of which the maturity of Senior Indebtedness has been accelerated;



(C) the Company has delivered to the Trustee (i) either a private Internal Revenue Service ruling or an Opinion of Counsel to the effect that, based on a change in law occurring after the execution of this Indenture, the Holders of the Trust Debt Securities 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 manner and at the same times as would have been the case if such deposit, defeasance and discharge had not occurred, and (ii) an Opinion of Counsel to the effect that (A) the deposit shall not result in the Company, the Trustee or, if the Trust Debt Securities of such series are held by a Trust, such Trust being deemed to be an “investment company” under the Investment Company Act of 1940, as amended, and (B) such deposit creates a valid trust in which the Holders of the Trust Debt Securities of such series have the sole beneficial interest or that the Holders of the Trust Debt Securities of such series have a nonavoidable first priority security interest in such trust; and

(D) the Company has delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the defeasance contemplated by this provision have been complied with.

Upon such deposit, provisions of this Indenture with respect to such series of Trust Debt Securities shall no longer be in effect (except as to (1) the rights of registration of transfer and exchange of Trust Debt Securities of such series, (2) the replacement of apparently mutilated, defaced, destroyed, lost or stolen Trust Debt Securities of such series, (3) the rights of the Holders of the Trust Debt Securities of such series to receive payments of the principal thereof and premium, if any, and interest thereon, (4) the rights of the Holders of the Trust Debt Securities of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them, (5) the obligation of the Company to maintain an office or agency for payments on and registration of transfer of the Trust Debt Securities of such series, (6) the rights, obligations and immunities of the Trustee hereunder, and (7) the obligations of the Company to the Trustee for compensation and indemnity under Section 7.07 hereof), and the Trustee shall, at the request and expense of the Company, execute proper instruments acknowledging the same.

#### **8.02 Application by Trustee of Funds Deposited for Payment of Trust Debt Securities.**

Subject to Section 8.04 hereof, all moneys deposited with the Trustee pursuant to Section 8.01 hereof 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 Trust Debt Securities of the 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.

**8.03 Repayment of Moneys Held by Paying Agent.**

In connection with the satisfaction and discharge of this Indenture, all moneys then held by any Paying Agent under this Indenture 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.

**8.04 Return of Moneys Held by the Trustee and Paying Agent Unclaimed for Three Years.**

Any moneys deposited with or paid to the Trustee or any Paying Agent for the payment of the principal of and premium, if any, or interest on the Trust Debt Securities of any series and not applied but remaining unclaimed for three years after the date when such principal, premium, if any, or interest shall have become due and payable shall, unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property law, be repaid to the Company by the Trustee or such Paying Agent, and the Holders of such Trust Debt Securities 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.

**8.05 Reinstatement.**

If the Trustee or Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with 8.01 hereof with respect to the Trust Debt Securities of any series by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Trust Debt Securities of such series shall be revived and reinstated as though no deposit had occurred pursuant to this Article 8 until such time as the Trustee or Paying Agent is permitted to apply all such money and U.S. Government Obligations in accordance with Section 8.01 hereof; provided, however, that if the Company has made any payment of principal of or premium, if any, or accrued interest on the Trust Debt Securities of such series because of the reinstatement of their obligations, the Company shall be subrogated to the rights of the Holders thereof to receive such payment from the money and U.S. Government Obligations held by the Trustee or Paying Agent.

**ARTICLE IX  
AMENDMENTS**

**9.01 Without Consent of Holders.**

From time to time, when authorized by a resolution of the Board of Directors, the Company and the Trustee, without notice to or the consent of any Holders of the Trust Debt Securities, may amend or supplement this Indenture:

- (1) to cure any ambiguity, defect or inconsistency;
- (2) to comply with Article 5 hereof;

- (3) to provide for uncertificated Trust Debt Securities in addition to or in place of certificated Trust Debt Securities;
- (4) to make any other change that does not in the reasonable judgment of the Company adversely affect the rights of any Holder;
- (5) to comply with any requirement of the SEC in connection with the qualification of this Indenture under the TIA; or
- (6) to set forth the terms and conditions, which shall not be inconsistent with this Indenture, of any series of Trust Debt Securities (other than the Series II Trust Debt Securities) that are to be issued hereunder and the form of Trust Debt Securities of such series.

**9.02 With Consent of Holders.**

The Company and the Trustee may amend this Indenture in any manner not permitted by Section 9.01 hereof or may waive future compliance by the Company with any provisions of this Indenture with the consent of the Holders of a majority in aggregate principal amount of the Trust Debt Securities of each series affected thereby. Such an amendment or waiver may not, without the consent of each Holder of the Trust Debt Securities affected thereby:

- (1) reduce the principal amount of such Trust Debt Securities;
- (2) reduce the principal amount of such Trust Debt Securities the Holders of which must consent to an amendment of this Indenture or a waiver;
- (3) change the stated maturity of the principal of or the interest on or rate of interest on such Trust Debt Securities or the manner of calculation thereof;
- (4) change adversely to the Holders the redemption provisions of Article 3 hereof;
- (5) change the currency in respect of which the payments on such Trust Debt Securities are to be made;
- (6) make any change in Article 10 hereof that adversely affects the rights of the Holders of the Trust Debt Securities or any change to any other Section hereof that adversely affects their rights under Article 10 hereof; or
- (7) change Section 6.07 hereof;

provided that, in the case of the outstanding Trust Debt Securities of a series then held by a Trust, no such amendment shall be made that adversely affects the holders of the Preferred Trust Securities of that Trust, and no waiver of any Event of Default with respect to the Trust Debt Securities of that series or compliance with any covenant under this Indenture shall be effective, without the prior consent of the holders of a majority of the aggregate liquidation amount of the

outstanding Preferred Trust Securities of that Trust or the holder of each such Preferred Trust Security, as applicable.

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

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

If certain Holders agree to defer or waive certain obligations of the Company hereunder with respect to Trust Debt Securities held by them, such deferral or waiver shall not affect the rights of any other Holder to receive the payment or performance required hereunder in a timely manner.

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

### **9.03 Compliance with Trust Indenture Act.**

Every supplemental indenture executed pursuant to this Article 9 shall comply with the TIA.

### **9.04 Revocation and Effect of Consents; Waivers and Actions.**

Until an amendment, waiver or other action by Holders becomes effective, a consent to it or any other action by a Holder of a Trust Debt Security hereunder is a continuing consent by the Holder and every subsequent Holder of that Trust Debt Security or portion of the Trust Debt Security that evidences the same obligation as the consenting Holder's Trust Debt Security, even if notation of the consent, waiver or action is not made on such Trust Debt Security. However, any such Holder or subsequent Holder may revoke the consent, waiver or action as to such Holder's Trust Debt Security or portion of the Trust Debt Security if the Trustee receives the notice of revocation before the consent of the requisite aggregate principal amount of such Trust Debt Securities then outstanding has been obtained and not revoked. After an amendment, waiver or action becomes effective, it shall bind every Holder of the Trust Debt Securities of the related series, except as provided in Section 9.02 hereof.

The Company may, but shall not be obligated to, fix a Record Date for the purpose of determining the Persons entitled to consent to any amendment or waiver. If a Record Date is fixed, then, notwithstanding the first two sentences of the immediately preceding paragraph, only Holders of Trust Debt Securities or holders of Preferred Trust Securities, as applicable, on 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 such after such Record Date. No such consent shall be valid or effective for more than 90 days after such Record Date.

**9.05 Notation on or Exchange of Trust Debt Securities.**

Trust Debt Securities of the related series authenticated and made available for delivery after the execution of any supplemental indenture pursuant to this Article 9 may, and shall, if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Trust Debt Securities so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any such supplemental indenture may be prepared and executed by the Company and authenticated and made available for delivery by the Trustee in exchange for outstanding Trust Debt Securities.

**9.06 Trustee to Execute Supplemental Indentures.**

The Trustee shall execute any supplemental indenture authorized pursuant to this Article 9 if the supplemental indenture does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, but need not, execute it. In executing such supplemental indenture the Trustee shall be provided with, and shall be fully protected in relying upon, an Officer's Certificate and Opinion of Counsel stating that such supplemental indenture is authorized or permitted by this Indenture.

**9.07 Effect of Supplemental Indentures.**

Upon the execution of any supplemental indenture under this Article 9, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes and every Holder of Trust Debt Securities of the related series theretofore or thereafter authenticated and made available for delivery hereunder shall be bound thereby.

**ARTICLE X  
SUBORDINATION**

**10.01 Applicability of Article; Trust Debt Securities Subordinated to Senior Indebtedness.**

(a) The provision of this Article 10 shall be applicable to each series of Trust Debt Securities unless the Trust Debt Securities of such series provide otherwise.

(b) If not otherwise provided with respect to the Trust Debt Securities of such series, then notwithstanding the provisions of Section 6.10 hereof or any other provision herein or in any Trust Debt Security, the Company and the Trustee and, by their acceptance thereof, the Holders of the Trust Debt Securities (i) covenant and agree that all payments by the Company of the principal of and premium, if any, and interest on the Trust Debt Securities (other than Trust Debt Securities which have been discharged pursuant to Article 8) shall be subordinated in accordance with the provisions of this Article 10 to the prior payment in full, in cash or cash

equivalents, of all amounts payable on, under or in connection with Senior Indebtedness, and (ii) acknowledge that holders of Senior Indebtedness are or shall be relying on this Article 10.

#### **10.02 Priority and Payment of Proceeds in Certain Events: Remedies Standstill.**

(a) Upon any payment or distribution of assets or securities of the Company, as the case may be, of any kind or character, whether in cash, property or securities, upon any dissolution or winding up or total or partial liquidation or reorganization of the Company, whether voluntary or involuntary, or in bankruptcy, insolvency, receivership or other proceedings, all amounts payable on, under or in connection with Senior Indebtedness (including any interest accruing on such Senior Indebtedness subsequent to the commencement of a bankruptcy, insolvency or similar proceeding) shall first be paid in full in cash, or payment provided for in cash or cash equivalents, before the Holders or the Trustee on behalf of the Holders or the holders of Preferred Trust Securities shall be entitled to receive from the Company any payment of principal of or premium, if any, or interest on the Trust Debt Securities or distribution of any assets or securities.

(b) No direct or indirect payment by or on behalf of the Company of principal of or premium, if any, or interest on the Trust Debt Securities (other than Trust Debt Securities which have been discharged pursuant to Article 8), whether pursuant to the terms of the Trust Debt Securities or upon acceleration or otherwise, shall be made if, any the time of such payment, there exists (i) a default in the payment of all or any portion of any Senior Indebtedness and the Trustee has received written notice thereof from the Company, from holders of Senior Indebtedness or from any trustee, representative or agent therefor, or (ii) any other default affecting Senior Indebtedness, as a result of which the maturity of Senior Indebtedness has been accelerated and the Trustee has received written notice from the Company, from holders of Senior Indebtedness or from any trustee, representative or agent therefor, and such default shall not have been cured or waived by or on behalf of the holders of such Senior Indebtedness.

(c) If, notwithstanding the foregoing provisions prohibiting such payment or distribution, the Trustee or any Holder shall have received any payment on account of the principal of or premium, if any, or interest on the Trust Debt Securities when such payment is prohibited by this Section 10.02 and before all amounts payable on, under or in connection with Senior Indebtedness are paid in full in cash or cash equivalents, then and in such event (subject to the provisions of Section 10.08 hereof) such payment or distribution shall be received and held in trust for the holders of Senior Indebtedness and, at the written direction of the trustee, representative or agent for the holders of the Senior Indebtedness, shall be paid to the holders of the Senior Indebtedness remaining unpaid to the extent necessary to pay such Senior Indebtedness in full in cash or cash equivalents.

Upon any payment or distribution of assets or securities referred to in this Article 10, the Trustee and the Holders shall be entitled to rely upon any order or decree of a court of competent jurisdiction in which such dissolution, winding up, liquidation or reorganization proceedings are pending, and upon a certificate of the receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making any such payment or distribution, delivered to the Trustee for the purpose of ascertaining the Persons entitled to participate in such distribution, the holders of Senior

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 10.

**10.03 Payments which May Be Made Prior to Notice.**

Nothing in this Article 10 or elsewhere in this Indenture shall prevent (i) the Company, except under the conditions described in Section 10.02 hereof, from making payments of principal of or premium, if any, or interest on the Trust Debt Securities or from depositing with the Trustee any monies for such payments, or (ii) the application by the Trustee of any monies deposited with it for the purpose of making such payments of principal of or premium, if any, or interest on the Trust Debt Securities, to the Holders entitled thereto, unless at least one Business Day prior to the date when such payment would otherwise (except for the prohibitions contained in Section 10.02 hereof) become due and payable the Trustee shall have received the written notice provided for in Section 10.02(b)(i) or (ii) hereof.

**10.04 Rights of Holders of Senior Indebtedness Not to Be Impaired.**

No right of any present or future holder of any Senior Indebtedness to enforce subordination as herein provided shall at any time or in any way be prejudiced or impaired by any act or failure to act in good faith by any such holder, or by any noncompliance by the Company with the terms and provisions and covenants herein regardless of any knowledge thereof any such holder may have or otherwise be charged with.

The provisions of this Article 10 are intended to be for the benefit of, and shall be enforceable directly by, the holders of Senior Indebtedness. Notwithstanding anything to the contrary in this Article 10, to the extent any Holders or the Trustee have paid over or delivered to any holder of Senior Indebtedness any payment or distribution received on account of the principal of or premium (if any) or interest on the Trust Debt Securities to which any other holder of Senior Indebtedness shall be entitled to share in accordance with Section 10.02 hereof, no holder of Senior Indebtedness shall have a claim or right against any Holders or the Trustee with respect to any such payment or distribution or as a result of the failure to make payments or distributions to such other holder of Senior Indebtedness.

**10.05 Trustee May Take Action to Effectuate Subordination.**

Each Holder of a Trust Debt Security, by his acceptance thereof, authorizes and directs the Trustee on his behalf to take such action as may be required by the trustee, representative or agent for holders of Senior Indebtedness or by the Company to effectuate, as between the holders of Senior Indebtedness and the Holders, the subordination as provided in this Article 10 and appoints the Trustee his attorney-in-fact for any and all such purposes.

**10.06 Subrogation.**

Upon the payment in full, in cash or cash equivalents, of all Senior Indebtedness, any Holder shall be subrogated to the rights of the holders of such Senior Indebtedness to receive payments or distributions of assets of the Company made on such Senior Indebtedness until the Trust Debt Securities shall be paid in full; and for the purposes of such subrogation, no payments or distributions to holders of such Senior Indebtedness of any cash property or securities to

which such Holders of the Trust Debt Securities would be entitled except for this Article 10, and no payment pursuant to this Article 10 to holders of such Senior Indebtedness by such Holders of the Trust Debt Securities, shall, as between the Company, its creditors other than holders of such Senior Indebtedness and such Holders of the Trust Debt Securities, be deemed to be a payment by the Company to or on account of such Senior Indebtedness, it being understood that the provisions of this Article 10 are solely for the purpose of defining the relative rights of the holders of such Senior Indebtedness, on the one hand, and such Holders of the Trust Debt Securities, on the other hand.

If any payment or distribution to which Holders of Trust Debt Securities would otherwise have been entitled but for the provisions of this Article 10 shall have been applied, pursuant to this Article 10, to the payment of all Senior Indebtedness then and in such case such Holders of the Trust Debt Securities shall be entitled to receive from the holders of such Senior Indebtedness at the time outstanding any payments or distributions received by such holders of Senior Indebtedness in excess of the amount sufficient to pay, in cash or cash equivalents, all such Senior Indebtedness in full.

**10.07 Obligations of Company Unconditional; Reinstatement.**

Nothing in this Article 10 or elsewhere in this Indenture or in any Trust Debt Security is intended to or shall impair, as between the Company and Holders of the Trust Debt Securities, the obligations of the Company, which are absolute and unconditional, to pay to such Holders the principal of and premium, if any, and interest on the Trust Debt Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of such Holders of the Trust Debt Securities 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 of Trust Debt Securities or holder of Preferred Trust Securities, as applicable, from exercising all remedies otherwise permitted by applicable law under this Indenture, subject to the rights, if any, under this Article 10 of the holders of such Senior Indebtedness in respect of cash, property or securities of the Company received upon the exercise of any such remedy.

The failure to make a scheduled payment of principal of or premium, if any, or interest on the Trust Debt Securities by reason of Section 10.02 hereof shall not be construed as preventing the occurrence of an Event of Default under Section 6.01 hereof; provided, however, that if (i) the conditions preventing the making of such payment no longer exist, and (ii) such Holders of the Trust Debt Securities are made whole with respect to such omitted payments, the Event of Default relating thereto (including any failure to pay any accelerated amounts) shall be automatically waived, and the provisions of the Indenture shall be reinstated as if no such Event of Default had occurred.

**10.08 Trustee Entitled to Assume Payments Not Prohibited in Absence of Notice.**

The Trustee or Paying Agent shall not be charged with the knowledge of the existence of any default in the payment of all or a portion of any Senior Indebtedness or any other default affecting Senior Indebtedness, as a result of which the maturity of the Senior Indebtedness has



been accelerated, unless and until the Trustee or Paying Agent shall have received written notice thereof from the Company or one or more holders of Senior Indebtedness or from any trustee, representative or agent therefor or unless the Trustee or Paying Agent otherwise had actual knowledge thereof; and, prior to the receipt of any such written notice or actual knowledge of a Responsible Officer in the Corporate Trust Department of the Trustee or Paying Agent, the Trustee or Paying Agent may conclusively assume that no such facts exist.

Unless at least one Business Day prior to the date when by the terms of this Indenture any monies are to be deposited by the Company with the Trustee or any Paying Agent for any purpose (including, without limitation, the payment of the principal of or premium, if any, or interest on any Trust Debt Security), the Trustee or Paying Agent shall have received with respect to such monies the notice provided for in Section 10.02 hereof or a Responsible Officer in the Corporate Trust Department of the Trustee or Paying Agent shall have actual knowledge of default in the payment of all or a portion of any Senior Indebtedness or any other default affecting Senior Indebtedness as the result of which the maturity of the Senior Indebtedness has been accelerated, the Trustee or Paying Agent shall have full power and authority to receive and apply such monies to the purpose for which they were received. Neither of them shall be affected by any notice to the contrary, which may be received by either on or after such date. The foregoing shall not apply to the Paying Agent if the Company is acting as Paying Agent. Nothing in this Section 10.08 shall limit the right of the holders of Senior Indebtedness to recover payments as contemplated by Section 10.02 hereof. The Trustee or Paying Agent shall be entitled to conclusively rely on the delivery to it of a written notice by a Person representing himself or itself to be a holder of such Senior Indebtedness (or a trustee, representative or agent on behalf of such holder) to establish that such notice has been given by a holder of such Senior Indebtedness or a trustee, representative or agent on behalf of any such holder. The Trustee shall not be deemed to have any duty to the holders (and shall be fully protected in relying upon such notice) of Senior Indebtedness.

**10.09 Right of Trustee to Hold Senior Indebtedness.**

The Trustee and any Paying Agent shall be entitled to all of the rights set forth in this Article 10 in respect of any Senior Indebtedness at any time held by them to the same extent as any other holder of such Senior Indebtedness, and nothing in this Indenture shall be construed to deprive the Trustee or any Paying Agent of any of its rights as such holder.

**10.10 Trustee Not Fiduciary for Holders of Senior Indebtedness.**

The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness and, to the extent permitted by applicable law, shall not be liable to any such holders if the Trustee shall in good faith mistakenly pay over or distribute to Holders of Securities or to the Company or to any other person cash, property or securities to which any holders of Senior Indebtedness shall be entitled by virtue of this Article or otherwise. With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants or obligations as are specifically set forth in this Article and no implied covenants or obligations with respect to holders of Senior Indebtedness shall be read into this Indenture against the Trustee.

**ARTICLE XI  
MISCELLANEOUS**

**11.01 Trust Indenture Act Controls.**

If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by operation of subsection (c) of Section 318 of the TIA, the imposed duties shall control. The provisions of Sections 310 to 317, inclusive, of the TIA that impose duties on any Person (including provisions automatically deemed included in an indenture unless the indenture provides that such provisions are excluded) are a part of and govern this Indenture, except as, and to the extent, they are expressly excluded from this Indenture, as permitted by the TIA.

**11.02 Notices.**

Any notice, request or other communication required or permitted to be given hereunder shall be in writing and delivered, telecopied or mailed by first-class mail, postage prepaid, addressed as follows:

if to the Company:

Southwest Gas Corporation  
5241 Spring Mountain Road  
P.O. Box 98510  
Las Vegas, Nevada 89193-8510  
Facsimile No.: (702) 364-8542  
Attention: Treasurer

if to the Trustee:

BNY Midwest Trust Company  
2 North LaSalle Street, Suite 1020  
Chicago, Illinois 60602  
Facsimile No. (312) 827-8542  
Attention: Corporate Trust Department

The Company or the Trustee, by giving notice to the other, may designate additional or different addresses for subsequent notices of communications. The Company shall notify the holder, if any, of Senior Indebtedness of any such additional or different addresses of which the Company receives notice from the Trustee.

Any notice or communication given to a Holder shall be mailed or delivered to the Holder at the Holder's address as it appears on the Register of the Registrar and shall be sufficiently given if mailed within the time prescribed.

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, it is duly given, whether or not received by the addressee.

If the Company mails a notice or communication to the Holders, it shall mail a copy to the Trustee and each Registrar, Paying Agent or co-Registrar.

**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 Trust Debt Securities. The Company, the Trustee, the Registrar, the Paying Agent and anyone else shall have the protection of TIA Section 312(c).

**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 furnish to the Trustee:

(1) an Officer's Certificate (complying with Section 11.05 hereof) stating that, in the opinion of such Officer, all conditions precedent to the taking of such action have been complied with; and

(2) if appropriate, an Opinion of Counsel (complying with Section 11.05 hereof) stating that, in the opinion of such counsel all such conditions precedent to the taking of such action have been complied with.

**11.05 Statements Required in Certificate or Opinion.**

Each Officer's Certificate and Opinion of Counsel with respect to compliance with a covenant or condition provided for in this Indenture shall include:

(1) a statement that each Person making such Officer's Certificate or Opinion of Counsel 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 Officer's Certificate or Opinion of Counsel are based;

(3) a statement that, in the opinion of each such Person, such Person has made such examination or investigation as is necessary to enable such Person to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement that, in the opinion of such Person, such covenant or condition has been complied with; provided, however, that with respect to matters of fact not involving any legal conclusion, an Opinion of Counsel may rely on an Officer's Certificate or certificates of public officials.

**11.06 Severability Clause.**

If any provision in this Indenture or in the Trust Debt Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**11.07 Rules by Trustee, Paying Agent and Registrar.**

The Trustee may make reasonable rules for action by or a meeting of Holders. The Registrar and Paying Agent may make reasonable rules for their functions.

**11.08 Legal Holidays.**

If any specified date (including a date for giving notice) is a Legal Holiday, the action to be taken on such date shall be taken on the next succeeding day that is not a Legal Holiday, and if such action is a payment in respect of the Trust Debt Securities, unless otherwise specified pursuant to Section 2.01 hereof no principal, premium (if any) or interest installment shall accrue for the intervening period; except that if any interest payment is due on a Legal Holiday and the next succeeding day is in the next succeeding calendar year, such payment shall be made on the Business Day immediately preceding such Legal Holiday.

**11.09 Governing Law.**

This Indenture and the Trust Debt Securities shall be governed by and construed in accordance with the laws of the State of New York as applied to contracts made and performed within the State of New York, without regard to its principles of conflicts of laws.

**11.10 No Recourse Against Others.**

No director, officer, employee or stockholder, as such, of the Company shall have any liability for any obligations of the Company under the Trust Debt Securities or this Indenture or for any claim based on, in respect of or by reason of such obligations their creation. By accepting a Trust Debt Security, each Holder shall waive and release all such liability. The waiver and release shall be part of the consideration for the issue of the Trust Debt Securities.

**11.11 Successors.**

All agreements of the Company in this Indenture and Trust Debt Securities shall bind its successors and assigns. All agreements of the Trustee in this Indenture shall bind its successors and assigns.

**11.12 Multiple Original Copies of this Indenture.**

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. Any signed copy shall be sufficient proof of this Indenture.

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**11.13 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 subsidiary. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

**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.

**11.15 Benefits of Indenture.**

Except as otherwise expressly provided herein with respect to holders of Senior Indebtedness and holders of Preferred Trust Securities, nothing in this Indenture or in the Trust Debt Securities, express or implied, shall give to any person, other than the parties hereto and their successors hereunder and the Holders of the Trust Debt Securities, any benefit or any legal or equitable right, remedy or claim under this Indenture.

**SIGNATURES**

IN WITNESS WHEREOF, the undersigned, being duly authorized, have executed this Indenture on behalf of the respective parties hereto as of the date first above written.

SOUTHWEST GAS CORPORATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

BNY MIDWEST TRUST COMPANY, as Trustee

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit A**

**SOUTHWEST GAS CORPORATION**  
**7.70% Junior Subordinated Debenture due 2043**

No. \_\_\_\_\_

IF THE TRUST DEBT SECURITY IS TO BE A GLOBAL TRUST DEBT SECURITY, INSERT—This Trust Debt Security is a global Trust Debt Security within the meaning of the Indenture hereinafter referred to and is registered in the name of a Depository or a nominee of a Depository. This Trust Debt Security is exchangeable for global Trust Debt Securities registered in the name of a person other than the Depository or its nominee only in the limited circumstances described in the Indenture, and no transfer of this Trust Debt Security (other than a transfer of this Trust Debt Security as a whole by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository) may be registered except in limited circumstances. Every Trust Debt Security delivered upon registration of transfer of, or in exchange for, or in lieu of, this global Trust Debt Security shall be a global Trust Debt Security, subject to the foregoing, except in the limited circumstances described above.

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), to the issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as requested by an authorized representative of DTC (or to such other entity as is requested by an authorized representative of DTC) and any payment is made to Cede & Co. (or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.)

Southwest Gas Corporation, a California corporation (the “Company”, which term includes any successor company under the Indenture hereinafter referred to), for value received, hereby promises to pay to BNY Midwest Trust Company, as Property Trustee for Southwest Gas Capital II, or registered assigns, the principal sum of 103,100,000 Dollars on September 15, 2043, and to pay interest on said principal sum from August 25, 2003 or from the most recent Interest Payment Date (as defined below) to which interest has been paid or duly provided for, quarterly in arrears on March 31, June 30, September 30 and December 31 of each year, commencing September 30, 2003 (each, an “Interest Payment Date”) at a rate equal to 7.70% per annum until the principal hereof shall have become due and payable, and on any overdue principal and (to the extent that payment of such interest is enforceable under applicable law) on any overdue installment of interest at the same rate per annum. During any time that Property Trustee II is the holder of this Trust Debt Security, the Company shall pay such additional amounts as may be necessary in order that the Distribution (as defined in the Trust II Agreement) then due and payable by Trust II on its Preferred Trust Securities shall not be reduced as a result of any additional taxes, duties and other governmental charges of whatever nature (other than withholding taxes) to which Trust II has become subject.

In the event that any Interest Payment Date is not a Business Day, then interest will be payable on the next succeeding day which 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 such date. The interest installment so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Trust Debt Security is registered at the close of business on the Regular Record Date for such interest installment, which shall be the 15th day (whether or not a Business Day) preceding the applicable Interest Payment Date, provided that if all of the Series II Trust Debt Securities (as defined below) are then held by Southwest Gas Capital II (the "Trust") or the Series II Trust Debt Securities are held in book-entry-only form, the Regular Record Date shall be the close of business on the Business Day next preceding such Interest Payment Date. Any such interest installment not punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date, and may be paid to the Person in whose name this Trust Debt Security is registered at the close of business on a Special Record Date to be fixed by the Trustee (as defined below) for the payment of such defaulted interest, notice whereof shall be given to the Holders of the Series II Trust Debt Securities not less than 7 days prior to such Special Record Date, as more fully provided in the Indenture.

Payment of the principal of and interest on this Trust Debt Security will be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. Payments of interest on an Interest Payment Date will be made by check mailed to the Holder hereof at the address shown in the Register or, at the option of the Holder hereof, to such other place in the United States of America as the Holder hereof shall designate to the Trustee in writing. At the request of a Holder of at least \$10,000,000 aggregate principal amount of Series II Trust Debt Securities, interest on such Trust Debt Securities will be payable by wire transfer within the continental United States in immediately available funds to the bank account number specified in writing by such Holder to the Registrar prior to the Regular Record Date.

The principal hereof and interest due hereon on the Stated Maturity Date or a Redemption Date (other than an Interest Payment Date) will be paid in immediately available funds only upon surrender of this Trust Debt Security at the principal corporate office of BNY Midwest Trust Company, Paying Agent, in Chicago, Illinois, or at such other office or agency of the Paying Agent as the Company shall designate by written notice to the Holder of this Trust Debt Security.

The indebtedness evidenced by this Trust Debt Security is, to the extent provided in the Indenture, subordinate and subject in right of payment to the prior payment in full of all Senior Indebtedness, and this Trust Debt Security is issued subject to the provisions of the Indenture with respect thereto. The Holder of this Trust Debt Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination so provided and (c) appoints the Trustee his attorney-in-fact for any and all such purposes. The Holder of this Trust Debt Security, by his acceptance hereof, hereby waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Indebtedness, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.



This Trust Debt Security is one of a duly authorized series of Trust Debt Securities of the Company (herein sometimes referred to as the "Series II Trust Debt Securities"), specified in the Indenture, limited in aggregate principal amount to \$103,100,000, issued under and pursuant to an Indenture dated as of August 25, 2003 (the "Indenture") executed and delivered between the Company and BNY Midwest Trust Company, as trustee (the "Trustee"). The Series II Trust Debt Securities are initially being issued to the Trust, to be held on behalf of the Trust by its property trustee (the "Property Trustee"). Concurrently with the issuance of the Series II Trust Debt Securities, the Trust is issuing its trust securities, representing undivided beneficial interests in the assets of the Trust and having an aggregate liquidation amount equal to the principal amount of the Series II Trust Debt Securities, including the Trust's 7.70% Preferred Trust Securities (the "Preferred Trust Securities"). By the terms of the Indenture, Trust Debt Securities are issuable in series which may vary as to amount, date of maturity, rate of interest and in other respects as in the Indenture provided. Reference is made to the Indenture for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and Holders of the Trust Debt Securities. Each term used in this Trust Debt Security which is defined in the Indenture and not defined herein shall have the meaning assigned to it in the Indenture.

At the option of the Company, the Series II Trust Debt Securities are redeemable prior to maturity (i) at any time and from time to time on or after August 25, 2008, in whole or in part, and (ii) if a Special Event shall occur and be continuing, in whole (but not in part), at a price equal to \$25 per Series II Trust Debt Security plus accrued interest to the Redemption Date. A "Special Event" means either a "Tax Event" or an "Investment Company Event", as the case may be. "Tax Event" means that the Company shall have received an opinion of nationally recognized independent tax counsel (which may be regular counsel to the Company or an Affiliate, but not an employee thereof and which must be acceptable to the Property Trustee of the Trust) experienced in such matters to the effect that, as a result of 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 affecting taxation, or as a result of any official administrative pronouncement or judicial decision interpreting or applying such laws or regulations, which amendment or change is effective or such interpretation or pronouncement is announced on or after the date of original issuance of the Preferred Trust Securities, there is more than an insubstantial risk that (i) the Trust is, or will be within 90 days of the date of such opinion, subject to United States Federal income tax with respect to interest received or accrued on the Trust Debt Securities, (ii) interest payable by the Company to the Trust on the Series II Trust Debt Securities is not, or within 90 days of the date of such opinion will not be, deductible by the Company, in whole or in part, for United States Federal income tax purposes or (iii) the Trust is, or will be within 90 days of the date of such opinion, subject to more than a de minimis amount of other taxes, duties, assessments or other governmental charges. "Investment Company Event" means that the Company shall have received an opinion of nationally recognized independent counsel (which may be regular counsel to the Company or an Affiliate, but not an employee thereof and which must be acceptable to the Property Trustee of the Trust) experienced in such matters to the effect 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 1940 Act Law"), there is more than an insubstantial risk that the Trust is or within 90 days of the date of such opinion will be considered an "investment company" that is required to

be registered under the Investment Company Act of 1940, as amended, which Change in 1940 Act Law becomes effective or would become effective, as the case may be, on or after the date of original issuance of the Preferred Trust Securities.

At least 30 days but not more than 60 days before the Redemption Date, the Trustee shall mail or cause to be mailed a notice of redemption by first-class mail, postage prepaid, to each Holder of Series II Trust Debt Securities to be redeemed.

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

In case an Event of Default with respect to the Series II Trust Debt Securities occurs and is continuing, the principal of and interest on the Series II Trust Debt Securities may (and, in certain circumstances, shall) be declared, and upon such declaration shall become, due and payable, in the manner, with the effect and subject to the conditions provided in the Indenture.

The Indenture contains provisions for defeasance at any time of the entire indebtedness of this Trust Debt Security upon compliance by the Company with certain conditions set forth therein.

Subject to certain exceptions in the Indenture which require the consent of every Holder, the Company and the Trustee may amend the Indenture or may waive future compliance by the Company with any provisions of the Indenture, with the consent of the Holders of at least a majority in aggregate principal amount of the Trust Debt Securities of each series affected thereby, provided that if the Series II Trust Debt Securities are held by the Trust, no such amendment or waiver that adversely affects the holders of the Preferred Trust Securities shall be effective without the prior consent of the holders of at least a majority in aggregate liquidation amount of the outstanding Preferred Trust Securities. Subject to certain exceptions in the Indenture, without the consent of any Holder, the Company and the Trustee may amend the Indenture to cure any ambiguity, defect or inconsistency, to bind a successor to the obligations of the Indenture, to provide for uncertificated Trust Debt Securities in addition to certificated Trust Debt Securities, to comply with any requirements of the Trust Debt Securities and the Securities and Exchange Commission in connection with the qualification of the Indenture under the TIA, or to make any change that, in the reasonable judgment of the Company, does not adversely affect the rights of any Holder. Amendments bind all Holders and subsequent Holders.

No reference herein to the Indenture and no provision of this Trust Debt Security or the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and interest on this Trust Debt Security at the time and place and at the rate and in the money herein prescribed.

So long as no Event of Default with respect to the Series II Trust Debt Securities has occurred and is continuing, the Company shall have the right at any time and from time to time to extend the interest payment period of the Series II Trust Debt Securities for up to 20 consecutive quarterly periods (the "Extension Period"), provided that no Extension Period shall extend beyond the Stated Maturity Date or Redemption Date of any Series II Trust Debt

Security. At the end of the Extension Period, the Company shall pay all interest then accrued and unpaid (together with interest thereon at the rate specified for the Series II Trust Debt Securities, compounded quarterly, to the extent that payment of such interest is enforceable under applicable law). Prior to the termination of any such Extension Period, the Company may further extend such Extension Period, provided that such Extension Period, together with all such previous and further extensions, shall not exceed 20 consecutive quarterly periods and shall not extend beyond the Stated Maturity Date or Redemption Date of any Series II Trust Debt Security. At the termination of any such Extension Period and upon the payment of all amounts then due, the Company may elect to begin a new Extension Period, subject to the foregoing restrictions.

Series II Trust Debt Securities are issuable only in registered form without coupons in denominations of \$25 and any integral multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, this Trust Debt Security is exchangeable for a like aggregate principal amount of Series II Trust Debt Securities of a different authorized denomination, as requested by the Holder surrendering the same.

As provided in the Indenture and subject to certain limitations therein set forth, this Trust Debt Security is transferable by the Holder hereof upon surrender of this Trust Debt Security for registration of transfer at the office or agency of the Registrar accompanied by a written instrument or instruments of transfer in form satisfactory to the Registrar duly executed by the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Series II Trust Debt Securities of authorized denominations and for the same aggregate principal amount will be issued to the designated transferee or transferees. No service charge will be made for any such transfer, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in relation thereto.

Prior to presentment for registration of transfer of this Trust Debt Security, the Company, the Trustee, any Paying Agent and any Registrar may deem and treat the Holder hereof as the absolute owner hereof (whether or not this Trust Debt Security shall be overdue and notwithstanding any notice of ownership or writing hereon made by anyone other than the Registrar) for the purpose of receiving payment of or on account of the principal hereof and interest due hereon and for all other purposes, and neither the Company nor the Trustee nor any Paying Agent nor any Registrar shall be affected by any notice to the contrary.

No recourse shall be had for the payment of the principal of or the interest on this Trust Debt Security, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture, against any incorporator, shareholder officer or director, past, present or future, as such, of the Company or of any 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, all such liability being, by the acceptance hereof and as part of the consideration for the issuance hereof, expressly waived and released.

This Trust Debt Security shall not be valid until an authorized signatory of the Trustee manually signs and dates the Trustee's Certificate of Authentication below.

IN WITNESS WHEREOF, the Company has caused this Trust Debt Security to be signed manually or by facsimile by its duly authorized officers and a facsimile of its corporate seal to be affixed hereto or imprinted hereon.

SOUTHWEST GAS CORPORATION

[SEAL]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
(Assistant) Secretary

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

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

BNY MIDWEST TRUST COMPANY, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

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

**ASSIGNMENT FORM**

To assign this Trust Debt Security, fill in the form below: (I) or (we) assign and transfer this Trust Debt Security to:

\_\_\_\_\_  
\_\_\_\_\_  
(Insert assignee's social security or tax I.D. number)

\_\_\_\_\_  
\_\_\_\_\_  
(Print or type assignee's name, address and zip code)

and irrevocably appoint \_\_\_\_\_ agent to transfer this Trust Debt Security on the books of the Register. The agent may substitute another to act for him.

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

(Sign exactly as your name appears on the other side of this Trust Debt Security)

Signature Guaranty: \_\_\_\_\_

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

[Letterhead of O'Melveny &amp; Myers LLP]

August 22, 2003

Southwest Gas Corporation  
5241 Spring Mountain Road  
Las Vegas, Nevada 89150

**Re: Southwest Gas Trust II 7.70% 4,000,000 Preferred Trust Securities**

Ladies and Gentlemen:

At your request, we have examined the Registration Statement ("Registration Statement") on Form S-3 (File No. 333-106419, 333-106419-01, 333-106419-02 and 333-106419-03), as amended by Amendment No. 1 and Amendment No. 2, of Southwest Gas Corporation (the "Company"), Southwest Gas Capital II (the "Trust"), Southwest Gas Capital III and Southwest Gas Capital IV, filed with the Securities and Exchange Commission on June 24, 2003, July 22, 2003 and August 7, 2003, respectively, the Prospectus dated August 12, 2003 (the "Prospectus") and the Prospectus Supplement dated August 20, 2003 (the "Prospectus Supplement") in connection with the registration of the 7.70% Preferred Trust Securities (Liquidation Amount \$25 per Preferred Trust Security) of the Trust (the "Preferred Trust Securities"), the 7.70% Junior Subordinated Debentures due 2043 of the Company (the "Junior Subordinated Debentures") and the guarantee of the Preferred Trust Securities (the "Guarantee").

This opinion is being furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K promulgated under the Securities Act of 1933, as amended.

We are of the opinion that:

1. the Junior Subordinated Debentures have been duly authorized by all necessary corporate action on the part of the Company and, upon the execution and delivery thereof by the Company, payment therefor by the Trust and the authentication of the certificate or certificates representing the Junior Subordinated Debentures by a duly authorized signatory of BNY Midwest Trust Company, as the Trustee, will be legally valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally (including, without limitation, fraudulent conveyance

laws) and by general principles of equity including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law; and

2. the Guarantee has been duly authorized by all necessary corporate action on the part of the Company and, upon the execution thereof by the Company and the issuance and sale of the Preferred Trust Securities and the other securities to be issued in connection therewith in the manner referred to in the Prospectus and Prospectus Supplement, will be a legally valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally (including, without limitation, fraudulent conveyance laws) and by general principles of equity including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law.

We hereby consent to the incorporation by reference of this opinion into the Prospectus constituting part of the Registration Statement and to the reference to our firm under the caption "Legal Matters" in the Prospectus and the Prospectus Supplement constituting part of the Registration Statement.

Respectfully submitted,

/s/ O'Melveny & Myers LLP

[Letterhead of Richards, Layton & Finger, P.A.]

August 22, 2003

Southwest Gas Capital Trust II  
c/o Southwest Gas Corporation  
5241 Spring Mountain Road  
P.O. Box 98510  
Las Vegas, Nevada 89193-8510

Re: Southwest Gas Capital Trust II

Ladies and Gentlemen:

We have acted as special Delaware counsel for Southwest Gas Capital Trust II, a Delaware statutory trust (the "Trust"), in connection with the matters set forth herein. At your request, this opinion is being furnished to you.

For purposes of giving the opinions hereinafter set forth, our examination of documents has been limited to the examination of originals or copies of the following:

- (a) The Trust Agreement for the Trust, dated as of June 23, 2003 (the "Original Trust Agreement"), by and among Southwest Gas Corporation, a California corporation, as depositor (the "Depositor"), and the trustees of the Trust named therein;
- (b) A certified copy of the Certificate of Trust for the Trust, as filed with the Office of the Secretary of State of the State of Delaware (the "Secretary of State") on June 23, 2003;
- (c) The Amended and Restated Trust Agreement for the Trust, dated as of August 25, 2003, among the Depositor, BNY Midwest Trust Company, as Property Trustee, The Bank of New York (Delaware), as Delaware trustee and the holders, from time to time, of the undivided beneficial interests in the assets of the Trust (the "Trust Agreement");



- (d) The Prospectus, dated August 12, 2003, and the Prospectus Supplement, dated August 20, 2003, with respect to the Trust (jointly, the "Prospectus") relating to the 7.70% Preferred Trust Securities of the Trust representing preferred undivided beneficial interests in the assets of the Trust (each, a "Preferred Trust Security" and collectively, the "Preferred Trust Securities"); and
- (e) A Certificate of Good Standing for the Trust, dated August 22, 2003, obtained from the Secretary of State.

Initially capitalized terms used herein and not otherwise defined are used as defined in the Trust Agreement.

For purposes of this opinion, we have not reviewed any documents other than the documents listed in paragraphs (a) through (e) above. In particular, we have not reviewed any document (other than the documents listed in paragraphs (a) through (e) above) that is referred to in or incorporated by reference into the documents reviewed by us. 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 Trust Agreement will constitute the entire agreement among the parties thereto with respect to the creation, operation and termination of the Trust, that the Certificate of Trust is in full force and effect and has not been further amended and that the Trust Agreement will be in full force and effect and will be executed in substantially the forms reviewed by us, (ii) except to the extent provided in paragraph 1 below, the due creation or due organization or due formation, as the case may be, and valid existence in good standing of each party to the documents examined by us under the laws of the jurisdiction governing its creation, organization or formation, (iii) the legal capacity of natural persons who are parties to the documents examined by us, (iv) except to the extent provided in paragraph 2 below, 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) except to the extent provided in paragraph 2 below, the due authorization, execution and delivery by all parties thereto of all documents examined by us, (vi) the receipt by each Person to whom Preferred Trust Securities are to be issued by the Trust (collectively, the "Preferred Trust Security Holders") of a Preferred Trust Security Certificate for such Preferred Trust Security and the payment for the Preferred Trust Security acquired by it, in accordance with the Trust Agreement and the Prospectus, and (vii) that the Preferred Trust Securities are issued and sold to the Preferred Trust Security Holders in accordance with the Trust Agreement and the Prospectus. We have not participated in the preparation of the Prospectus and assume no responsibility for their contents.

This opinion is limited to the laws of the State of Delaware (excluding the securities and blue sky 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 that are currently in effect.

Based upon the foregoing, and upon our examination of such questions of law and statutes of the State of Delaware as we have considered necessary or appropriate, and subject to the assumptions, qualifications, limitations and exceptions set forth herein, we are of the opinion that:

1. The Trust has been duly created and is validly existing in good standing as a statutory trust under the Delaware Statutory Trust Act, 12 Del. C. § 3801, et seq.
2. The Preferred Trust Securities of the Trust have been duly authorized by the Trust Agreement and are duly and validly issued and, subject to the qualifications set forth in paragraph 3 below, fully paid and non-assessable undivided beneficial interests in the assets of the Trust.
3. The Holders of the Preferred Trust Securities, as beneficial owners of the Trust, are 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 Holders of the Preferred Trust Securities may be obligated to make payments as set forth in the Trust Agreement.

We consent to the incorporation by reference of this opinion into the Prospectus. In addition, we hereby consent to the reference to us as local counsel 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.

Very truly yours,

/s/ Richards, Layton & Finger, P.A.

DKD/jmb

[Letterhead of O'Melveny &amp; Myers LLP]

August 22, 2003

Southwest Gas Corporation  
5241 Spring Mountain Road  
Las Vegas, Nevada 89150

**Re: Registration Statement on Form S-3**

Ladies and Gentlemen:

We have acted as special counsel to Southwest Gas Corporation, a California corporation (the "Company"), and Southwest Gas Capital II (the "Trust") in connection with the preparation of the Registration Statement ("Registration Statement") on Form S-3 (File Nos. 333-106419, 333-106419-01, 333-106419-02 and 333-106419-03), as amended by Amendment No. 1 and Amendment No. 2, of the Company, the Trust, Southwest Gas Capital III and Southwest Gas Capital IV, filed with the Securities and Exchange Commission on June 24, 2003, July 22, 2003 and August 7, 2003, respectively, and the Prospectus dated August 12, 2003 (the "Prospectus") and the Prospectus Supplement dated August 20, 2003 (the "Prospectus Supplement") in connection with the registration of the 7.70% Preferred Trust Securities (Liquidation Amount \$25 per Preferred Trust Security) of the Trust (the "Preferred Trust Securities"), the 7.70% Junior Subordinated Debentures due 2043 of the Company and the guarantee of the Preferred Trust Securities .

In our capacity as such counsel, we have examined originals or copies of the Registration Statement, the Prospectus, the Prospectus Supplement and the Amended and Restated Trust Agreement for Southwest Gas Capital II, dated as of August 25, 2003, among (i) the Company, (ii) BNY Midwest Trust Company, a trust company organized under the laws of the State of Illinois, as trustee, (iii) The Bank of New York (Delaware), a state bank chartered under the laws of the State of Delaware, as Delaware trustee and (iv) the several Holders, as defined therein, and those corporate and other records and documents we considered appropriate.

We hereby confirm that, although the discussion set forth under the heading "U.S. Federal Income Tax Consequences" in the Prospectus Supplement does not purport to discuss all possible United States federal income tax consequences of the purchase, ownership and disposition of the Preferred Trust Securities, such discussion constitutes, in all material respects, a fair and accurate summary of the United States federal income tax consequences of the purchase, ownership and disposition of the Preferred Trust Securities, based on current law. It is possible, however, that contrary positions may be taken by the Internal Revenue Service and that a court may agree with such contrary positions.

The opinions contained herein are rendered only as of the date hereof. We undertake no obligation to update this letter or the opinions contained herein or to advise you of any subsequent changes of the facts stated or assumed herein or any subsequent changes in applicable law.

We hereby consent to the incorporation by reference of this opinion into the Prospectus and Prospectus Supplement constituting part of the Registration Statement and to the reference to our firm under the caption "Legal Matters" in the Prospectus and the Prospectus Supplement constituting part of the Registration Statement.

Respectfully submitted,

/s/ O'Melveny & Myers LLP