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

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

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<b>Sempra Energy</b>	<b>California</b>	<b>33-0732627</b>
<b>Sempra Energy Global Enterprises</b>	<b>California</b>	<b>33-0783483</b>
<b>Sempra Energy Capital Trust II</b>	<b>Delaware</b>	<b>52-6988598</b>
<b>Sempra Energy Capital Trust III</b>	<b>Delaware</b>	<b>52-6988599</b>
(Exact name of registrant as specified in its charter)	(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)

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**101 Ash Street**  
**San Diego, California 92101**  
**(619) 696-2000**

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

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**John R. Light, Esq.**  
**Executive Vice President and General Counsel**  
**101 Ash Street**  
**San Diego, California 92101**  
**(619) 696-2034**

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

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**Approximate date of commencement of proposed sale to the public:** From time to time after the registration statement becomes effective, as determined by market and other conditions.

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

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

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

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

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.

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## CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered(1)	Amount to be registered(1)(2)(3)	Proposed maximum aggregate offering price(3)(4)	Amount of Registration Fee
Debt securities, common stock, without par value, and preferred stock, without par value, warrants to purchase debt securities, common stock or preferred stock, securities purchase contracts, securities purchase units and depositary shares of Sempra Energy			
Class A junior participating preferred stock purchase rights, without par value, of Sempra Energy(5)			
Debt securities and warrants to purchase debt securities of Sempra Energy Global Enterprises(6)			
Guarantees of debt securities of Sempra Energy Global Enterprises by Sempra Energy			
Trust preferred securities of Sempra Energy Capital Trust II and Sempra Energy Capital Trust III(7)			
Guarantees of trust preferred securities of the Trusts by Sempra Energy(7)			
Total	\$ 2,000,000,000	\$ 2,000,000,000	\$ 161,800

- (1) An indeterminate principal amount or number of debt securities, common stock, preferred stock, guarantees, warrants to purchase common stock, preferred stock and debt securities, stock purchase contracts, stock purchase units and depositary shares as may be issued in the event Sempra Energy elects to offer fractional interests in preferred stock and such indeterminate principal amounts or number of debt securities, common stock or preferred stock as may be issued upon conversion of, or in exchange for, or upon exercise of, or pursuant to, warrants, or convertible or exchangeable debt securities, stock purchase contracts or stock purchase units or preferred stock that provides for exercise or conversion into or purchase of such securities of Sempra Energy and an indeterminate principal amount of debt securities and warrants to purchase debt securities of Sempra Energy Global Enterprises and an indeterminate number of trust preferred securities of the Sempra Energy Capital Trust II and Sempra Energy Capital Trust III as may from time to time be issued at indeterminate prices, with an aggregate offering price not to exceed \$2,000,000,000. Debt securities may be issued and sold to the Trusts, in which event the debt securities may later be distributed to the holders of trust preferred securities.
- (2) In United States dollars or the equivalent thereof in any other currency, composite currency or currency unit as shall result in an aggregate initial offering price for all securities of \$2,000,000,000.
- (3) This amount represents the principal amount of any debt securities issued at their stated principal amount, the issue price of any debt securities issued at a discount from the stated principal amount, the issue price of any preferred stock, warrants to purchase common stock, preferred stock and debt securities, stock purchase contracts, stock purchase units, depositary shares and trust preferred securities and the amount computed pursuant to Rule 457(c) for any common stock.
- (4) Estimated solely for the purpose of calculating the registration fee, which is calculated in accordance with Rule 457(o) of the rules and regulations under the Securities Act of 1933. Rule 457(o) permits the registration fee to be calculated on the basis of the maximum offering price of all of the securities listed and, therefore, the table does not specify by each class information as to the amount to be registered, the proposed maximum offering price per unit or the proposed maximum aggregate offering price.
- (5) The rights are initially carried and traded with the common stock. The value attributable to the rights, if any, is reflected in the value of the common stock.
- (6) Also includes an indeterminate number of securities that may be issued upon exercise, conversion or exchange of or purchase pursuant to any securities registered hereunder that provide for conversion or exchange.
- (7) Includes the rights of holders of the trust preferred securities under the guarantees of trust preferred securities and back-up undertakings, consisting of obligations by Sempra Energy, as set forth in the declaration of trust, the applicable indenture and any supplemental indenture thereto, in each case as further described in the registration statement. No separate consideration will be received for any guarantees or any back-up.

The registrants hereby amend this registration statement on such date or dates as may be necessary to delay its effective date until the registrants shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

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

Subject to Completion, Dated March 4, 2003.

**PRELIMINARY PROSPECTUS**

**\$2,000,000,000**



**SEMPRA ENERGY**

Debt Securities, Common Stock, Preferred Stock, Guarantees, Warrants to Purchase Debt Securities, Common Stock and Preferred Stock, Securities Purchase Contracts, Securities Purchase Units and Depositary Shares

**SEMPRA ENERGY GLOBAL ENTERPRISES**

Debt Securities Guaranteed by Sempra Energy and Warrants to Purchase Debt Securities

**SEMPRA ENERGY CAPITAL TRUST II  
SEMPRA ENERGY CAPITAL TRUST III**

Trust Preferred Securities Guaranteed by Sempra Energy

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We may offer and sell the securities from time to time in one or more offerings. This prospectus provides you with a general description of the securities we may offer.

Each time we sell securities, we will provide a supplement to this prospectus that contains specific information about the offering and the terms of the securities. The supplement may also add, update or change information contained in this prospectus. You should carefully read this prospectus and the accompanying prospectus supplement before you invest in any of our securities.

**Sempra Energy**

Sempra Energy may offer and sell the following securities:

- debt securities;
- common stock;
- preferred stock;
- guarantees of debt securities and trust preferred securities;
- warrants to purchase debt securities, common stock and preferred stock;
- securities purchase contracts and securities purchase units; and/or
- depositary shares.

**Sempra Energy Global Enterprises**

Sempra Energy Global Enterprises may offer and sell debt securities guaranteed by Sempra Energy and warrants to purchase debt securities.

**The Sempra Energy Trusts**

Sempra Energy Capital Trust II and Sempra Energy Capital Trust III may offer and sell trust preferred securities guaranteed by Sempra Energy.

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**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.**

The date of this prospectus is \_\_\_\_\_, 2003.

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a “shelf” registration statement that we filed with the United States Securities and Exchange Commission. By using a shelf registration statement, we may sell up to \$2,000,000,000 offering price of any combination of the securities described in this prospectus from time to time and in one or more offerings. This prospectus only provides you with a general description of the securities that we may offer. Each time we sell securities, we will provide a supplement to this prospectus that contains specific information about the terms of the securities. The supplement may also add, update or change information contained in this prospectus. Before purchasing any securities, you should carefully read both this prospectus and the accompanying prospectus supplement, together with the additional information described under the heading “Where You Can Find More Information.”

This prospectus does not contain separate financial statements for Sempra Energy Global Enterprises or Sempra Energy Capital Trust II or Sempra Energy Capital Trust III. Sempra Energy files consolidated financial information with the SEC that includes Sempra Energy Global Enterprises and each of the trusts. The trusts have no historical operations and do not have any independent function other than to issue securities and to purchase subordinated debt securities from Sempra Energy. We do not believe that additional financial information regarding Sempra Energy Global Enterprises or the trusts would be useful to you.

You should rely only on the information contained or incorporated by reference in this prospectus and in any supplement to this prospectus. We have not authorized any other person to provide you with different

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information. If anyone provides you with different or inconsistent information, you should not rely on it. You should assume that the information appearing in this prospectus and the accompanying prospectus supplement is accurate as of the date on their respective covers. Our business, financial condition, results of operations and prospects may have changed since that date.

### **FORWARD-LOOKING STATEMENTS**

This prospectus, any accompanying prospectus supplement and the documents they incorporate by reference may contain statements that are not historical fact and constitute “forward-looking statements.” When we use words like “believes,” “expects,” “anticipates,” “intends,” “plans,” “estimates,” “may,” “should” or similar expressions, or when we discuss our strategy or plans, we are making forward-looking statements. Forward-looking statements are not guarantees of performance. They involve risks, uncertainties and assumptions. Our future results may differ materially from those expressed in these forward-looking statements. These statements are necessarily based upon various assumptions involving judgments with respect to the future and other risks, including, among others:

- local, regional, national and international economic, competitive, political, legislative and regulatory conditions and developments;
- actions by the California Public Utilities Commission, the California State Legislature, the California Department of Water Resources and the Federal Energy Regulatory Commission;
- capital market conditions, inflation rates, interest rates and exchange rates;
- energy and trading markets, including the timing and extent of changes in commodity prices;
- weather conditions and conservation efforts;
- war and terrorist attacks;
- business, regulatory and legal decisions;
- the pace of deregulation of retail natural gas and electricity delivery;
- the timing and success of business development efforts; and
- other uncertainties, all of which are difficult to predict and many of which are beyond our control.

You are cautioned not to rely unduly on any forward-looking statements. These risks and uncertainties are discussed in more detail under “Business” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our Annual Report on Form 10-K for the year ended December 31, 2002 and other documents on file with the SEC. You may obtain copies of these documents as described under “Where You Can Find More Information” below.

### **WHERE YOU CAN FIND MORE INFORMATION**

#### **Available Information**

Sempra Energy files reports, proxy statements and other information with the SEC. Information filed with the SEC by Sempra Energy can be inspected and copied at the Public Reference Room maintained by the SEC at 450 Fifth Street, N.W., Room 1024, Washington D.C. 20549.

You may also obtain copies of this information by mail from the Public Reference Section of the SEC, 450 Fifth Street, N.W., Room 1024, Washington, D.C. 20549, at prescribed rates. Further information on the

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operation of the SEC's Public Reference Room in Washington, D.C. can be obtained by calling the SEC at 1-800-SEC-0330.

The SEC also maintains a web site that contains reports, proxy statements and other information about issuers, such as Sempra Energy, who file electronically with the SEC. The address of that site is <http://www.sec.gov>.

Sempra Energy's common stock is listed on the New York Stock Exchange under the symbol "SRE," and reports, proxy statements and other information concerning Sempra Energy can also be inspected at the offices of the New York Stock Exchange at 20 Broad Street, New York, New York 10005.

This prospectus is part of a registration statement that we filed with the SEC. The full registration statement may be obtained from the SEC or Sempra Energy, as indicated below. Forms of the indentures, the declarations of trust and other documents establishing the terms of the offered securities and the guarantees are filed as exhibits to the registration statement. Statements in this prospectus about these documents are summaries. You should refer to the actual documents for a more complete description of the relevant matters.

### **Incorporation by Reference**

The rules of the SEC allow us to "incorporate by reference" information into this prospectus, which means that we can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is deemed to be part of this prospectus, and later information that we file with the SEC will automatically update and supersede that information. This prospectus incorporates by reference the documents set forth below that have been previously filed with the SEC. These documents contain important information about Sempra Energy.

<u>SEC Filings (File No. 1-14201)</u>	<u>Period</u>
Annual Report on Form 10-K	Year ended December 31, 2002
Current Reports on Form 8-K	Filed February 21, 2003
Registration Statement on Form 8-A	Filed June 5, 1998

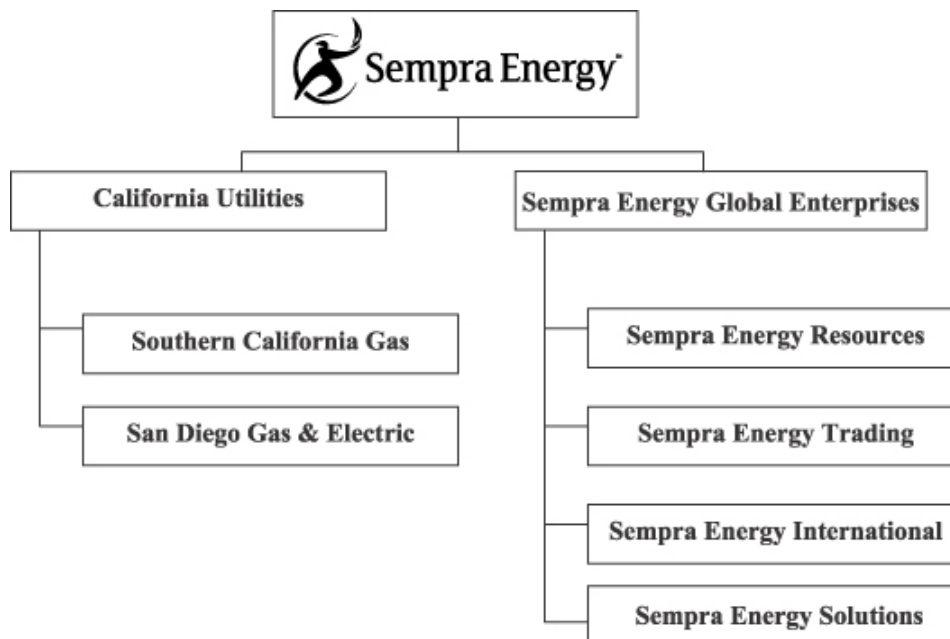
We are also incorporating by reference all additional documents that we file with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, between the date of this prospectus and the termination of the offering of securities described in this prospectus.

Sempra Energy will provide without charge to each person to whom a copy of this prospectus has been delivered a copy of any and all of these filings. You may request a copy of these filings by writing or telephoning us at:

Sempra Energy  
101 Ash Street  
San Diego, California 92101  
Attention: Corporate Secretary  
Telephone: (619) 696-2034

**SEMPRA ENERGY**

Sempra Energy, based in San Diego, is a Fortune 500 energy services holding company. Our family of companies provides a wide spectrum of value-added electric and gas products and services to a diverse range of customers. Our operations are divided between our delivery services, which are comprised of our California utility subsidiaries, and Sempra Energy Global Enterprises, our growth businesses, as described below.



As of December 31, 2002, our California utility subsidiaries, Southern California Gas Company and San Diego Gas & Electric company, served over 21 million consumers. Natural gas service was provided throughout Southern California and portions of Central California through approximately 6.1 million active meters as of December 31, 2002. Electric service was provided throughout San Diego County and portions of Orange County, both in Southern California, through approximately 1.3 million active meters as of December 31, 2002. Through other subsidiaries, Sempra Energy also provides other energy-related products and services.

The information above concerning Sempra Energy and its subsidiaries is only a summary and does not purport to be comprehensive. For additional information concerning Sempra Energy and its subsidiaries, you should refer to the information described under the caption "Where You Can Find More Information" above.

Our principal executive offices are located at 101 Ash Street, San Diego, California 92101 and our telephone number is (619) 696-2034.

## SEMPRA ENERGY GLOBAL ENTERPRISES

Sempra Energy Global Enterprises is a wholly owned subsidiary of Sempra Energy. It is a holding company for many of the subsidiaries of Sempra Energy that are not subject to California utility regulation.

Sempra Energy Global Enterprises' principal subsidiaries provide the following energy-related products and services:

- Sempra Energy Resources acquires, develops and operates power plants for the competitive market;
- Sempra Energy Trading is a wholesale trader of physical and financial energy products, including natural gas, power, crude oil and other commodities, and a trader and wholesaler of metals, serving a broad range of customers;
- Sempra Energy International engages in energy-infrastructure projects outside the United States and, as of December 31, 2002, had interests in companies that provide natural gas and electricity services to over 2.6 million customers in Argentina, Chile, Mexico and Peru; and
- Sempra Energy Solutions provides energy-related products and services on a retail basis, including energy efficiency engineering services, to various markets.

Sempra Energy Global Enterprises may, in the future, engage in other businesses.

Sempra Energy Global Enterprises' offices are located at 101 Ash Street, San Diego, California 92101 and the telephone number is (619) 696-2034.



## SEMPRA ENERGY CAPITAL TRUST II AND SEMPra ENERGY CAPITAL TRUST III

Sempra Energy created Sempra Energy Capital Trust II and Sempra Energy Capital Trust III. Sempra Energy will file an Amended and Restated Declaration of Trust (a “Declaration”) for each trust, which will state the terms and conditions for each trust to issue and sell its trust preferred securities and trust common securities. A form of Declaration is filed as an exhibit to the registration statement of which this prospectus forms a part.

Each trust exists solely to:

- issue and sell its trust preferred securities (representing beneficial interests in the trust) to investors;
- issue and sell its trust common securities (representing beneficial interests in the trust) to Sempra Energy;
- use the proceeds from the sale of its trust preferred and trust common securities to purchase a series of Sempra Energy’s subordinated debt securities;
- distribute the cash payments it receives on the subordinated debt securities it owns to the holders of its trust preferred and trust common securities;
- maintain its status as a grantor trust for federal income tax purposes; and
- engage in other activities that are necessary or incidental to these purposes.

Sempra Energy will purchase all of the trust common securities of each trust. The trust common securities will represent an aggregate liquidation amount equal to at least 3% of each trust’s total capitalization. The trust preferred securities will represent the remaining portion of the trust’s total capitalization. The trust common securities will have terms substantially identical to, and will rank equal in priority of payment with, the trust preferred securities. However, if Sempra Energy defaults on the related subordinated debt securities, then cash distributions and liquidation, redemption and other amounts payable on the trust common securities will be subordinate to the trust preferred securities in priority of payment.

The trust preferred securities will be guaranteed by Sempra Energy as described later in this prospectus.

Sempra Energy has appointed five trustees to conduct each trust’s business and affairs:

- The Bank of New York, as property trustee;
- The Bank of New York (Delaware), as Delaware trustee; and
- Three Sempra Energy officers, as regular trustees.

Only Sempra Energy, as owner of the trust common securities, can remove or replace the trustees. In addition, Sempra Energy can increase or decrease the number of trustees.

Sempra Energy will pay all fees and expenses related to each trust and each offering of the related trust preferred securities and will pay all ongoing costs and expenses of each trust, except the respective trust’s obligations under the related trust preferred and trust common securities.

The trusts will not have separate financial statements. The statements would not be material to holders of the trust preferred securities because no trust will have any independent operations. Each trust exists solely for the reasons described above.

**USE OF PROCEEDS**

Unless stated otherwise in the applicable prospectus supplement, the net proceeds from the sale of the offered securities will be:

- used by Sempra Energy and/or its subsidiaries for general corporate purposes, including investing in unregulated business activities and reducing short-term debt incurred to provide interim financing for such purposes; and
- used by the respective trusts to purchase subordinated debt securities of Sempra Energy, which will in turn use the proceeds from the issuance of subordinated debt securities for the purposes stated above.

**RATIO OF EARNINGS TO COMBINED FIXED CHARGES  
AND PREFERRED STOCK DIVIDENDS**

The following table sets forth the ratio of Sempra Energy earnings to combined fixed charges and preferred stock dividends for each of the five years in the five-year period ended December 31, 2002:

	Years Ended December 31,				
	2002	2001	2000	1999	1998
Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends	3.01	2.86	2.90	3.21	2.74

## DESCRIPTION OF SECURITIES

The following is a general description of the terms and provisions of the securities we may offer and sell by this prospectus. These summaries are not meant to be a complete description of each security. This prospectus and any accompanying prospectus supplement will contain the material terms and conditions for each security. The accompanying prospectus supplement may add, update or change the terms and conditions of the securities as described in this prospectus. For more information about the securities offered by us, please refer to:

- the indenture between Sempra Energy and U.S. Bank National Association, as successor trustee to U.S. Bank Trust National Association, relating to the issuance of each series of senior debt securities by Sempra Energy (the “senior indenture”);
- the indenture between Sempra Energy and The Bank of New York, as trustee, relating to the issuance of each series of subordinated debt securities by Sempra Energy (the “subordinated indenture”);
- the indenture among Sempra Energy Global Enterprises, Sempra Energy, as Guarantor, and U.S. Bank National Association, as successor trustee to U.S. Bank Trust National Association, relating to the issuance of each series of senior debt securities by Sempra Energy Global Enterprises;
- the Declaration of each trust; and
- Sempra Energy’s guarantee of the trust preferred securities issued by each trust.

Forms of these documents are filed as exhibits to the registration statement of which this prospectus is a part. The indentures are subject to and governed by the Trust Indenture Act of 1939, as amended, and may be supplemented or amended from time to time following their execution.

## DESCRIPTION OF DEBT SECURITIES

Unless indicated differently in a prospectus supplement, the following description sets forth the general terms and provisions of the debt securities that Sempra Energy and Sempra Energy Global Enterprises may offer by this prospectus. The debt securities may be issued as senior debt securities or subordinated debt securities in the case of Sempra Energy and as senior debt securities in the case of Sempra Energy Global Enterprises.

The senior debt securities will be governed by the senior indenture and the subordinated debt securities will be governed by the subordinated indenture. Each indenture gives the issuer broad authority to set the particular terms of each series of debt securities, including the right to modify certain of the terms contained in the indenture. The particular terms of a series of debt securities and the extent, if any, to which the particular terms of the issue modify the terms of the applicable indenture will be described in the accompanying prospectus supplement relating to such series of debt securities.

Each indenture contains the full legal text of the matters described in this section. Because this section is a summary, it does not describe every aspect of the debt securities or the applicable indentures. This summary is subject to and qualified in its entirety by reference to all the provisions of the applicable indenture, including definitions of terms used in such indenture. We also include references in parentheses to certain sections of the indentures. Whenever we refer to particular sections or defined terms of the indentures in this prospectus or in a prospectus supplement, these sections or defined terms are incorporated by reference into this prospectus or into the prospectus supplement. This summary also is subject to and qualified by reference to the description of the particular terms of a particular series of debt securities described in the applicable prospectus supplement or supplements.

### General

Sempra Energy and Sempra Energy Global Enterprises may issue an unlimited amount of debt securities under the indentures in one or more series. Neither company is required to issue all debt securities of one series

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at the same time and, unless otherwise provided in a prospectus supplement, either company may reopen a series, without the consent of the holders of the debt securities of that series, for issuances of additional debt securities of that series.

The debt securities of Sempra Energy and Sempra Energy Global Enterprises will be unsecured obligations of the company issuing the security, and the debt securities of Sempra Energy Global Enterprises will be unconditionally guaranteed by Sempra Energy as to payment of principal, premium, if any, and interest as described under the caption “—Guarantee of Sempra Energy; Holding Company Structure” below.

Before the issuance of each series of debt securities, the terms of the particular securities will be specified in either a supplemental indenture (including any pricing supplement) and a board resolution of the issuing company or in one or more officers’ certificates of the issuing company pursuant to a supplemental indenture or a board resolution. We refer you to the applicable prospectus supplement for a description of the following terms of each series of debt securities:

- (a) the title of the debt securities;
- (b) any limit upon the principal amount of the debt securities;
- (c) the date or dates on which principal will be payable or how to determine the dates;
- (d) the rate or rates or method of determination of interest; the date from which interest will accrue; the dates on which interest will be payable, which we refer to as the “interest payment dates”; and any record dates for the interest payable on the interest payment dates;
- (e) any obligation or option of the issuing company to redeem, purchase or repay debt securities, or any option of the registered holder to require the issuing company to redeem or repurchase debt securities, and the terms and conditions upon which the debt securities will be redeemed, purchased or repaid;
- (f) the denominations in which the debt securities will be issuable (if other than denominations of \$1,000 and any integral multiple thereof);
- (g) whether the debt securities are to be issued in whole or in part in the form of one or more global debt securities and, if so, the identity of the depositary for the global debt securities; and
- (h) any other terms of the debt securities that may be different from those described below.

(See Section 301.)

### **Ranking**

The senior debt securities will be the unsecured and unsubordinated obligations of the company issuing the security. The indebtedness represented by the senior debt securities will rank equally with all other unsecured and unsubordinated debt of the company issuing the senior debt security (either Sempra Energy or Sempra Energy Global Enterprises). The indebtedness represented by the subordinated debt securities will rank junior and subordinate in right of payment to the prior payment in full of the senior debt of Sempra Energy, to the extent and in the manner set forth under the caption “—Subordination” below and as may be set forth in a prospectus supplement. The debt securities are obligations of Sempra Energy and Sempra Energy Global Enterprises exclusively, and are not the obligations of any of their respective subsidiaries. Because each company conducts its operations primarily through its respective subsidiaries and substantially all of its respective consolidated assets are held by its respective subsidiaries, the debt securities will be effectively subordinated to all existing and future indebtedness and other liabilities of each issuing company’s respective subsidiaries.

### **Guarantee of Sempra Energy; Holding Company Structure**

Sempra Energy will unconditionally guarantee the payment of principal of and any premium and interest on the debt securities issued by Sempra Energy Global Enterprises, when due and payable, whether at the stated

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maturity date, by declaration of acceleration, call for redemption or otherwise, in accordance with the terms of the debt securities and the applicable indenture. These guarantees are referred to as the “debt securities guarantees” in this prospectus. The debt securities guarantees will remain in effect until the entire principal of and any premium and interest on the debt securities has been paid in full or otherwise discharged in accordance with the provisions of the applicable indenture.

Sempra Energy conducts its operations primarily through its subsidiaries and substantially all of its consolidated assets are held by its subsidiaries. Accordingly, Sempra Energy’s cash flow and its ability to meet its obligations under its debt securities and the debt securities guarantees are largely dependent upon the earnings of its subsidiaries and the distribution or other payment of these earnings to Sempra Energy in the form of dividends or loans or advances and repayment of loans and advances from Sempra Energy. Except for Sempra Energy Global Enterprises, with respect to repayment of their debt securities, the subsidiaries are separate and distinct legal entities and have no obligation to pay any amounts due on the Sempra Energy debt securities or to make any funds available for payment of amounts due on these debt securities or the debt securities guarantees.

Because Sempra Energy is a holding company, its obligations under the debt securities and the debt securities guarantees will be structurally subordinated to all existing and future liabilities of its subsidiaries. Therefore, Sempra Energy’s rights and the rights of its creditors, including the rights of the holders of the debt securities issued by Sempra Energy and any debt securities guarantees, to participate in the assets of any subsidiary upon the liquidation or reorganization of the subsidiary will be subject to the prior claims of the subsidiary’s creditors. To the extent that Sempra Energy may itself be a creditor with recognized claims against any of its subsidiaries, Sempra Energy’s claims would still be effectively subordinated to any security interest in, or mortgages or other liens on, the assets of the subsidiary and would be subordinated to any indebtedness or other liabilities of the subsidiary that are senior to the claims held by Sempra Energy. Sempra Energy expects to incur, and expects that each of its subsidiaries will incur, substantial additional amounts of indebtedness.

Sempra Energy Global Enterprises also conducts its operations primarily through its subsidiaries and substantially all of its consolidated assets are held by its subsidiaries. Accordingly, the discussion above is equally applicable to Sempra Energy Global Enterprises and the debt securities it issues.

### **Payment of Debt Securities—Interest**

Unless indicated differently in a prospectus supplement, the issuing company will pay interest on the debt securities on each interest payment date by check mailed to the person in whose name the debt securities are registered as of the close of business on the regular record date relating to the interest payment date.

However, if the issuing company defaults in paying interest on a debt security, the issuing company will pay defaulted interest in either of the two following ways:

- (a) The issuing company will first propose to the trustee a payment date for the defaulted interest. Next, the trustee will choose a special record date for determining which registered holders are entitled to the payment. The special record date will be between ten and 15 days before the proposed payment date. Finally, the issuing company will pay the defaulted interest on the payment date to the registered holder of the debt security as of the close of business on the special record date.
- (b) Alternatively, the issuing company can propose to the trustee any other lawful manner of payment that is consistent with the requirements of any securities exchange on which the debt securities are listed for trading. If the trustee thinks the proposal is practicable, payment will be made as proposed.

(See Section 307.)

### **Payment of Debt Securities—Principal**

The company issuing the debt securities will pay principal of and any premium and interest on the debt securities at stated maturity, upon redemption or otherwise, upon presentation of the debt securities at the office

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of the paying agent, which initially will be the trustee or such other paying agent designated in accordance with the applicable indenture. Any other paying agent initially designated for the debt securities of a particular series will be named in the applicable prospectus supplement.

If any interest payment date, redemption date or the maturity date of the debt securities is not a business day at any place of payment, then payment of the principal, premium, if any, and interest may be made on the next business day at that place of payment. In that case, no interest will accrue on the amount payable for the period from and after the applicable interest payment date, redemption date or maturity date, as the case may be.

The issuing company will pay principal of and any premium on the debt securities at stated maturity, upon redemption or otherwise, upon presentation of the debt securities at the office of the paying agent. In the discretion of the company issuing the debt securities, the issuing company may appoint one or more additional paying agents and security registrars and designate one or more additional places for payment and for registration of transfer, but must at all times maintain a place of payment of the debt securities and a place for registration of transfer of the debt securities in the Borough of Manhattan, the City of New York. (See Section 1002.)

### **Form; Transfers; Exchanges**

The debt securities will be issued:

- (a) only in fully registered form;
- (b) without interest coupons; and
- (c) on denominations that are even multiples of \$1,000.

You may have your debt securities divided into debt securities of smaller denominations (of at least \$1,000) or combined into debt securities of larger denominations, as long as the total principal amount is not changed. This is called an “exchange.” (See Section 305.)

You may exchange or transfer debt securities at the office of the trustee. The trustee acts as our agent for registering debt securities in the names of holders and transferring debt securities. The company issuing the debt securities may appoint another agent or act as its own agent for this purpose. The entity performing the role of maintaining the list of registered holders is called the “security registrar.” It will also perform transfers. (See Section 305.)

In the discretion of the company issuing the debt securities, the issuing company may change the place for registration of transfer of the debt securities and may remove and/or appoint one or more additional security registrars. (See Sections 305 and 1002.)

There will be no service charge for any transfer or exchange of the debt securities, but you may be required to pay a sum sufficient to cover any tax or other governmental charge payable in connection with the transfer or exchange.

We may block the transfer or exchange of (a) debt securities during a period of 15 days before giving any notice of redemption or (b) any debt security selected for redemption in whole or in part, except the unredeemed portion of any debt security being redeemed in part. (See Section 305.)

### **Optional Redemption**

Unless indicated differently in a prospectus supplement, all or a portion of the debt securities may be redeemed at the option of the issuing company at any time or from time to time. The redemption price for the debt securities to be redeemed on any redemption date will be equal to the greater of the following amounts:

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- 100% of the principal amount of the debt securities being redeemed on the redemption date; or
- the sum of the present values of the remaining scheduled payments of principal and interest on the debt securities being redeemed on that redemption date (not including any portion of any payments of interest accrued to the redemption date) discounted to the redemption date on a semiannual basis at the Adjusted Treasury Rate (as defined below) plus a number of basis points as set forth in any accompanying prospectus supplement, as determined by the Reference Treasury Dealer (as defined below).

plus, in each case, accrued and unpaid interest thereon to the redemption date. Notwithstanding the foregoing, installments of interest on the debt securities that are due and payable on interest payment dates falling on or before a redemption date will be payable on the interest payment date to the registered holders as of the close of business on the relevant record date according to the debt securities and the indenture. The redemption price will be calculated on the basis of a 360-day year consisting of twelve 30-day months.

The company issuing the debt securities will mail notice of any redemption at least 30 days but not more than 60 days before the redemption date to each registered holder of the debt securities to be redeemed. Once notice of redemption is mailed, the debt securities called for redemption will become due and payable on the redemption date and at the applicable redemption price, plus accrued and unpaid interest to the redemption date. If the issuing company elects to redeem all or a portion of the debt securities, that redemption will not be conditional upon receipt by the paying agent or the trustee of monies sufficient to pay the redemption price. (See Section 1104.)

Debt securities will cease to bear interest on the redemption date. The issuer of the debt securities will pay the redemption price and any accrued interest once you surrender the debt security for redemption. (See Section 1105.) If only part of a debt security is redeemed, the trustee will deliver to you a new debt security of the same series for the remaining portion without charge. (Section 1106.)

Unless the company issuing the debt securities defaults in payment of the redemption price, on and after the redemption date interest will cease to accrue on the debt securities or portions thereof called for redemption.

“*Adjusted Treasury Rate*” means, with respect to any redemption date, the rate per annum equal to the semiannual equivalent yield to maturity of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date.

“*Comparable Treasury Issue*” means the United States Treasury security selected by the Reference Treasury Dealer as having a maturity comparable to the remaining term of the debt securities to be redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of such debt securities.

“*Comparable Treasury Price*” means, with respect to any redemption date, (A) the average of the Reference Treasury Dealer Quotations for such redemption date, after excluding the highest and lowest such Reference Treasury Dealer Quotations, or (B) if the trustee receives fewer than three Such Reference Treasury Dealer Quotations, the average of all such Quotations, or (C) if the trustee receives only one Reference Treasury Dealer Quotation, such Quotation.

“*Reference Treasury Dealer*” means (A) the underwriters referenced in any applicable prospectus supplement; provided, however, that if any of the foregoing shall cease to be a primary U.S. Government securities dealer in New York City (a “Primary Treasury Dealer”), the company issuing the debt securities will substitute therefor another Primary Treasury Dealer; and (B) any other Primary Treasury Dealer(s) selected by the company issuing the debt securities.

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“*Reference Treasury Dealer Quotation*” means, with respect to each Reference Treasury Dealer and any redemption date, the average, as determined by the company issuing the debt securities, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the company issuing the debt securities by such Reference Treasury Dealer at 5:00 p.m. (New York City time) on the third business day preceding such redemption date.

### **Events of Default**

An “event of default” occurs with respect to the debt securities of any series if:

- (a) the issuing company does not pay any interest on any debt securities of the applicable series within 30 days of the due date;
- (b) the issuing company does not pay any principal of or premium on any debt securities of the applicable series on the due date;
- (c) the issuing company or, if applicable, the guarantor of the debt securities remains in breach of a covenant or warranty (excluding covenants and warranties solely applicable to another series of debt securities issued under the applicable indenture) in the applicable indenture or the debt securities of the applicable series for 60 days after it receives a written notice of default stating it is in breach and requiring remedy of the breach; the notice must be sent by either the trustee or registered holders of at least 25% of the principal amount of the outstanding debt securities of the affected series;
- (d) default occurs under any bond, note, debenture or other instrument evidencing any indebtedness for money borrowed by the issuing company or, if applicable, the guarantor of the debt securities, excluding any of the issuing company’s subsidiaries (including a default with respect to any other series of debt securities issued under the applicable indenture), or under any mortgage, indenture or other instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by the issuing company (or the payment of which is guaranteed by the issuing company or, if applicable, the guarantor of the debt securities), excluding any of the issuing company’s subsidiaries, whether such indebtedness or guarantee exists on the date of the applicable indenture or is issued or entered into following the date of the applicable indenture, if:
  - (1) either:
    - such default results from the failure to pay any such indebtedness when due; or
    - as a result of such default the maturity of such indebtedness has been accelerated prior to its expressed maturity; and
  - (2) the principal amount of such indebtedness, together with the principal amount of any other such indebtedness in default for failure to pay any such indebtedness when due or the maturity of which has been so accelerated, aggregates at least \$25 million;
- (e) the issuing company or, if applicable, the guarantor of the debt securities files for bankruptcy or other specified events in bankruptcy, insolvency, receivership or reorganization occur; or
- (f) any other event of default specified in the applicable prospectus supplement for such series occurs.

(See Section 501.)

No event of default with respect to a series of debt securities necessarily constitutes an event of default with respect to the debt securities of any other series issued under the applicable indenture.



## Remedies

### *Acceleration*

If an event of default occurs and is continuing with respect to any series of debt securities, then either the trustee or the registered holders of at least 25% in principal amount of the outstanding debt securities of that series may declare the principal amount of all of the debt securities of that series, together with accrued and unpaid interest thereon, to be due and payable immediately. (See Section 502.)

### *Rescission of Acceleration*

After the declaration of acceleration has been made with respect to any series of debt securities and before the trustee has obtained a judgment or decree for payment of the money due, the declaration and its consequences will be rescinded and annulled, if:

- (a) the company issuing the debt securities of that series pays or deposits with the trustee a sum sufficient to pay:
  - (1) all overdue interest on the debt securities of that series, other than interest which has become due by declaration of acceleration;
  - (2) the principal of and any premium on the debt securities of that series which have become due, otherwise than by the declaration of acceleration, and overdue interest on these amounts;
  - (3) interest on overdue interest, other than interest which has become due by declaration of acceleration, on the debt securities of that series to the extent lawful; and
  - (4) all amounts due to the trustee under the applicable indenture; and
- (b) all events of default with respect to the debt securities of that series, other than the nonpayment of the principal and interest which has become due solely by the declaration of acceleration, have been cured or waived as provided in the applicable indenture.

(See Section 502.)

For more information as to waiver of defaults, see “—Waiver of Default and of Compliance” below.

### *Control by Registered Holders; Limitations*

If an event of default with respect to the debt securities of any series occurs and is continuing, the registered holders of a majority in principal amount of the outstanding debt securities of that series, voting as a single class, without regard to the holders of outstanding debt securities of any other series that may also be in default, will have the right to direct the time, method and place of:

- (a) conducting any proceeding for any remedy available to the trustee with respect to the debt securities of that series; and
- (b) exercising any trust or power conferred on the trustee with respect to the debt securities of that series.

These rights of registered holders to give directions are subject to the following limitations:

- (a) the registered holders' directions do not conflict with any law or the applicable indenture; and
- (b) the direction is not unduly prejudicial to the rights of holders of the debt securities of that series who do not join in that action.

The trustee may also take any other action it deems proper which is consistent with the registered holders' direction. (See Sections 512 and 603.)

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In addition, each indenture provides that no registered holder of debt securities of any series will have any right to institute any proceeding, judicial or otherwise, with respect to the applicable indenture or for the appointment of a receiver or for any other remedy thereunder unless:

- (a) that registered holder has previously given the trustee written notice of a continuing event of default;
- (b) the registered holders of at least 25% in aggregate principal amount of the outstanding debt securities of that series have made written request to the trustee to institute proceedings in respect of that event of default and have offered the trustee reasonable indemnity against costs and liabilities incurred in complying with the request; and
- (c) for 60 days after receipt of the notice, the trustee has failed to institute a proceeding and no direction inconsistent with the request has been given to the trustee during the 60-day period by the registered holders of a majority in aggregate principal amount of outstanding debt securities of that series.

Furthermore, no registered holder will be entitled to institute any action if and to the extent that the action would disturb or prejudice the rights of other registered holders of debt securities. (See Section 507.)

However, each registered holder has an absolute and unconditional right to receive payment when due and to bring a suit to enforce that right. (See Section 508.)

### **Notice of Default**

The trustee is required to give the registered holders of debt securities of the affected series notice of any default under the applicable indenture to the extent required by the Trust Indenture Act, unless the default has been cured or waived; except that in the case of an event of default of the character specified above in clause (c) under “—Events of Default,” no notice shall be given to such registered holders until at least 30 days after the occurrence of the default. The Trust Indenture Act currently permits the trustee to withhold notices of default (except for certain payment defaults) if the trustee in good faith determines the withholding of the notice to be in the interests of the registered holders. (See Section 602.)

The company issuing the debt securities will furnish the trustee with an annual statement as to its compliance with the conditions and covenants in the applicable indenture.

### **Waiver of Default and of Compliance**

The registered holders of a majority in aggregate principal amount of the outstanding debt securities of any series, voting as a single class, without regard to the holders of outstanding debt securities of any other series, may waive, on behalf of all registered holders of the debt securities of that series, any past default under the applicable indenture, except a default in the payment of principal, premium or interest, or with respect to compliance with certain provisions of the applicable indenture that cannot be amended without the consent of the registered holder of each outstanding debt security of that series. (See Section 513.)

Unless indicated differently in a prospectus supplement, compliance with certain covenants in the applicable indenture or otherwise provided with respect to debt securities of any series may be waived before the time specified for compliance by the registered holders of a majority in aggregate principal amount of the debt securities of such series. (See Section 1006.)

### **Consolidation, Merger and Conveyance of Assets as an Entirety; No Financial Covenants**

Sempra Energy and Sempra Energy Global Enterprises have each agreed not to consolidate or merge with or into any other entity, or to sell, transfer, lease or otherwise convey its properties and assets as an entirety or substantially as an entirety to any entity, unless:

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- (a) it is the continuing entity (in the case of a merger) or the successor entity formed by such consolidation or into which it is merged or which acquires by sale, transfer, lease or other conveyance its properties and assets, as an entirety or substantially as an entirety, 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 expressly assumes, by supplemental indenture, (i) the due and punctual payment of the principal, premium and interest on all the debt securities and the performance of all of the covenants under the indenture and (ii) in the case of Sempra Energy, the due and punctual payment of all amounts under the debt securities guarantees; and
- (b) immediately after giving effect to the transaction, no event of default, and no event which after notice or lapse of time or both would become an event of default, has or will have occurred and be continuing.

Neither the applicable indenture nor the debt securities guarantee contains any financial or other similar restrictive covenants.

(See Section 801.)

### **Modification of Indenture**

*Without Registered Holder Consent.* Without the consent of any registered holders of debt securities, the company issuing the debt securities and the trustee may enter into one or more supplemental indentures for any of the following purposes:

- (a) to evidence the succession of another entity to the company issuing the debt securities; or
- (b) to add one or more covenants for the benefit of the holders of all or any series of debt securities or to surrender any right or power conferred upon the company issuing the debt securities; or
- (c) to add any additional events of default for all or any series of debt securities; or
- (d) to change or eliminate any provision of the applicable indenture so long as the change or elimination does not apply to any debt securities entitled to the benefit of such provision or to add any new provision to the applicable indenture (in addition to the provisions which may otherwise be added to the applicable indenture pursuant to the other clauses of this paragraph) so long as the addition does not apply to any outstanding debt securities; or
- (e) to provide security for the debt securities of any series; or
- (f) to establish the form or terms of debt securities of any series, as permitted by the applicable indenture; or
- (g) to evidence and provide for the acceptance of appointment of a separate or successor trustee; or
- (h) to cure any ambiguity, defect or inconsistency or to make any other changes with respect to any series of debt securities that does not adversely affect the interests of the holders of debt securities of that series in any material respect.

(See Section 901.)

*With Registered Holder Consent.* Subject to the following sentence, the company issuing the debt securities and the trustee may, with some exceptions, amend or modify the applicable indenture with the consent of the registered holders of at least a majority in aggregate principal amount of the debt securities of each series affected by the amendment or modification. However, no amendment or modification may, without the consent of the registered holder of each outstanding debt security affected thereby:

- (a) change the stated maturity of the principal or interest on any debt security or reduce the principal amount, interest or premium payable or change any place of payment where or the currency in which any debt security is payable, or impair the right to bring suit to enforce any payment;

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- (b) reduce the percentages of registered holders whose consent is required for any supplemental indenture or waiver;
- (c) modify or affect in any manner the terms and conditions of the obligations of Sempra Energy in respect of the due and punctual payment of the principal of, or premium, if any, or interest on any debt securities guarantees; or
- (d) modify certain provisions in the applicable indenture relating to supplemental indentures and waivers of certain covenants and past defaults.

A supplemental indenture which changes or eliminates any provision of the applicable indenture expressly included solely for the benefit of holders of debt securities of one or more particular series will be deemed not to affect the interests under the applicable indenture of the holders of debt securities of any other series.

(See Section 902.)

### **Defeasance**

The indentures provide, unless the terms of the particular series of debt securities provide otherwise, that the company issuing the debt securities or, if applicable, the guarantor of the debt securities, may, upon satisfying several conditions, cause it to be discharged from its respective obligations, with some exceptions, with respect to any series of debt securities, which we refer to as “defeasance.”

One condition the issuing company or, if applicable, the guarantor of the debt securities must satisfy is the irrevocable deposit with the trustee, in trust, of money and/or government obligations which, through the scheduled payment of principal and interest on those obligations, would provide sufficient moneys to pay the principal of and any premium and interest on those debt securities on the maturity dates of the payments or upon redemption.

In addition, the company issuing the debt securities or, if applicable, the guarantor of the debt securities will be required to deliver an opinion of counsel to the effect that a holder of debt securities will not recognize income, gain or loss for federal income tax purposes as a result of the defeasance and will be subject to federal income tax on the same amounts, at the same times and in the same manner as if that defeasance had not occurred. The opinion of counsel must be based upon a ruling of the Internal Revenue Service or a change in law after the date of the applicable indenture.

(See Article XIII.)

### **Satisfaction and Discharge**

The applicable indenture will cease to be of further effect with respect to any series of debt securities, and we will be deemed to have satisfied and discharged all of our obligations under the applicable indenture, except as noted below, when:

- all outstanding debt securities of such series have become due or will become due within one year at their stated maturity or on a redemption date; and
- the issuing company deposits with the trustee, in trust, funds that are sufficient to pay and discharge all remaining indebtedness on the outstanding debt securities of such series.

The company issuing the debt securities and, as applicable, guaranteeing the debt securities, of such series will remain obligated to pay all other amounts due under the applicable indenture and guarantee and to perform certain ministerial tasks as described in the applicable indenture.

(See Section 401.)

### **Resignation and Removal of the Trustee; Deemed Resignation**

The trustee with respect to any series of debt securities may resign at any time by giving written notice to us. The trustee may also be removed with respect to the debt securities of any series by act of the registered holders of a majority in principal amount of the then outstanding debt securities of such series. No resignation or removal of the trustee and no appointment of a successor trustee will become effective until the acceptance of appointment by a successor trustee in accordance with the requirements of the applicable indenture. Under certain circumstances, the company issuing a series of debt securities may appoint a successor trustee with respect to such series of debt securities, and if the successor trustee accepts, the trustee will be deemed to have resigned. (See Section 610.)

### **Subordination**

Unless indicated differently in a prospectus supplement, Sempra Energy's subordinated debt securities will be subordinated in right of payment to the prior payment in full of all its senior debt. This means that upon:

- (a) any distribution of the assets of Sempra Energy upon its dissolution, winding-up, liquidation or reorganization in bankruptcy, insolvency, receivership or other proceedings; or
- (b) acceleration of the maturity of the subordinated debt securities; or
- (c) a failure to pay any senior debt or interest thereon when due and continuance of that default beyond any applicable grace period; or
- (d) acceleration of the maturity of any senior debt as a result of a default,

the holders of all of Sempra Energy's senior debt will be entitled to receive:

- in the case of clauses (a) and (b) above, payment of all amounts due or to become due on all senior debt; and
- in the case of clauses (c) and (d) above, payment of all amounts due on all senior debt,

before the holders of any of the subordinated debt securities are entitled to receive any payment. So long as any of the events in clauses (a), (b), (c) or (d) above has occurred and is continuing, any amounts payable on the subordinated debt securities will instead be paid directly to the holders of all senior debt to the extent necessary to pay the senior debt in full and, if any payment is received by the subordinated indenture trustee under the subordinated indenture or the holders of any of the subordinated debt securities before all senior debt is paid in full, the payment or distribution must be paid over to the holders of the unpaid senior debt. Subject to paying the senior debt in full, the holders of the subordinated debt securities will be subrogated to the rights of the holders of the senior debt to the extent that payments are made to the holders of senior debt out of the distributive share of the subordinated debt securities. (See Section 1401.)

"*senior debt*" means with respect to the subordinated debt securities, the principal of, and premium, if any, and interest on and any other payment in respect of indebtedness due pursuant to any of the following, whether outstanding on the date the subordinated debt securities are issued or thereafter incurred, created or assumed:

- (a) all of the indebtedness of Sempra Energy evidenced by notes, debentures, bonds or other securities sold by it for money or other obligations for money borrowed;
- (b) all indebtedness of others of the kinds described in the preceding clause (a) assumed by or guaranteed in any manner by Sempra Energy or in effect guaranteed by Sempra Energy through an agreement to purchase, contingent or otherwise, as applicable; and
- (c) all renewals, extensions or refundings of indebtedness of the kinds described in either of the preceding clauses (a) and (b), unless, in the case of any particular indebtedness, renewal, extension or refunding, the instrument creating or evidencing the same or the assumption or guarantee of the same by its terms

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provides that such indebtedness, renewal, extension or refunding is not superior in right of payment to or is pari passu with such securities. (See Section 101.)

Due to the subordination, if assets of Sempra Energy are distributed upon insolvency, certain of its general creditors may recover more, ratably, than holders of subordinated debt securities. The subordination provisions will not apply to money and securities held in trust under the satisfaction and discharge and the defeasance provisions of the applicable subordinated indenture. (See Section 1410.)

The subordinated debt securities, the subordinated indenture and the trust preferred securities guarantee do not limit Sempra Energy or any of its subsidiaries' ability to incur additional indebtedness, including indebtedness that will rank senior to subordinated debt securities and trust preferred securities guarantees. Sempra Energy expects that it will incur, and that each of its subsidiaries will incur, substantial additional amounts of indebtedness in the future. (See Section 301.)

### **Conversion Rights**

The terms and conditions of any series of debt securities being offered that are convertible into common stock of Sempra Energy will be set forth in a prospectus supplement. These terms will include the conversion price, the conversion period, provisions as to whether conversion will be at the option of the holder or the company issuing the debt securities, the events requiring an adjustment of the conversion price and provisions affecting conversion if such series of debt securities are redeemed.

### **Miscellaneous Provisions**

Each indenture provides that certain debt securities, including those for which payment or redemption money has been deposited or set aside in trust as described under "—Satisfaction and Discharge" above, will not be deemed to be "outstanding" in determining whether the registered holders of the requisite principal amount of the outstanding debt securities have given or taken any demand, direction, consent or other action under the indenture as of any date, or are present at a meeting of registered holders for quorum purposes. (See Section 101.)

The company issuing the debt securities will be entitled to set any day as a record date for the purpose of determining the registered holders of outstanding debt securities of any series entitled to give or take any demand, direction, consent or other action under the applicable indenture, in the manner and subject to the limitations provided in the applicable indenture. In certain circumstances, the trustee also will be entitled to set a record date for action by registered holders of any series of outstanding debt securities. If a record date is set for any action to be taken by registered holders of particular debt securities, the action may be taken only by persons who are registered holders of the respective debt securities on the record date. (See Section 104.)

### **Governing Law**

Each indenture and the related debt securities will be governed by and construed in accordance with the laws of the State of New York. (See Section 112.)

## DESCRIPTION OF SEMPRA ENERGY'S COMMON STOCK AND PREFERRED STOCK

*Unless indicated differently in a prospectus supplement, this section describes the terms of Sempra Energy's common stock and preferred stock. The following description of Sempra Energy's common stock and preferred stock is only a summary and is qualified in its entirety by reference to the articles of incorporation and bylaws of Sempra Energy. Therefore, you should read carefully the more detailed provisions of Sempra Energy's Amended and Restated Articles of Incorporation, Sempra Energy's Amended and Restated Bylaws, and Sempra Energy's Rights Agreement, dated May 26, 1998, between Sempra Energy and First Chicago Trust Company of New York, as rights agent, copies of which are incorporated by reference as exhibits to the registration statement of which this prospectus is a part.*

### General

The authorized capital stock of Sempra Energy consists of (1) 750,000,000 shares of Sempra Energy common stock, without par value, and (2) 50,000,000 shares of preferred stock, without par value. As of December 31, 2002, there were 204,911,572 issued and outstanding shares of Sempra Energy common stock and no shares of Sempra Energy preferred stock. No other classes of capital stock are authorized under the Sempra Energy articles of incorporation. The issued and outstanding shares of Sempra Energy common stock are duly authorized, validly issued, fully paid, nonassessable and free of preemptive rights.

### Sempra Energy Common Stock

The holders of Sempra Energy common stock are entitled to receive such dividends as the Sempra Energy board of directors may from time to time declare, subject to any rights of holders of outstanding shares of Sempra Energy preferred stock. Except as otherwise provided by law, each holder of Sempra Energy common stock is entitled to one vote per share on each matter submitted to a vote of a meeting of shareholders, subject to any class or series voting rights of holders of Sempra Energy preferred stock. Under the Sempra Energy articles of incorporation, the Sempra Energy board of directors is classified into three classes, each consisting of a number as nearly equal as possible to one-third of the total number of directors constituting the entire Sempra Energy board of directors. The holders of shares of Sempra Energy common stock are not entitled to cumulate votes for the election of directors.

In the event of any liquidation, dissolution or winding up of Sempra Energy, whether voluntary or involuntary, the holders of shares of Sempra Energy common stock, subject to any rights of the holders of outstanding shares of Sempra Energy preferred stock, are entitled to receive any remaining assets of Sempra Energy after the discharge of its liabilities.

Holders of Sempra Energy common stock are not entitled to preemptive rights to subscribe for or purchase any part of any new or additional issue of stock or securities convertible into stock. Sempra Energy common stock does not contain any redemption provisions or conversion rights and is not liable to assessment or further call.

Each outstanding share of Sempra Energy common stock is accompanied by a right to purchase one one-hundredth of a share of Class A Junior Participating Preferred Stock, without par value, of Sempra Energy at a price of \$80 per right, subject to certain anti-dilution adjustments. The Sempra Energy board of directors has reserved 7,500,000 shares of such Class A preferred stock for issuance upon exercise of the rights, as more fully discussed below under the caption "—Description of Preferred Share Purchase Rights."

The registrar and transfer agent for the Sempra Energy common stock is First Chicago Trust Company of New York.

### **Sempra Energy Preferred Stock**

The Sempra Energy board of directors is authorized, pursuant to the Sempra Energy articles of incorporation, to issue up to 50,000,000 shares of Sempra Energy preferred stock in one or more series and to fix and determine the number of shares of Sempra Energy preferred stock of any series, to determine the designation of any such series, to increase or decrease the number of shares of any such series after the issue of shares of that series, and to determine or alter the rights, preferences, privileges and restrictions granted to or imposed upon any such series. Currently, there are no shares of Sempra Energy preferred stock outstanding. However, the Sempra Energy board of directors has reserved 7,500,000 shares of Class A preferred stock for issuance in connection with rights issued under the Sempra Energy rights agreement.

Before the issuance of shares of each series of Sempra Energy preferred stock, the board of directors is required to adopt resolutions and file a certificate of determination with the Secretary of State of the State of California. The certificate of determination will fix for each series the designation and number of shares and the rights, preferences, privileges and restrictions of the shares including, but not limited to, the following:

- (a) the title and stated value of the Sempra Energy preferred stock;
- (b) voting rights, if any, of the Sempra Energy preferred stock;
- (c) any rights and terms of redemption (including sinking fund provisions);
- (d) the dividend rate(s), period(s) and/or payment date(s) or method(s) of calculation applicable to the Sempra Energy preferred stock;
- (e) whether dividends are cumulative or non-cumulative and, if cumulative, the date from which dividends on the Sempra Energy preferred stock will accumulate;
- (f) the relative ranking and preferences of the Sempra Energy preferred stock as to dividend rights and rights upon the liquidation, dissolution or winding up of Sempra Energy's affairs;
- (g) the terms and conditions, if applicable, upon which the Sempra Energy preferred stock will be convertible into Sempra Energy common stock, including the conversion price (or manner of calculation) and conversion period;
- (h) the provision for redemption, if applicable, of the Sempra Energy preferred stock;
- (i) the provisions for a sinking fund, if any, for the Sempra Energy preferred stock;
- (j) liquidation preferences;
- (k) any limitations on issuance of any class or series of Sempra Energy preferred stock ranking senior to or on a parity with the class or series of Sempra Energy preferred stock as to dividend rights and rights upon liquidation, dissolution or winding up of Sempra Energy's affairs; and
- (l) any other specific terms, preferences, rights, limitations or restrictions of the Sempra Energy preferred stock.

All shares of Sempra Energy preferred stock will, when issued, be fully paid and nonassessable and will not have any preemptive or similar rights.

In addition to the terms listed above, we will set forth in a prospectus supplement the following terms relating to the class or series of Sempra Energy preferred stock being offered:

- (a) the number of shares of the Sempra Energy preferred stock offered, the liquidation preference per share and the offering price of the Sempra Energy preferred stock;
- (b) the procedures for any auction and remarketing, if any, for the Sempra Energy preferred stock;
- (c) any listing of the Sempra Energy preferred stock on any securities exchange; and



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- (d) a discussion of any material and/or special United States federal income tax considerations applicable to the Sempra Energy preferred stock.

### **Rank**

The Sempra Energy preferred stock will rank, with respect to dividends and upon our liquidation, dissolution or winding up:

- (a) senior to all classes or series of Sempra Energy common stock and to all of our equity securities ranking junior to the Sempra Energy preferred stock;
- (b) on a parity with all of Sempra Energy's equity securities, the terms of which specifically provide that the equity securities rank on a parity with the Sempra Energy preferred stock; and
- (c) junior to all of Sempra Energy's equity securities, the terms of which specifically provide that the equity securities rank senior to the Sempra Energy preferred stock.

### **Description of Preferred Share Purchase Rights**

On May 26, 1998, the Sempra Energy board of directors adopted a preferred share purchase rights plan providing that one preferred share purchase right will attach to each share of Sempra Energy common stock (each, a "purchase right"). The description and terms of the rights are set forth in a rights agreement, dated as of May 26, 1998, by and between Sempra Energy and First Chicago Trust Company of New York, as rights agent. The purchase rights have an anti-takeover effect that is intended to discourage coercive or unfair takeover tactics and to encourage any potential acquirer to negotiate a fair price to all Sempra Energy shareholders. The purchase rights may cause substantial dilution to any party that may attempt to acquire Sempra Energy on terms not approved by the Sempra Energy board of directors. However, the purchase rights are structured in a way so as not to interfere with any negotiated merger or other business combination. The purchase rights will expire on May 31, 2008. Until a purchase right is exercised, the holder of the purchase right will have no rights as a shareholder of Sempra Energy beyond those rights afforded to existing shareholders, including the right to vote or to receive dividends.

The purchase rights are designed to assure that all of Sempra Energy's shareholders receive fair and equal treatment in the event of any proposed takeover of Sempra Energy and to guard against partial tender offers, open market accumulations and other abusive tactics that may be deployed to gain control of Sempra Energy without a control premium paid to all shareholders. Any time before the first date that a person or group has become an "acquiring person" as defined in the rights agreement, the purchase rights should not interfere with any merger or other business combination that is approved by the Sempra Energy board of directors.

### **Anti-Takeover Provisions**

The Sempra Energy articles of incorporation and bylaws contain provisions that may have the effect of discouraging persons from acquiring large blocks of Sempra Energy stock or delaying or preventing a change in control of Sempra Energy. The material provisions that may have such an effect are:

- (a) classification of the Sempra Energy board of directors into three classes with the term of only one class expiring each year;
- (b) a provision permitting the Sempra Energy board of directors to make, amend or repeal the Sempra Energy bylaws;
- (c) authorization for the Sempra Energy board of directors to issue Sempra Energy preferred stock in series and to fix rights and preferences of the series (including, among other things, whether, and to what extent, the shares of any series will have voting rights and the extent of the preferences of the shares of any series with respect to dividends and other matters);

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- (d) a provision that shareholders may take action only at annual or special meetings or by unanimous written consent in lieu of a meeting;
- (e) advance notice procedures with respect to nominations of directors or proposals other than those adopted or recommended by the Sempra Energy board of directors; and
- (f) provisions permitting amendment of certain of these provisions only by an affirmative vote of the holders of at least two-thirds of the outstanding shares of Sempra Energy common stock entitled to vote.

Some acquisitions of Sempra Energy's outstanding voting shares would also require approval of the SEC under the Public Utility Holding Company Act of 1935 and of various state and foreign regulatory authorities.

## DESCRIPTION OF WARRANTS

*This section describes the general terms of the warrants that Sempra Energy may offer and sell by this prospectus. This prospectus and any accompanying prospectus supplement will contain the material terms and conditions for each warrant. The accompanying prospectus supplement may add, update or change the terms and conditions of the warrants as described in this prospectus. In this section, references to “we,” “our” and “us” mean Sempra Energy excluding, unless otherwise expressly stated or the context otherwise requires, its subsidiaries.*

### General

We, and/or Sempra Energy Global Enterprises, may issue warrants to purchase debt securities, preferred stock or common stock. Warrants may be issued independently or together with any securities and may be attached to or separate from those securities. The warrants will be issued under warrant agreements to be entered into between us and a bank or trust company, as warrant agent, all of which will be described in the prospectus supplement relating to the warrants we are offering. The warrant agent will act solely as our agent in connection with the warrants and will not have any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants. A copy of the warrant agreement will be filed with the SEC in connection with the offering of the warrants.

### Debt Warrants

We, and/or Sempra Energy Global Enterprises, may issue warrants for the purchase of our debt securities, or in the case of warrants issued by Sempra Energy Global Enterprises, their debt securities. As explained below, each debt warrant will entitle its holder to purchase debt securities at an exercise price set forth in, or to be determinable as set forth in, the related prospectus supplement. Debt warrants may be issued separately or together with debt securities.

The debt warrants are to be issued under debt warrant agreements to be entered into between us, or, if applicable, Sempra Energy Global Enterprises, and one or more banks or trust companies, as debt warrant agent, as will be set forth in the prospectus supplement relating to the debt warrants being offered by the prospectus supplement and this prospectus. A copy of the debt warrant agreement, including a form of the debt warrant certificate representing the debt warrants, will be filed with the SEC in connection with the offering of the debt warrants.

The particular terms of each issue of debt warrants, the debt warrant agreement relating to the debt warrants and the debt warrant certificates representing debt warrants will be described in the applicable prospectus supplement, including, as applicable:

- (a) the title of the debt warrants;
- (b) the initial offering price;
- (c) the title, aggregate principal amount and terms of the debt securities purchasable upon exercise of the debt warrants;
- (d) the currency or currency units in which the offering price, if any, and the exercise price are payable;
- (e) the title and terms of any related debt securities with which the debt warrants are issued and the number of the debt warrants issued with each debt security;
- (f) the date, if any, on and after which the debt warrants and the related debt securities will be separately transferable;
- (g) the principal amount of debt securities purchasable upon exercise of each debt warrant and the price at which that principal amount of debt securities may be purchased upon exercise of each debt warrant;

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- (h) if applicable, the minimum or maximum number of warrants that may be exercised at any one time;
- (i) the date on which the right to exercise the debt warrants will commence and the date on which the right will expire;
- (j) if applicable, a discussion of United States federal income tax, accounting or other considerations applicable to the debt warrants;
- (k) whether the debt warrants represented by the debt warrant certificates will be issued in registered or bearer form, and, if registered, where they may be transferred and registered;
- (l) anti-dilution provisions of the debt warrants, if any;
- (m) redemption or call provisions, if any, applicable to the debt warrants; and
- (n) any additional terms of the debt warrants, including terms, procedures and limitations relating to the exchange and exercise of the debt warrants.

Debt warrant certificates will be exchangeable for new debt warrant certificates of different denominations and, if in registered form, may be presented for registration of transfer, and debt warrants may be exercised at the corporate trust office of the debt warrant agent or any other office indicated in the related prospectus supplement. Before the exercise of debt warrants, holders of debt warrants will not be entitled to payments of principal, premium, if any, or interest, if any, on the debt securities purchasable upon exercise of the debt warrants, or to enforce any of the covenants in the applicable indenture.

### **Equity Warrants**

We may issue warrants for the purchase of our equity securities, such as our preferred stock or common stock. As explained below, each equity warrant will entitle its holder to purchase equity securities at an exercise price set forth in, or to be determinable as set forth in, the related prospectus supplement. Equity warrants may be issued separately or together with equity securities.

The equity warrants are to be issued under equity warrant agreements to be entered into between us and one or more banks or trust companies, as equity warrant agent, as will be set forth in the prospectus supplement relating to the equity warrants being offered by the prospectus supplement and this prospectus. A copy of the equity warrant agreement, including a form of the equity warrant certificate representing the equity warranty, will be filed with the SEC in connection with the offering of the equity warrants.

The particular terms of each issue of equity warrants, the equity warrant agreement relating to the equity warrants and the equity warrant certificates representing equity warrants will be described in the applicable prospectus supplement, including, as applicable:

- (a) the title of the equity warrants;
- (b) the initial offering price;
- (c) the aggregate number of equity warrants and the aggregate number of shares of the equity security purchasable upon exercise of the equity warrants;
- (d) the currency or currency units in which the offering price, if any, and the exercise price are payable;
- (e) if applicable, the designation and terms of the equity securities with which the equity warrants are issued, and the number of equity warrants issued with each equity security;
- (f) the date, if any, on and after which the equity warrants and the related equity security will be separately transferable;
- (g) if applicable, the minimum or maximum number of the equity warrants that may be exercised at any one time;

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- (h) the date on which the right to exercise the equity warrants will commence and the date on which the right will expire;
- (i) if applicable, a discussion of United States federal income tax, accounting or other considerations applicable to the equity warrants;
- (j) anti-dilution provisions of the equity warrants, if any;
- (k) redemption or call provisions, if any, applicable to the equity warrants; and
- (l) any additional terms of the equity warrants, including terms, procedures and limitations relating to the exchange and exercise of the equity warrants.

Holders of equity warrants will not be entitled, solely by virtue of being holders, to vote, to consent, to receive dividends, to receive notice as shareholders with respect to any meeting of shareholders for the election of directors or any other matter, or to exercise any rights whatsoever as a holder of the equity securities purchasable upon exercise of the equity warrants.

## DESCRIPTION OF SECURITIES PURCHASE CONTRACTS AND SECURITIES PURCHASE UNITS

*This section describes the general terms of the securities purchase contracts and securities purchase units that Sempra Energy may offer and sell by this prospectus. This prospectus and any accompanying prospectus supplement will contain the material terms and conditions for each securities purchase contract and securities purchase unit. The accompanying prospectus supplement may add, update or change the terms and conditions of the securities purchase contracts and securities purchase units as described in this prospectus. In this section, references to “we,” “our” and “us” mean Sempra Energy excluding, unless otherwise expressly stated or the context otherwise requires, its subsidiaries.*

### **Stock Purchase Contract and Stock Purchase Units**

We may issue stock purchase contracts, representing contracts obligating holders to purchase from us, and obligating us to sell to the holders, a specified number of shares of common stock or preferred stock at a future date or dates, or a variable number of shares of common stock or preferred stock for a stated amount of consideration. The price per share and the number of shares of common stock or preferred stock may be fixed at the time the stock purchase contracts are issued or may be determined by reference to a specific formula set forth in the stock purchase contracts. Any such formula may include anti-dilution provisions to adjust the number of shares of common stock or preferred stock issuable pursuant to the stock purchase contracts upon certain events.

The stock purchase contracts may be issued separately or as part of units consisting of a stock purchase contract and, as security for the holder’s obligations to purchase the shares under the stock purchase contracts, either (a) our senior debt securities or subordinated debt securities, (b) our debt obligations of third parties, including U.S. Treasury securities, or (c) preferred securities of a trust. The stock purchase contracts may require us to make periodic payments to the holders of the stock purchase units or vice versa, and such payments may be unsecured or prefunded on some basis. The stock purchase contracts may require holders to secure their obligations in a specified manner, and in certain circumstances, we may deliver newly issued prepaid stock purchase contracts upon release to a holder of any collateral securing such holder’s obligations under the original stock purchase contract.

### **Debt Purchase Contracts and Debt Purchase Units**

We may issue debt purchase contracts, representing contracts obligating holders to purchase from us, and obligating us to sell to the holders, a specified principal amount of debt securities at a future date or dates. The purchase price and the interest rate may be fixed at the time the debt purchase contracts are issued or may be determined by reference to a specific formula set forth in the debt purchase contracts.

The debt purchase contracts may be issued separately or as part of units consisting of a debt purchase contract and, as security for the holder’s obligations to purchase the securities under the debt purchase contracts, either (a) our senior debt securities or subordinated debt securities, (b) our debt obligations of third parties, including U.S. Treasury securities, or (c) preferred securities of a trust. The debt purchase contracts may require us to make periodic payments to the holders of the debt purchase units or vice versa, and such payments may be unsecured or prefunded on some basis. The debt purchase contracts may require holders to secure their obligations in a specified manner, and in certain circumstances, we may deliver newly issued prepaid debt purchase contracts upon release to a holder of any collateral securing such holder’s obligations under the original debt purchase contract.

The applicable prospectus supplement will describe the general terms of any purchase contracts or purchase units and, if applicable, prepaid purchase contracts. The description in the prospectus supplement will not purport to be complete and will be qualified in its entirety by reference to (a) the purchase contracts, (b) the collateral arrangements and depository arrangements, if applicable, relating to such purchase contracts or purchase units and (c) if applicable, the prepaid purchase contracts and the document pursuant to which such prepaid purchase contracts will be issued. Material United States federal income tax considerations applicable to the purchase contracts and the purchase units will also be discussed in the applicable prospectus supplement.

## DESCRIPTION OF DEPOSITARY SHARES

*This section describes the general terms of the depositary shares Sempra Energy may offer and sell by this prospectus. This prospectus and any accompanying prospectus supplement will contain the material terms and conditions for the depositary shares. The accompanying prospectus supplement may add, update, or change the terms and conditions of the depositary shares as described in this prospectus. In this section, reference to “we,” “our” and “us” mean Sempra Energy excluding, unless otherwise expressly stated or the context requires, its subsidiaries.*

### General

We may, at our option, elect to offer depositary shares, each representing a fraction (to be set forth in the prospectus supplement relating to a particular series of preferred stock) of a share of a particular class or series of preferred stock as described below. In the event we elect to do so, depositary receipts evidencing depositary shares will be issued to the public.

The shares of any class or series of preferred stock represented by depositary shares will be deposited under a deposit agreement among us, a depositary selected by us and the holders of the depositary receipts. The depositary will be a bank or trust company having its principal office in the United States and having a combined capital and surplus of at least \$50,000,000. Subject to the terms of the deposit agreement, each owner of a depositary share will be entitled, in proportion to the applicable fraction of a share of preferred stock represented by such depositary share, to all the rights and preferences of the shares of preferred stock represented by the depositary share, including dividend, voting, redemption and liquidation rights.

The depositary shares will be evidenced by depositary receipts issued pursuant to the deposit agreement. Depositary receipts will be distributed to those persons purchasing the fractional shares of the related class or series of preferred shares in accordance with the terms of the offering described in the related prospectus supplement.

Pending the preparation of definitive depositary receipts, the depositary may, upon our written order, issue temporary depositary receipts substantially identical to, and entitling the holders thereof to all the rights pertaining to, the definitive depositary receipts but not in definitive form. Definitive depositary receipts will be prepared without unreasonable delay, and temporary depositary receipts will be exchangeable for definitive depositary receipts without charge to the holder.

### Dividends and Other Distributions

The depositary will distribute all cash dividends or other cash distributions received for the preferred stock to the entitled record holders of depositary shares in proportion to the number of depositary shares that the holder owns on the relevant record date; provided, however, that if we or the depositary is required by law to withhold an amount on account of taxes, then the amount distributed to the holders of depositary shares shall be reduced accordingly. The depositary will distribute only an amount that can be distributed without attributing to any holder of depositary shares a fraction of one cent. The depositary will add the undistributed balance to and treat it as part of the next sum received by the depositary for distribution to holders of the depositary shares.

If there is a non-cash distribution, the depositary will distribute property received by it to the entitled record holders of depositary shares, in proportion, insofar as possible, to the number of depositary shares owned by the holders, unless the depositary determines, after consultation with us, that it is not feasible to make such distribution. If this occurs, the depositary may, with our approval, sell such property and distribute the net proceeds from such sale to the holders. The deposit agreement also will contain provisions relating to how any subscription or similar rights that we may offer to holders of the preferred stock will be available to the holders of the depositary shares.

### **Withdrawal of Shares**

Upon surrender of the depositary receipts at the corporate trust office of the depositary, unless the related depositary shares have previously been called for redemption, converted or exchanged into our other securities, the holder of the depositary shares evidenced thereby is entitled to delivery of the number of whole shares of the related class or series of preferred stock and any money or other property represented by such depositary shares. Holders of depositary receipts will be entitled to receive whole shares of the related class or series of preferred stock on the basis set forth in the prospectus supplement for such class or series of preferred stock, but holders of such whole shares of preferred stock will not thereafter be entitled to exchange them for depositary shares. If the depositary receipts delivered by the holder evidence a number of depositary shares in excess of the number of depositary shares representing the number of whole shares of preferred stock to be withdrawn, the depositary will deliver to such holder at the same time a new depositary receipt evidencing such excess number of depositary shares. In no event will fractional shares of preferred stock be delivered upon surrender of depositary receipts to the depositary.

### **Conversion, Exchange and Redemption**

If any class or series of preferred stock underlying the depositary shares may be converted or exchanged, each record holder of depositary receipts representing the shares of preferred stock being converted or exchanged will have the right or obligation to convert or exchange the depositary shares represented by the depositary receipts.

Whenever we redeem or convert shares of preferred stock held by the depositary, the depositary will redeem or convert, at the same time, the number of depositary shares representing the preferred stock to be redeemed or converted. The depositary will redeem the depositary shares from the proceeds it receives from the corresponding redemption of the applicable series of preferred stock. The depositary will mail notice of redemption or conversion to the record holders of the depositary shares that are to be redeemed between 30 and 60 days before the date fixed for redemption or conversion. The redemption price per depositary share will be equal to the applicable fraction of the redemption price per share on the applicable class or series of preferred stock. If less than all the depositary shares are to be redeemed, the depositary will select which shares are to be redeemed by lot on a pro rata basis or by any other equitable method as the depositary may decide.

After the redemption or conversion date, the depositary shares called for redemption or conversion will no longer be outstanding. When the depositary shares are no longer outstanding, all rights of the holders will end, except the right to receive money, securities or other property payable upon redemption or conversion of the depositary shares.

### **Voting the Preferred Stock**

When the depositary receives notice of a meeting at which the holders of the particular class or series of preferred stock are entitled to vote, the depositary will mail the particulars of the meeting to the record holders of the depositary shares. Each record holder of depositary shares on the record date may instruct the depositary on how to vote the shares of preferred stock underlying the holder's depositary shares. The depositary will try, if practical, to vote the number of shares of preferred stock underlying the depositary shares according to the instructions. We will agree to take all reasonable action requested by the depositary to enable it to vote as instructed.

### **Amendment and Termination of the Deposit Agreement**

We and the depositary may agree at any time to amend the deposit agreement and the depositary receipt evidencing the depositary shares. Any amendment that (a) imposes or increases certain fees, taxes or other charges payable by the holders of the depositary shares as described in the deposit agreement or (b) otherwise materially adversely affects any substantial existing rights of holders of depositary shares, will not take effect



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until such amendment is approved by the holders of at least a majority of the depositary shares then outstanding. Any holder of depositary shares that continues to hold its shares after such amendment has become effective will be deemed to have agreed to the amendment.

We may direct the depositary to terminate the deposit agreement by mailing a notice of termination to holders of depositary shares at least 30 days before termination. The depositary may terminate the deposit agreement if 90 days have elapsed after the depositary delivered written notice of its election to resign and a successor depositary is not appointed. In addition, the deposit agreement will automatically terminate if:

- the depositary has redeemed all related outstanding depositary shares;
- all outstanding shares of preferred stock have been converted into or exchanged for common stock; or
- we have liquidated, terminated or wound up our business and the depositary has distributed the preferred stock of the relevant series to the holders of the related depositary shares.

### **Reports and Obligations**

The depositary will forward to the holders of depositary shares all reports and communications from us that are delivered to the depositary and that we are required by law, the rules of an applicable securities exchange or our amended and restated certificate of incorporation to furnish to the holders of the preferred stock. Neither we nor the depositary will be liable if the depositary is prevented or delayed by law or any circumstances beyond its control in performing its obligations under the deposit agreement. The deposit agreement limits our obligations to performance in good faith of the duties stated in the deposit agreement. The depositary assumes no obligation and will not be subject to liability under the deposit agreement except to perform such obligations as are set forth in the deposit agreement without negligence or bad faith. Neither we nor the depositary will be obligated to prosecute or defend any legal proceeding connected with any depositary shares or class or series of preferred stock unless the holders of depositary shares requesting us to do so furnish us with a satisfactory indemnity. In performing our obligations, we and the depositary may rely and act upon the advice of our counsel or accountants, on any information provided to us by a person presenting shares for deposit, any holder of a receipt, or any other document believed by us or the depositary to be genuine and to have been signed or presented by the proper party or parties.

### **Payment of Fees and Expenses**

We will pay all fees, charges and expenses of the depositary, including the initial deposit of the preferred stock and any redemption of the preferred stock. Holders of depositary shares will pay taxes and governmental charges and any other charges as are stated in the deposit agreement for their accounts.

### **Resignation and Removal of Depositary**

At any time, the depositary may resign by delivering notice to us, and we may remove the depositary at any time. Resignations or removals will take effect upon the appointment of a successor depositary and its acceptance of the appointment. The successor depositary must be appointed within 90 days after the delivery of the notice of resignation or removal and must be a bank or trust company having its principal office in the United States and having a combined capital and surplus of at least \$50,000,000.

## DESCRIPTION OF TRUST PREFERRED SECURITIES

*This section describes the general terms of the trust preferred securities that Sempra Energy may offer and sell by this prospectus. This prospectus and any accompanying prospectus supplement will contain the material terms and conditions for each trust preferred security. The accompanying prospectus supplement may add, update or change the terms and conditions of the trust preferred securities as described in this prospectus. In this section, references to “we,” “our” and “us” mean Sempra Energy excluding, unless otherwise expressly stated or the context otherwise requires, its subsidiaries.*

### General

Each Declaration authorizes the regular trustees to issue on behalf of each trust one series of trust preferred securities which will have the terms described below and in a prospectus supplement. Each trust will use the net proceeds from the sale of trust preferred securities and trust common securities to purchase a series of subordinated debt securities from us. The property trustee will hold legal title to such subordinated debt securities in trust for the benefit of the holders of the applicable trust preferred securities. We will guarantee the payment of distributions and other amounts payable on the trust preferred securities, but only to the extent that the trust has funds legally and immediately available to make those payments. The trust preferred securities and trust common securities of a trust are referred to herein as the “trust securities.”

Each trust preferred securities guarantee, when taken together with our obligation under the related series of subordinated debt securities, the subordinated indenture and the related Declaration, will provide a full and unconditional guarantee of amounts due on the trust preferred securities issued by a trust.

Each Declaration will be qualified as an indenture under the Trust Indenture Act. Each property trustee will act as indenture trustee for the trust preferred securities to comply with the provisions of the Trust Indenture Act.

The trust preferred securities will be represented by a global security that will be deposited with and registered in the name of The Depository Trust Company (“DTC”) or its nominee. Whenever we refer to a “holder” of trust preferred securities in this prospectus, we mean the registered holder, which, for any trust preferred securities in book-entry form, will be DTC or its nominee. We discuss various matters relevant to global securities under “Global Securities—Book-Entry, Delivery and Form” below.

Each series of trust preferred securities will have the terms, including distributions, redemption, voting, liquidation rights and the other preferred, deferred or other special rights or other restrictions as described in the relevant Declaration or made part of the Declaration by the Trust Indenture Act or the Delaware Statutory Trust Act. The terms of the trust preferred securities will mirror the terms of the subordinated debt securities held by the trust.

The prospectus supplement relating to the trust preferred securities of a trust will describe the specific terms of the trust preferred securities, including:

- (a) the name of the trust preferred securities;
- (b) the dollar amount and number of trust preferred securities issued;
- (c) any provision relating to deferral of distribution payments, if different from those described in this prospectus;
- (d) the annual distribution rate(s) (or method of determining the rate(s)), the payment date(s) and the record dates used to determine the holders who are to receive distributions;
- (e) the date from which distributions shall be cumulative;
- (f) the optional redemption provisions, if any, including the prices, time periods and other terms and conditions for which the trust preferred securities shall be purchased or redeemed, in whole or in part;

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- (g) the terms and conditions, if any, upon which the applicable series of subordinated debt securities may be distributed to holders of the trust preferred securities, if different from those described in this prospectus;
- (h) the voting rights, if any, of holders of the trust preferred securities, if different from those described in this prospectus;
- (i) any securities exchange on which the trust preferred securities will be listed;
- (j) whether the trust preferred securities are to be issued in book-entry form and represented by one or more global certificates and, if so, the depository for the global certificates and the specific terms of the depository arrangements, if different from those described in this prospectus; and
- (k) any other relevant rights, preferences, privileges, limitations or restrictions of the trust preferred securities, if different from those described in this prospectus.

Each prospectus supplement will describe certain United States federal income tax considerations applicable to the purchase, holding and disposition of the series of trust preferred securities covered by the prospectus supplement.

### **Distributions**

Distributions will accumulate on each series of trust preferred securities from the date they are first issued. Unless deferred as described below, distributions will be payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year (each, a “distribution date”). Distributions not paid when due will accumulate additional distributions, compounded quarterly, at the annual rate stated in the related prospectus supplement, to the extent permitted by law. Whenever we use the term “distributions” in this prospectus, we are including any of these distributions. The amount of distributions payable for any period will be computed on the basis of a 360-day year of twelve 30-day months.

The assets of a trust available for distribution to holders of trust preferred securities will be limited to the interest payments the trust receives from us with respect to the subordinated debt securities. Consequently, if we defer or for any other reason fail to make interest payments on the subordinated debt securities, the trust will not have funds to pay distributions on the trust preferred securities.

As long as no Subordinated Indenture Event of Default (as defined in the subordinated indenture for the subordinated debt securities held by a trust) has occurred and has not been cured, we will have the right to defer interest payments on the related subordinated debt securities at any time. We may defer interest payments on the related subordinated debt securities in each case for a period not exceeding 20 consecutive quarters (each, a “deferral period”). No deferral period may extend beyond the stated maturity of the related subordinated debt securities. Before a deferral period ends, we may extend it further if that deferral period does not exceed 20 consecutive quarters or extend beyond the stated maturity of the related subordinated debt securities. When a deferral period ends and we have paid all accrued and unpaid interest on the related subordinated debt securities, we may begin a new deferral period, subject to the terms described above. There is no limit on the number of deferral periods that we may begin.

If we defer interest payments on the related subordinated debt securities, the trust also will defer the payment of distributions on the trust preferred securities. During a deferral period, the holder of trust preferred securities will still accumulate distributions at the annual rate specified in the related prospectus supplement, plus the holder of trust preferred securities will accumulate additional distributions on the deferred distributions at the same rate, to the extent permitted by law. During a deferral period, the holder of trust preferred securities will be required to accrue interest income for United States federal income tax purposes.

If we elect to begin a deferral period, we will be subject to specified restrictions relating to paying dividends on or repurchasing our common stock and making payments on certain of our debt securities. See “Description of the Subordinated Debt Securities of Sempra Energy Purchased with Proceeds of Trust Securities—Payments—Deferral Period Restrictions” below.

## **Redemption**

Trust preferred securities will remain outstanding until the applicable trust redeems them or distributes the subordinated debt securities in exchange for the trust preferred securities. Any redemption of trust preferred securities must occur as described below under “—Redemption of Trust Preferred Securities.” Any exchange distribution must occur as described below under the caption “—Exchange of Trust Preferred Securities for Subordinated Debt Securities.”

### *Redemption of Trust Preferred Securities*

If we repay or redeem the related subordinated debt securities, whether at their stated maturity, upon acceleration after a Subordinated Indenture Event of Default or upon early redemption, the applicable property trustee will redeem a like amount of trust preferred securities of the applicable trust on the Redemption Date at the Redemption Price. In this context, “like amount” means trust preferred securities having an aggregate liquidation amount equal to the aggregate principal amount of the subordinated debt securities being repaid or redeemed. “Redemption Date” means the date that the principal of the subordinated debt securities being redeemed becomes due for payment under the subordinated indenture. “Redemption Price” means the aggregate liquidation amount of the trust preferred securities to be redeemed, plus any accumulated and unpaid distributions on those securities to the Redemption Date.

### *Repayment and Redemption of Subordinated Debt Securities*

We may redeem any series of subordinated debt securities, at our option, before their stated maturity as follows:

- at any time on or after the date stated in an applicable prospectus supplement, in whole or in part, provided that no partial redemption may occur during a deferral period; and
- at any time in whole, but not in part, within 90 days after a Tax Event or an Investment Company Act Event has occurred.

See “Description of the Subordinated Debt Securities of Sempra Energy Purchased with Proceeds of Trust Securities—Optional Redemption” below for the definitions of “Tax Event” and “Investment Company Act Event.”

If a Tax Event is continuing and we do not elect to dissolve a trust or redeem the related subordinated debt securities, we may be required to pay additional sums on such subordinated debt securities. The provisions regarding repayment and redemption of subordinated debt securities, as well as information about the effect that possible tax law changes may have on the subordinated debt securities and trust preferred securities, are discussed in “Description of the Subordinated Debt Securities of Sempra Energy Purchased with Proceeds of Trust Securities—Stated Maturity” and “—Optional Redemption—Payment of Additional Sums” below.

### *Redemption Procedures*

A property trustee will give at least 30 days, but not more than 60 days, notice before the Redemption Date, unless the redemption results from acceleration after a Subordinated Indenture Event of Default and the property trustee is not able to give notice during this period. In that case, a property trustee will give the notice as soon as practicable. A property trustee will give the notice of redemption in the manner described below under the caption “—Notices.”

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The property trustee will irrevocably deposit with DTC (in the case of any book-entry trust preferred securities) or the Paying Agent (as defined below) (in the case of any non-book-entry trust preferred securities) funds sufficient to pay the Redemption Price for all trust preferred securities being redeemed on that date, to the extent that such funds are deposited with the property trustee.

DTC will pay the Redemption Price for trust preferred securities held in book-entry form and called for redemption in accordance with the procedures of DTC, to the extent the property trustee has deposited sufficient funds with DTC. The Paying Agent will pay the Redemption Price for trust preferred securities held in definitive form and called for redemption, to the extent the property trustee has deposited sufficient funds with the Paying Agent, against surrender of the certificates representing those trust preferred securities. The trust preferred securities will be issued in definitive form only in the special circumstances described under the caption “Book-Entry Issuance—Global Securities” below. Any distributions that are due on a distribution date that is on or before the Redemption Date will be payable to the holders of those trust preferred securities on the record date for the related distribution date.

Once the property trustee gives notice of redemption and deposits funds as discussed above, all rights of the holders of the trust preferred securities called for redemption will cease at the time of the deposit, except the right of those holders to receive the Redemption Price, but without interest on that amount. In addition, those trust preferred securities will no longer be outstanding.

On the Redemption Date, distributions will stop accumulating on the subordinated debt securities called for redemption. However, if payment of the Redemption Price for any trust preferred securities is not made, distributions on those trust preferred securities will continue to accumulate to the date the Redemption Price is paid.

If a trust redeems less than all of its trust preferred securities, then the liquidation amount of trust preferred securities to be redeemed will be allocated pro rata between its outstanding trust preferred securities and its outstanding trust common securities, based upon their respective aggregate liquidation amounts. The applicable property trustee will select the trust preferred securities to be redeemed from among the outstanding trust preferred securities of such trust not previously called for redemption. A property trustee may use any method of selection that it deems to be fair and appropriate.

### *Other Purchases of Trust Preferred Securities*

We or our subsidiaries may purchase outstanding trust preferred securities by tender, in the open market or by private agreement, subject to applicable laws, including United States federal securities laws.

### **Exchange of Trust Preferred Securities for Subordinated Debt Securities**

We will have the right at any time, in our sole discretion, to dissolve a trust. After a trust has satisfied all liabilities to its creditors, as provided by law, the applicable property trustee will distribute a like amount of subordinated debt securities to the holders of the related trust securities in exchange for all such trust securities outstanding, in liquidation of the trust. In this context, “like amount” means subordinated debt securities having an aggregate principal amount equal to the aggregate liquidation amount of all such trust securities outstanding.

If an exchange distribution with respect to a trust occurs, we must use our best efforts to list the related subordinated debt securities on the New York Stock Exchange or such other stock exchange or organization, if any, on which the trust preferred securities of such trust are listed.

*Exchange Procedures*

A property trustee will make the exchange distribution to holders of trust preferred securities listed in a trust's records at the close of business on the record date for the exchange distribution. If the trust preferred securities are held in book-entry form, the record date will be one Business Day (as defined below) before the date that we set as the exchange distribution date (the "Exchange Date"). If the trust preferred securities are not held in book-entry form, the record date will be the 15th day (whether or not a Business Day) before the Exchange Date.

A property trustee will give holders at least 30 days, but not more than 60 days, notice before the Exchange Date. Property trustees will give the notice of an Exchange Date in the manner described below under "—Notices."

On the Exchange Date with respect to a trust:

- the trust preferred securities of such trust will no longer be outstanding;
- certificates representing a like amount of subordinated debt securities will be issued to holders of trust preferred securities of such trust upon their surrender to the property trustee or its agent for exchange;
- any certificates representing trust preferred securities of such trust that are not surrendered for exchange will be deemed to represent a like amount of subordinated debt securities (and until such certificates are surrendered for exchange, no payments of interest or principal on such subordinated debt securities will be made to the holders of those trust preferred securities); and
- the holders of trust preferred securities of such trust will not have any further rights with respect to such trust preferred securities, except the right to receive certificates representing subordinated debt securities upon surrender of their certificates as described above.

*Certain Tax Consequences*

Under current United States federal income tax law and interpretations and assuming, as each trust expects, that it will not be classified as an association taxable as a corporation, a holder of trust preferred securities would not be taxed if a property trustee distributes subordinated debt securities to it upon liquidation of the trust. However, if a Tax Event were to occur and a trust were subject to taxation on income received or accrued on subordinated debt securities, a holder of trust preferred securities and the trust could be taxed on that distribution.

**Ranking**

The trust preferred securities of a trust will rank equally with the trust common securities of that trust. A trust will make payments of distributions and the Redemption Price on the trust preferred securities and the trust common securities pro rata, based on the aggregate liquidation amounts of the trust preferred securities and trust common securities, except as follows. If a Subordinated Indenture Event of Default has occurred with respect to the series of subordinated debt securities held by a trust and has not been cured, that trust may not make any payments on its trust common securities until the trust has paid in full or provided in full all unpaid amounts on its trust preferred securities.

If a Subordinated Indenture Event of Default occurs with respect to the series of subordinated debt securities held by a trust, the holders of the trust common securities of that trust will be deemed to have waived all rights to act with respect to the related Declaration Event of Default (as defined below) with respect to that trust until all such Declaration Events of Default have been cured, waived or eliminated. Until any such Declaration Events of Default have been cured, waived or eliminated, the property trustee of that trust will act solely on behalf of holders of the trust preferred securities of that trust (and not on behalf of the holders of the trust common securities of that trust), and only the holders of trust preferred securities of that trust will have the right to direct the property trustee to act on their behalf.

### **Status of Trust Preferred Securities Guarantees**

Each trust preferred securities guarantee will constitute our unsecured obligation and will rank:

- (a) equal in rank with any other guarantee similar to the trust preferred securities guarantees issued by us on behalf of the holders of securities issued by any other trust established by us or our affiliates;
- (b) subordinate and junior in right of payment to all of our other liabilities, except those that rank equally or are subordinate by their terms;
- (c) equal with any guarantee now or hereafter issued by us in respect of the most senior preferred or preference stock now or hereafter issued by us, and with any guarantee now or hereafter issued by us in respect of any preferred or preference stock of any of our affiliates; and
- (d) senior to our common stock.

Each Declaration will require that the holders of the related trust preferred securities accept the subordination provisions and other terms of the related trust preferred securities guarantee. A trust preferred securities guarantee will constitute a guarantee of payment and not of collection (in other words, the holder of a trust preferred securities guarantee may sue us, or seek other remedies, to enforce its rights under the trust preferred securities guarantee without first suing any other person or entity). A trust preferred securities guarantee will not be discharged except by payment of the trust preferred securities guarantee payments in full to the extent not previously paid or upon distribution of subordinated debt securities to the holders of the trust preferred securities pursuant to the related Declaration.

### **Liquidation Distribution Upon Dissolution**

Each Declaration states that the related trust shall be dissolved:

- (a) upon the expiration of the term of such trust;
- (b) upon the bankruptcy of Sempra Energy;
- (c) upon the filing of a certificate of dissolution or its equivalent with respect to Sempra Energy;
- (d) 90 days after the revocation of the articles of incorporation of Sempra Energy (but only if the articles of incorporation are not reinstated during that 90-day period);
- (e) upon the written direction to the property trustee from Sempra Energy at any time to dissolve such trust and distribute the related subordinated debt securities to holders in exchange for the trust preferred securities;
- (f) upon the redemption of all of the trust securities of such trust; or
- (g) upon entry of a court order for the dissolution of Sempra Energy or such trust.

In the event of a dissolution, after a trust satisfies (whether by payment or reasonable provision for payment) all amounts owed to creditors of the trust, the holders of the trust securities of such trust will be entitled to receive:

- (a) cash equal to the aggregate liquidation amount of each trust security, plus accumulated and unpaid distributions to the date of payment; unless
- (b) subordinated debt securities in an aggregate principal amount equal to the aggregate liquidation amount of the trust securities are distributed to the holders of the trust securities.

If a trust cannot pay the full amount due on its trust securities because insufficient assets are available for payment, then the amounts payable by the trust on its trust securities shall be paid pro rata. However, if an event of default under the related Indenture has occurred, the total amounts due on the trust preferred securities will be paid before any distribution on the trust common securities.

## **Declaration Events of Default**

The term “Declaration Event of Default” with respect to a trust means any of the following:

- a Subordinated Indenture Event of Default occurs with respect to the related series of subordinated debt securities (see “Description of the Subordinated Debt Securities of Sempra Energy Purchased with Proceeds of Trust Securities—Events of Default” below);
- such trust does not pay any distribution within 30 days of its due date, provided that no deferral period is continuing;
- such trust does not pay any Redemption Price on its due date;
- the trustee(s) of such trust remains in breach in a material respect of any term of the related Declaration for 90 days after the trustee receives notice of default stating the trustee is in breach. The notice must be sent by the holders of at least 25% in liquidation amount of the outstanding trust preferred securities of such trust; and
- the property trustee of such trust files for bankruptcy or certain other events in bankruptcy or insolvency occur and a successor property trustee of such trust is not appointed within 60 days.

If a Subordinated Indenture Event of Default occurs and the subordinated indenture trustee and the holders of not less than 25% in principal amount of the outstanding subordinated debt securities of the related series fail to declare the principal of all of such subordinated debt securities to be immediately due and payable, the holders of at least 25% in aggregate liquidation amount of the outstanding trust preferred securities of the related trust will have the right to declare such principal immediately due and payable by providing notice to us and the subordinated indenture trustee.

If we fail to pay principal, premium, if any, or interest on a series of subordinated debt securities when payable, then a holder of the related trust preferred securities may directly sue us or seek other remedies to collect its pro rata share of payments owed.

Within 90 days after learning of a Declaration Event of Default with respect to a trust, the related property trustee will notify the holders of the trust securities of such trust, the regular trustees and us, unless the Declaration Event of Default has been cured or waived.

We and a regular trustee of a trust must provide the property trustee of such trust with an annual certificate stating whether they are in compliance with all the conditions and covenants applicable to them under the related Declaration.

If a Declaration Event of Default with respect to a trust has occurred and has not been cured, the trust preferred securities of such trust will have a preference in right of payment over the trust common securities of such trust as discussed above. The holders of trust securities are not entitled to accelerate the maturity of the trust preferred securities upon a Declaration Event of Default.

## **Enforcement Rights**

If a Subordinated Indenture Event of Default occurs with respect to a series of subordinated debt securities, the holders of the related trust preferred securities must rely on the applicable property trustee, as the holder of such subordinated debt securities, to enforce its rights under such subordinated debt securities and the applicable subordinated indenture against us, subject to the following:

### *Right of Direct Action*

If we do not make full and timely payments on such subordinated debt securities, the related trust will not have funds available to make payments of distributions or other amounts due on the related trust preferred



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securities. In this event, a holder of such trust preferred securities may sue us directly to collect its pro rata share of payments owed. We may not amend the applicable subordinated indenture to remove the right of any holder of trust preferred securities to bring a direct action against us without the prior written consent of all of the holders of the related series of trust preferred securities. We will be able to set-off any payment made to a holder of trust preferred securities in connection with a direct action.

### *Other Rights under the Subordinated Indenture*

The holders of 25% or more in liquidation amount of the outstanding trust preferred securities of a trust may accelerate the maturity of the related series of subordinated debt securities when a Subordinated Indenture Event of Default with respect to such series has occurred and has not been cured and neither the subordinated indenture trustee nor the holders of the related series of subordinated debt securities have exercised such acceleration rights. In addition, the holders of a majority in liquidation amount of the outstanding trust preferred securities of a trust may cancel a declaration of acceleration of the related series of subordinated debt securities and may waive specified Subordinated Indenture Events of Default with respect to such series. See “Description of the Subordinated Debt Securities of Semptra Energy Purchased with Proceeds of Trust Securities—Events of Default” and “—Remedies” below.

### **Voting Rights; Amendment of the Declaration**

The holders of the trust preferred securities of a trust will have no voting rights except as discussed below and under “Description of the Subordinated Debt Securities of Semptra Energy Purchased with Proceeds of Trust Securities—Consolidation, Merger and Conveyance of Assets as an Entirety; No Financial Covenants” and “Description of Trust Preferred Securities Guarantees—Amendments and Assignment” below, and as otherwise required by law or the applicable Declaration.

With respect to a trust, if any proposed amendment to the applicable Declaration provides for, or the regular trustees of such trust otherwise propose to effect:

- (a) any action that would adversely affect the powers, preferences or special rights of the trust preferred securities of such trust in any material respect, whether by way of amendment to the applicable Declaration or otherwise; or
- (b) the dissolution, winding-up or termination of such trust other than pursuant to the terms of the applicable Declaration,

then the holders of the trust preferred securities of such trust as a class will be entitled to vote on the amendment or proposal. In that case, the amendment or proposal will be effective only if approved by the holders of at least a majority in aggregate liquidation amount of such trust preferred securities.

A Declaration may be amended from time to time by us and the applicable property trustee and the applicable regular trustees without the consent of the holders of trust preferred securities of the related trust to:

- (a) cure any ambiguity, correct or supplement any provision which may be inconsistent with any other provision, or make provisions not inconsistent with any other provisions with respect to matters or questions arising under the applicable Declaration, in each case to the extent that the amendment does not adversely affect the interests of any holder of trust preferred securities of the related trust in any material respect; or
- (b) modify, eliminate or add to any provisions to the extent necessary to ensure that the related trust will not be classified as other than a grantor trust for United States federal income tax purposes or to ensure that such trust will not be required to register as an “investment company” under the Investment Company Act.

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Except as provided in the next paragraph, other amendments to a Declaration may be made by us or the securities trustees of the related trust upon:

- (a) approval of the holders of a majority in aggregate liquidation amount of the outstanding trust preferred securities of such trust; and
- (b) receipt by the securities trustee of such trust of an opinion of counsel 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 the trust's exemption from the Investment Company Act.

Notwithstanding the foregoing, without the consent of each affected holder of the trust securities of the related trust, a Declaration may not be amended to:

- (a) change the amount or timing of any distribution on the trust securities of such trust or otherwise adversely affect the amount of any distribution required to be made in respect of the trust securities of such trust as of a specified date; or
- (b) restrict the right of a holder of the trust securities of such trust to institute suit for the enforcement of any such payment on or after such date.

In addition, no amendment may be made to a Declaration if the amendment would:

- (a) cause the related trust to be characterized as other than a grantor trust for United States federal income tax purposes;
- (b) cause the related trust to be deemed to be an "investment company" which is required to be registered under the Investment Company Act; or
- (c) impose any additional obligation on us, the property trustee of the related trust or the Delaware trustee of the related trust without its consent.

Without obtaining the prior approval of the holders of a majority in aggregate liquidation amount of the trust preferred securities of a trust, the securities trustees of such trust may not:

- (a) direct the time, method and place of conducting any proceeding for any remedy available to the related subordinated indenture trustee or executing any trust or power conferred on the related property trustee with respect to the related series of subordinated debt securities;
- (b) waive any default that is waivable under the subordinated indenture;
- (c) cancel an acceleration of the principal of the related series of subordinated debt securities; or
- (d) consent to any amendment, modification or termination of the subordinated indenture or the related series of subordinated debt securities where such consent is required.

However, if a consent under the subordinated indenture requires the consent of each affected holder of a series of subordinated debt securities, then the applicable property trustee must obtain the prior consent of each holder of the related trust preferred securities. In addition, before taking any of the foregoing actions, the regular trustees of the related trust must obtain an opinion of counsel stating that the action will not cause such trust to be classified as other than a grantor trust for United States federal income tax purposes.

The property trustee of a trust will notify all holders of the trust preferred securities of such trust of any notice of default received from the subordinated indenture trustee with respect to the subordinated debt securities held by such trust.

## **Notices**

Notices to be given to holders of trust preferred securities held in book-entry form will be given to DTC in accordance with its procedures. Notices to be given to holders of trust preferred securities held in definitive form may be given by mail to their addresses set forth in trust records.

## **Payment and Paying Agency**

With respect to any trust preferred securities held in book-entry form, distributions will be paid to DTC, which will credit the relevant accounts at DTC on the applicable distribution dates in accordance with its procedures. With respect to any trust preferred securities issued in definitive form, distributions will be paid by check mailed to the address of the holder entitled to such payments, as such address appears in trust records. The paying agent of a trust (the "Paying Agent") will initially be the property trustee of such trust. A Paying Agent of a trust may resign upon 30 days written notice to the regular trustees and the property trustee of such trust. In such event, the property trustee of such trust will appoint a successor acceptable to the regular trustees of such trust to act as Paying Agent.

Persons holding their trust preferred securities in "street name" or indirectly through DTC should consult their banks or brokers for information on how they will receive payments. See "Global Securities—Book-Entry, Delivery and Form" in this prospectus.

Any money paid to a property trustee or a Paying Agent for payments on trust preferred securities that remains unclaimed at the end of two years after the amount is due will be repaid to us. After that two-year period, you may look only to us for payment of those amounts.

### *Business Day*

If any payment is due on a day that is not a Business Day, the payment will be made on the following Business Day (unless that Business Day is in a different calendar year, in which case the payment will be made on the preceding Business Day). Each payment made on the following or preceding Business Day will have the same force and effect as if made on the original payment due date. "Business Day" means any day other than a Saturday, a Sunday, a day on which banking institutions in New York City are authorized or required by law or executive order to remain closed or, with respect to such trust, a day on which the corporate trust office of the property trustee of such trust or the subordinated indenture trustee is closed for business.

### *Record Date*

A trust will pay distributions to holders of trust preferred securities listed in the trust's records on the record date for the payment. If trust preferred securities are held in book-entry form, the record date will be one Business Day before the relevant distribution date. If trust preferred securities are issued in definitive form, the record date will be the 15th day, whether or not a Business Day, before the relevant distribution date.

### *Registrar and Transfer Agent*

The property trustee of a trust will initially act as such trust's agent for registering trust preferred securities of such trust in the names of holders and transferring such trust preferred securities. Such property trustee also will perform the role of maintaining the list of registered holders of trust preferred securities of such trust. Holders will not be required to pay a service charge to transfer or exchange trust preferred securities, but may be required to pay for any tax or other governmental charge associated with the exchange or transfer.

## **Removal and Replacement of Trustees**

Only the holder of trust common securities of a trust has the right to remove, or replace the regular trustees and, before an event of default, property and Delaware trustees of the trust. If an event of default occurs, only the

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holders of trust preferred securities of a trust have the right to remove or replace the property and Delaware trustees. The resignation or removal of any trustee and the appointment of a successor trustee shall be effective only on the acceptance of appointment by the successor trustee in accordance with the provisions of the Declaration for such trust.

### **Information Concerning the Property Trustees**

For matters relating to compliance with the Trust Indenture Act, the property trustee of each trust will have all of the duties and responsibilities of an indenture trustee under the Trust Indenture Act. Each property trustee, other than during the occurrence and continuance of a Declaration Event of Default under the applicable trust, undertakes to perform only the duties as are specifically set forth in the applicable Declaration and, upon a Declaration event of default, must use the same degree of care and skill as a prudent person would exercise or use in the conduct of his or her own affairs. Subject to this provision, a property trustee is under no obligation to exercise any of the powers given it by the applicable Declaration at the request of any holder of trust preferred securities unless it is offered security or indemnity satisfactory to it against the costs, expenses and liabilities that it might incur.

### **Miscellaneous**

The regular trustees of each trust are authorized and directed to conduct the affairs of and to operate the trust in such a way that:

- (a) it will not be deemed to be an “investment company” required to be registered under the Investment Company Act;
- (b) it will be classified as a grantor trust for United States federal income tax purposes; and
- (c) the subordinated debt securities held by it will be treated as indebtedness of us for United States federal income tax purposes.

We and the regular trustees of a trust are authorized to take any action (so long as it is consistent with applicable law or the applicable certificate of trust or Declaration) that we and the regular trustees of the trust determine to be necessary or desirable for such purposes.

Registered holders of trust preferred securities have no preemptive or similar rights.

A trust may not borrow money, issue debt, execute mortgages or pledge any of its assets.

### **Governing Law**

Each Declaration and the related trust preferred securities will be governed by and construed in accordance with the laws of the State of Delaware.

**DESCRIPTION OF THE SUBORDINATED DEBT SECURITIES OF SEMPRA ENERGY  
PURCHASED WITH PROCEEDS OF TRUST SECURITIES**

*This section describes the general terms of the subordinated debt securities of Sempra Energy purchased with the proceeds of trust securities that may be offered and sold by this prospectus. This prospectus and any accompanying prospectus supplement will contain the material terms and conditions for each subordinated debt security. The accompanying prospectus supplement may add, update or change the terms and conditions of the subordinated debt securities as described in this prospectus. In this section, references to “we,” “our” and “us” mean Sempra Energy excluding, unless otherwise expressly stated or the context otherwise requires, its subsidiaries.*

**General**

Following the issuance of trust securities by a trust, the trust will use the proceeds of such issuance to purchase a series of subordinated debt securities. The property trustee of such trust will hold legal title to such series of subordinated debt securities in trust for the benefit of the holders of the trust securities of such trust.

The subordinated indenture will be qualified as an indenture under the Trust Indenture Act. The subordinated indenture trustee will act as indenture trustee for the subordinated debt securities to comply with the provisions of the Trust Indenture Act.

The subordinated debt securities will not be secured by any of our property or assets. The subordinated debt securities will rank junior in priority of payment to specified existing and future debt and other liabilities of ours which are described below under “—Subordination.”

**Payments**

We will pay interest to the direct holders of subordinated debt securities listed in our records at the close of business on the record date, as discussed below, in advance of each interest payment date. If a series of subordinated debt securities is distributed in exchange for the trust securities of a trust, we will make payments on such subordinated debt securities in accordance with procedures similar to those described under “Description of the Trust Preferred Securities—Payment and Paying Agency” above.

Any money paid to the subordinated indenture trustee or any paying agent, or held in trust by us, for payments on any subordinated debt securities, that remains unclaimed at the end of two years after the amount is due will be repaid to us. After that two-year period, a holder of subordinated debt securities may look only to us for payment of those amounts.

*Business Day*

If any payment is due on a day that is not a Business Day, the payment will be made on the following Business Day unless that Business Day is in a different calendar year, in which case the payment will be made on the preceding Business Day. Each payment made on the following or preceding Business Day will have the same force and effect as if made on the original payment due date.

*Record Date*

If subordinated debt securities are held in book-entry form, the record date will be one Business Day before the relevant interest payment date. If subordinated debt securities are held in certificated form, the record date will be as provided in a prospectus supplement.

### *Deferral Periods*

With respect to any series of subordinated debt securities, as long as no Subordinated Indenture Event of Default with respect to such series has occurred and has not been cured, we will have the right to defer the payment of interest on such series of subordinated debt securities as described in “Description of the Trust Preferred Securities—Distributions” above. During a deferral period, the holders of such series of subordinated debt securities will continue to accrue interest at the stated annual rate of interest for such series, plus will accrue additional interest on each deferred interest payment at such stated annual rate, compounded quarterly, from the corresponding interest payment date, to the extent permitted by law. Whenever we use the term “interest” with respect to subordinated debt securities in this prospectus, we are including any of this additional interest.

### *Deferral Period Restrictions*

During a deferral period, we and our subsidiaries may not take any of the following actions, except as described below:

- declare or pay any dividend or other distribution on, redeem, purchase or acquire, or make a liquidation payment on any shares of our capital stock;
- pay any amount on or repay, redeem or repurchase any debt securities issued by us that rank equally with or junior to the subordinated debt securities; or
- make any payments under any of our guarantees if such guarantee ranks equally with or junior to the subordinated debt securities and guarantees payments on any debt security of any of our subsidiaries.

Notwithstanding the foregoing, we may take any of the following actions during a deferral period:

- declare dividends in, or make any payment in, shares of our common stock;
- redeem, purchase or acquire our common stock if related to the issuance of common stock under any of our benefit plans for our directors, officers or employees;
- declare or pay a dividend in connection with any shareholder’s rights plan, issue stock under such plan or redeem, repurchase or acquire any rights distributed pursuant to the plan; or
- make payments under any trust preferred securities guarantee (as described under “Description of the Trust Preferred Securities—Status of Trust Preferred Securities Guarantees” above and under “Description of Trust Preferred Securities Guarantees” below).

### *Deferral Period Procedures*

We will give the property trustee and regular trustees of a trust and the subordinated indenture trustee notice of our election to begin a deferral period with respect to a series of subordinated debt securities held by such trust at least one Business Day before the earlier of:

- the next distribution date for the trust preferred securities of such trust; or
- the date the regular trustees of such trust are required to give notice of the record date or the distribution date to (1) the New York Stock Exchange or other applicable self-regulatory organization or (2) the holders of the trust preferred securities of such trust.

The subordinated indenture trustee must notify the holders of a series of subordinated debt securities in the manner described below in “—Notices” of our election to begin a deferral period with respect to such series.

### **Stated Maturity**

Each series of subordinated debt securities will have a stated maturity. However, we may shorten such stated maturity to an earlier date stated in the applicable prospectus supplement. You should expect that we will

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exercise this option with respect to a series of subordinated debt securities if, for example, a tax development occurs that prohibits us from deducting interest payments on such series unless such series has a shorter maturity date.

We also will have the option to extend the stated maturity of any series of subordinated debt securities if:

- we are not in bankruptcy, insolvent or in liquidation;
- we are not in default on the payment of interest or principal on such series of subordinated debt securities;
- the trust which holds such series of subordinated debt securities is not in arrears on payments of distributions on its trust preferred securities;
- no deferred distributions are accumulated on the trust preferred securities of the trust which holds such series of subordinated debt securities; and
- the trust preferred securities of the trust which holds such series of subordinated debt securities are rated at least BBB- by Standard & Poor's Ratings Services or Baa3 by Moody's Investors Services, Inc., or an equivalent rating by a successor rating agency.

You should assume that we will exercise our option to extend the stated maturity of a series of subordinated debt securities if we are unable to refinance such subordinated debt securities at a lower interest rate or it is otherwise in our interest to defer the stated maturity of such subordinated debt securities.

### *Procedures*

We will pay principal of and any premium on subordinated debt securities at stated maturity, upon redemption or otherwise, upon presentation of subordinated debt securities at the office of the subordinated indenture trustee, as our paying agent. In our discretion, we may appoint one or more additional paying agents and security registrars and designate one or more additional places for payment and for registration of transfer, but we must at all times maintain a place of payment of the subordinated debt securities and a place for registration of transfer of the subordinated debt securities in the Borough of Manhattan, The City of New York.

We will give notice to the subordinated indenture trustee of our selection of a new stated maturity for any series of subordinated debt securities at least 30 days, but not more than 60 days, before the effective date of the change. The subordinated indenture trustee will give holders of such subordinated debt securities notice of the new stated maturity promptly upon its receipt of the notice from us. The subordinated indenture trustee will give the notice in the manner described below under “—Notices.”

### **Optional Redemption**

We may redeem any series of subordinated debt securities, at our option, before their stated maturity as follows:

- at any time on or after the date stated in an applicable prospectus supplement, in whole or in part, provided that no partial redemption may occur during a deferral period with respect to such series of subordinated debt securities; and
- at any time in whole, but not in part, within 90 days after a Tax Event or an Investment Company Act Event has occurred with respect to such series of subordinated debt securities.

We will pay the Redemption Price on the Redemption Date to the holders of subordinated debt securities to be redeemed. In this context, “Redemption Price” means the aggregate principal amount of the subordinated debt securities to be redeemed, plus any accrued and unpaid interest on those securities to the Redemption Date. Notwithstanding the foregoing, installments of interest on those securities that are due and payable on interest

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payment dates falling on or before a Redemption Date will be payable on the interest payment date to the registered holders as of the close of business on the relevant record date according to those securities and the subordinated indenture. The Redemption Price will be calculated on the basis of a 360-day year consisting of twelve 30-day months.

We will mail notice of any redemption at least 30 days, but not more than 60 days, before the Redemption Date to each registered holder of the series of the subordinated debt securities to be redeemed. Once notice of redemption is mailed, the series of subordinated debt securities called for redemption will become due and payable on the Redemption Date and at the applicable Redemption Price, plus accrued and unpaid interest to the Redemption Date. If we elect to redeem all or a portion of a series of subordinated debt securities, that redemption will not be conditional upon receipt by the paying agent or the subordinated indenture trustee of monies sufficient to pay the Redemption Price. See “Description of Debt Securities—Optional Redemption” above.

### *Tax Event*

“Tax Event” with respect to any trust means that we receive an opinion of counsel, experienced in such matters, that as a result of any Tax Change (as defined below), there is more than an insubstantial risk that:

- such trust is, or will be within 90 days after the date of the opinion of counsel, subject to United States federal income tax with respect to income received or accrued on the series of subordinated debt securities held by such trust;
- interest payable by us or original issue discount accruing on such subordinated debt securities is not, or within 90 days after the date of the opinion, will not be, deductible by us, in whole or in part, for United States federal income tax purposes; or
- such trust is, or will be within 90 days after the date of the opinion, subject to more than a minimal amount of other taxes, duties or governmental charges.

As used above, “Tax Change” means with respect to any trust any of the following that are enacted, promulgated or announced on or after the date of the prospectus supplement for the trust preferred securities of such trust:

- amendment to or change, including any announced prospective change, in the laws or any regulations under the laws of the United States or of any political subdivision or taxing authority of the United States; or
- official administrative pronouncement or judicial decision interpreting or applying the laws or regulations stated above whether or not the pronouncement or decision is issued to or in connection with a proceeding involving us or such trust or subject to review or appeal.

### *Investment Company Act Event*

“Investment Company Act Event” means with respect to any trust that we receive an opinion of counsel, experienced in such matters, that as a result of the occurrence of a change in law or regulation, or a written change in interpretation or application of law or regulation, by any legislative body, court, governmental agency or regulatory authority effective on or after the date of the prospectus supplement for the trust preferred securities of such trust, there is more than an insubstantial risk that such trust is or will be considered an “investment company” that is required to be registered under the Investment Company Act of 1940, as amended.

### *Payment of Additional Sums*

If a Tax Event with respect to any trust is continuing and we do not elect to redeem the series of subordinated debt securities held by such trust or liquidate such trust, we will pay additional amounts, if any, to



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the holders of such subordinated debt securities so that, notwithstanding any additional taxes, duties or charges imposed on such trust because of a Tax Event, the trust will have sufficient funds to pay the full amount of distributions due on the outstanding trust securities of such trust.

### *Redemption Procedures*

We will give the holders of the series of subordinated debt securities to be redeemed at least 30 days, but not more than 60 days, notice before the Redemption Date, in the manner described below under “—Notices.” Once notice of redemption is mailed, the series of subordinated debt securities called for redemption become due and payable on the Redemption Date and at the redemption price, including accrued and unpaid interest and premium, if any, to the Redemption Date. In all other respects, the procedures for redeeming subordinated debt securities will be similar to those for redeeming trust preferred securities. See “Description of the Trust Preferred Securities—Redemption—Redemption Procedures” above.

On the Redemption Date, interest will stop accruing on the series of subordinated debt securities called for redemption. However, if payment of the Redemption Price for any such subordinated debt securities is not made, interest on those subordinated debt securities will continue to accrue to the date the Redemption Price is paid.

### **Exchange of Trust Preferred Securities for Subordinated Debt Securities**

We will have the right at any time to dissolve a trust. In such event, the applicable property trustee will distribute the series of subordinated debt securities held by such trust to the holders of the trust preferred securities of such trust in exchange for their securities. See “Description of Trust Preferred Securities—Exchange of Trust Preferred Securities for Subordinated Debt Securities” above and procedures relating to such an exchange.

### **Restrictions on Payments**

If any subordinated debt securities of a series are outstanding, we will be prohibited from taking specified actions described below if:

- (a) an event has occurred that constitutes a Subordinated Indenture Event of Default for such series or, after notice or passage of time, or both, would constitute a Subordinated Indenture Event of Default for such series, and we have knowledge of such event but do not take reasonable steps to cure the default;
- (b) we do not pay any amount due under the trust preferred securities guarantee relating to the trust preferred securities of such trust, if such series of subordinated debt securities are held by such trust; or
- (c) we have given notice of our election to begin a deferral period with respect to such series and have not rescinded such notice, or any deferral period with respect to such series is continuing.

In such event, we may not take any of the following actions, except as described below:

- (a) declare or pay any dividend or other distribution on, redeem, purchase or acquire, or make a liquidation payment on any shares of our capital stock;
- (b) pay any amount on or repay, redeem or repurchase any debt securities issued by us that rank equal with or junior to such series of subordinated debt securities; or
- (c) make any payments under any of our guarantees if such guarantee ranks equal with or junior to such series of subordinated debt securities and guarantees payments on any debt securities of any of our subsidiaries.

Notwithstanding the foregoing, we may:

- (a) declare dividends in, or make any payment in, shares of our common stock;

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- (b) redeem, purchase or acquire our common stock if related to the issuance of common stock under any of our benefit plans for our directors, officers or employees;
- (c) declare or pay a dividend in connection with any shareholder's rights plan, issue stock under such plan or redeem, repurchase or acquire any rights distributed pursuant to the plan; or
- (d) make payments under any trust preferred securities guarantee or any other preferred securities guarantee (as described under "Description of Trust Preferred Securities—Status of the Trust Preferred Securities Guarantees" above and "Description of Trust Preferred Securities Guarantees" below).

### **Events of Default**

A "Subordinated Indenture Event of Default" occurs with respect to a series of subordinated debt securities if:

- (a) we do not pay any interest on any subordinated debt securities of such series within 30 days of the due date, provided that, if we elect to defer an interest payment, the date on which that payment is due will be the date on which we are required to make payment following its deferral;
- (b) we do not pay any principal of or premium on any subordinated debt securities of such series on the due date;
- (c) we remain in breach of a covenant or warranty (excluding covenants and warranties solely applicable to another series of subordinated debt securities issued under the subordinated indenture) in the subordinated indenture or the subordinated debt securities of such series for 60 days after we receive a written notice of default stating we are in breach and requiring remedy of the breach; the notice must be sent by either the subordinated indenture trustee or registered holders of at least 25% of the principal amount of the outstanding subordinated debt securities of such series; or
- (d) we file for bankruptcy or other specified events in bankruptcy, insolvency, receivership or reorganization occur.

### **Remedies**

#### *Acceleration*

If a Subordinated Indenture Event of Default occurs and is continuing with respect to the subordinated debt securities of a series, then either the subordinated indenture trustee or the registered holders of at least 25% in principal amount of the outstanding subordinated debt securities of such series may declare the principal amount of all such subordinated debt securities, together with accrued and unpaid interest thereon, to be due and payable immediately.

#### *Rescission of Acceleration*

After the declaration of acceleration has been made with respect to a series of subordinated debt securities and before the subordinated indenture trustee has obtained a judgment or decree for payment of the money due, the declaration and its consequences will be rescinded and annulled if:

- (a) we pay or deposit with the subordinated indenture trustee a sum sufficient to pay:
  - (1) all overdue interest on the subordinated debt securities of such series, other than interest which has become due by declaration of acceleration;
  - (2) the principal of and any premium on the subordinated debt securities of such series which have become due otherwise than by the declaration of acceleration and overdue interest on these amounts;

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- (3) interest on overdue interest, other than interest which has become due by declaration of acceleration, on the subordinated debt securities of such series to the extent lawful; and
- (4) all amounts due to the subordinated indenture trustee under the subordinated indenture; and
- (b) all Subordinated Indenture Events of Default with respect to the subordinated debt securities of such series, other than the nonpayment of the principal and interest which has become due solely by the declaration of acceleration, have been cured or waived as provided in the subordinated indenture.

For more information as to waiver of defaults, see “—Waiver of Default and of Compliance” below.

### *Control by Registered Holders; Limitations*

If a Subordinated Indenture Event of Default with respect to a series of subordinated debt securities occurs and is continuing, the registered holders of a majority in principal amount of the outstanding subordinated debt securities of such series, voting as a single class, without regard to the holders of outstanding subordinated debt securities of any other series that may also be in default, will have the right to direct the time, method and place of.

- (a) conducting any proceeding for any remedy available to the subordinated indenture trustee with respect to the subordinated debt securities of such series; and
- (b) exercising any trust or power conferred on the subordinated indenture trustee with respect to the subordinated debt securities of such series.

These rights of registered holders to give directions are subject to the following limitations.

- (a) the registered holders' directions do not conflict with any law or the subordinated indenture; and
- (b) the direction is not unduly prejudicial to the rights of holders of subordinated debt securities of such series who do not join in that action

The subordinated indenture trustee may also take any other action it deems proper which is consistent with the registered holders' direction.

In addition, the subordinated indenture provides that no registered holder of subordinated debt securities of any series will have any right to institute any proceeding, judicial or otherwise, with respect to the subordinated indenture or for the appointment of a receiver or for any other remedy thereunder unless.

- (a) that registered holder has previously given the subordinated indenture trustee written notice of a continuing Subordinated Indenture Event of Default with respect to such series;
- (b) the registered holders of at least 25% in aggregate principal amount of the outstanding subordinated debt securities of such series have made written request to the subordinated indenture trustee to institute proceedings in respect of that Subordinated Indenture Event of Default and have offered the subordinated indenture trustee reasonable indemnity against costs and liabilities incurred in complying with the request; and
- (c) for 60 days after receipt of the notice, the subordinated indenture trustee has failed to institute a proceeding, and no direction inconsistent with the request has been given to the subordinated indenture trustee during the 60-day period by the registered holders of a majority in aggregate principal amount of outstanding subordinated debt securities of such series.

Furthermore, no registered holder will be entitled to institute any action if and to the extent that the action would disturb or prejudice the rights of other registered holders of subordinated debt securities.

However, each registered holder has an absolute and unconditional right to receive payment when due and to bring a suit to enforce that right.

### **Notice of Default**

The subordinated indenture trustee is required to give the registered holders of subordinated debt securities notice of any default under the subordinated indenture to the extent required by the Trust Indenture Act, unless the default has been cured or waived; except that in the case of an event of default of the character specified above in clause (c) under “—Events of Default,” no notice shall be given to the registered holders until at least 30 days after the occurrence of the default. The Trust Indenture Act currently permits the subordinated indenture trustee to withhold notices of default (except for certain payment defaults) if the subordinated indenture trustee in good faith determines the withholding of the notice to be in the interests of the registered holders.

We will furnish the subordinated indenture trustee with an annual statement as to our compliance with the conditions and covenants in the subordinated indenture.

### **Waiver of Default and of Compliance**

The registered holders of a majority in aggregate principal amount of the outstanding subordinated debt securities of any series, voting as a single class, without regard to the holders of outstanding subordinated debt securities of any other series, may waive, on behalf of all registered holders of the subordinated debt securities of such series, any past default under the subordinated indenture, except a default in the payment of principal, premium or interest on any subordinated debt securities of such series, or with respect to compliance with certain provisions of the subordinated indenture that cannot be amended without the consent of the registered holder of each outstanding trust preferred security of the trust which holds such series of subordinated debt securities.

Unless indicated differently in a prospectus supplement, compliance with certain covenants in the applicable indenture or otherwise provided with respect to subordinated debt securities of any series may be waived before the time specified for compliance by the registered holders of a majority in aggregate principal amount of the subordinate debt securities of such series.

### **Consolidation, Merger and Conveyance of Assets as an Entirety; No Financial Covenants**

We have agreed not to consolidate or merge with or into any other entity, or to sell, transfer, lease or otherwise convey our properties and assets as an entirety or substantially as an entirety to any entity, unless:

- (a) either we are the continuing entity (in the case of a merger) or the successor entity formed by such consolidation or into which we are merged or which acquires by sale, transfer, lease or other conveyance our properties and assets, as an entirety or substantially as an entirety, 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 expressly assumes, by supplemental indenture, the due and punctual payment of the principal, premium and interest on all the subordinated debt securities and the performance of all of our covenants under the subordinated indenture; and
- (b) immediately after giving effect to the transaction, no Subordinated Indenture Event of Default, and no event which after notice or lapse of time or both would become a Subordinated Indenture Event of Default, has or will have occurred and be continuing.

In addition to these conditions, the successor entity must assume all of our obligations with respect to the trust preferred securities guarantees, and such transaction must be permitted under, and not give rise to any violation of, any Declaration or any trust preferred securities guarantee.

Neither the subordinated indenture nor the trust preferred securities guarantees contain any financial or other similar restrictive covenants.

## Modification of Subordinated Indenture

*Without Registered Holder Consent.* Without the consent of any registered holders of any subordinated debt securities which may in the future be issued under the subordinated indenture, we, and the subordinated indenture trustee, may enter into one or more supplemental indentures for any of the following purposes:

- (a) to evidence the succession of another entity to us; or
- (b) to add one or more covenants for the benefit of the holders of all or any series of subordinated debt securities, or to surrender any right or power conferred upon us; or
- (c) to add any additional events of default for all or any series of subordinated debt securities; or
- (d) to change or eliminate any provision of the subordinated indenture so long as the change or elimination does not apply to any subordinated debt securities entitled to the benefit of such provision or to add any new provision to the subordinated indenture (in addition to the provisions which may otherwise be added to the subordinated indenture pursuant to the other clauses of this paragraph) so long as the addition does not apply to any outstanding subordinated debt securities; or
- (e) to provide security for the subordinated debt securities of any series; or
- (f) to establish the form or terms of subordinated debt securities of any series as permitted by the subordinated indenture; or
- (g) to evidence and provide for the acceptance of appointment of a separate or successor subordinated indenture trustee; or
- (h) to cure any ambiguity, defect or inconsistency or to make any other changes with respect to any series of subordinated debt securities that do not adversely affect the interests of the holders of that series of subordinated debt securities in any material respect.

*With Registered Holder Consent.* Subject to the following sentence, we and the subordinated indenture trustee may, with some exceptions, amend or modify the subordinated indenture with the consent of the registered holders of at least a majority in aggregate principal amount of the subordinated debt securities of each series affected by the amendment or modification. However, no amendment or modification may, without the consent of the registered holder of each outstanding subordinated debt security affected thereby:

- (a) change the stated maturity of the principal or interest on any subordinated debt security or reduce the principal amount, interest or premium payable, or change any place of payment where or the currency in which any debt security is payable, or impair the right to bring suit to enforce any payment;
- (b) reduce the percentages of registered holders whose consent is required for any supplemental indenture or waiver;
- (c) modify certain of the provisions in the subordinated indenture relating to supplemental indentures and waivers of certain covenants and past defaults; or
- (d) modify any provisions relating to subordination or the definition of "senior debt" in a manner adverse to the holders of the subordinated debt securities.

A supplemental indenture which changes or eliminates any provision of a subordinated indenture expressly included solely for the benefit of holders of subordinated debt securities of one or more particular series will be deemed not to affect the interests under the subordinated indenture of the holders of subordinated debt securities of any other series. However, any amendment that adversely affects the holders of any series of trust preferred securities in any material respect, as well as any termination of the subordinated indenture and any waiver of a Subordinated Indenture Event of Default with respect to any series of subordinated debt securities, will require the consent of the holders of a majority in liquidation amount of each series of trust preferred securities affected thereby.

## Subordination

The subordinated debt securities will be subordinated in right of payment to the prior payment in full of all our senior debt. This means that upon:

- (a) any distribution of our assets upon our dissolution, winding-up, liquidation or reorganization in bankruptcy, insolvency, receivership or other proceedings; or
- (b) acceleration of the maturity of any subordinated debt securities; or
- (c) a failure to pay any senior debt or interest thereon when due and continuance of that default beyond any applicable grace period; or
- (d) acceleration of the maturity of any senior debt as a result of a default,

the holders of all of our senior debt will be entitled to receive:

- (1) in the case of clauses (a) and (b) above, payment of all amounts due or to become due on all senior debt; and
- (2) in the case of clauses (c) and (d) above, payment of all amounts due on all senior debt,

before the holders of any of the subordinated debt securities are entitled to receive any payment. So long as any of the events in clauses (a), (b), (c) or (d) above has occurred and is continuing, any amounts payable on the subordinated debt securities will instead be paid directly to the holders of all senior debt to the extent necessary to pay the senior debt in full and, if any payment is received by the subordinated indenture trustee under the subordinated indenture or the holders of any of the subordinated debt securities before all senior debt is paid in full, the payment or distribution must be paid over to the holders of the unpaid senior debt. Subject to paying the senior debt in full, the holders of the subordinated debt securities will be subrogated to the rights of the holders of the senior debt to the extent that payments are made to the holders of senior debt out of the distributive share of the subordinated debt securities.

“*senior debt*” means with respect to the subordinated debt securities, the principal of, and premium, if any, and interest on any other payment in respect of indebtedness due pursuant to any of the following, whether outstanding on the date the subordinated debt securities are issued or thereafter incurred, created or assumed:

- (a) all of our indebtedness evidenced by notes, debentures, bonds or other securities sold by us for money or other obligations for money borrowed;
- (b) all indebtedness of others of the kinds described in the preceding clause (a) assumed by or guaranteed in any manner by us or in effect guaranteed by us through an agreement to purchase, contingent or otherwise; and
- (c) all renewals, extensions or refundings of indebtedness of the kinds described in either of the preceding clauses (a) and (b), unless, in the case of any particular indebtedness, renewal, extension or refunding, the instrument creating or evidencing the same or the assumption or guarantee of the same by its terms provides that such indebtedness, renewal, extension or refunding is not superior in right of payment to or is *pari passu* with such securities.

Due to the subordination, if our assets are distributed upon insolvency, certain of our general creditors may recover more, ratably, than holders of subordinated debt securities. The subordination provisions will not apply to money and securities held in trust under the satisfaction and discharge and the defeasance provisions of the subordinated indenture.

The subordinated debt securities, the subordinated indenture and the trust preferred securities guarantees do not limit our or any of our subsidiaries’ ability to incur additional indebtedness, including indebtedness that ranks senior to the subordinated debt securities and the trust preferred securities guarantees. We expect that we and our subsidiaries will incur substantial additional amounts of indebtedness in the future.

## **Defeasance**

The subordinated indenture provides, unless the terms of the particular series of debt securities provide otherwise, that we may, upon satisfying several conditions, cause ourselves to be discharged from our obligations, with some exceptions, with respect to any series of subordinated debt securities, which we refer to as “defeasance.”

One condition we must satisfy is the irrevocable deposit with the subordinated trustee, in trust, of money and/or government obligations which, through the scheduled payment of principal and interest on those obligations, would provide sufficient moneys to pay the principal of and any premium and interest on those subordinated debt securities on the maturity dates of the payments or upon redemption.

In addition, we will be required to deliver an opinion of counsel to the effect that a holder of subordinated debt securities will not recognize income, gain or loss for federal income tax purposes as a result of the defeasance and will be subject to federal income tax on the same amounts, at the same times and in the same manner as if that defeasance had not occurred. The opinion of counsel must be based upon a ruling of the Internal Revenue Service or a change in law after the date of the subordinated indenture.

## **Satisfaction and Discharge**

The subordinated indenture will cease to be of further effect with respect to any series of subordinated debt securities, and we will be deemed to have satisfied and discharged all of our obligations under the subordinated indenture, except as noted below, when:

- (a) all outstanding subordinated debt securities of such series have become due or will become due within one year at their stated maturity or on a Redemption Date; and
- (b) we deposit with the subordinated indenture trustee, in trust, funds that are sufficient to pay and discharge all remaining indebtedness on the outstanding subordinated debt securities of such series.

We will remain obligated to pay all other amounts due under the subordinated indenture and to perform certain ministerial tasks as described in the subordinated indenture.

## **Resignation and Removal of the Trustee; Deemed Resignation**

The subordinated indenture trustee with respect to any series of subordinated debt securities may resign at any time by giving written notice to us. The subordinated indenture trustee may also be removed with respect to the subordinated debt securities of any series by act of the registered holders of a majority in principal amount of the then outstanding subordinated debt securities of such series. No resignation or removal of the subordinated indenture trustee and no appointment of a successor trustee will become effective until the acceptance of appointment by a successor trustee in accordance with the requirements of the subordinated indenture. Under certain circumstances, we may appoint a successor trustee with respect to any series of subordinated debt securities and if the successor trustee accepts, the subordinated indenture trustee will be deemed to have resigned.

## **Registration of Trust Preferred Subordinated Debt Securities**

The trust preferred subordinated debt securities initially will be issued in certificated form and registered in the name of the applicable property trustee. If in the future any trust preferred subordinated debt securities are distributed to holders of trust preferred securities in exchange for trust preferred securities and at that time such trust preferred securities are represented by a global security, the subordinated debt securities would also be represented by a global security. In this event, we expect that the book entry arrangements applicable to such subordinated debt securities would be similar to those applicable to the trust preferred securities.

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**Notices**

Notices to be given to holders of subordinated debt securities held in certificated form may be given by mail to their addresses as set forth in our records. Notices to be given to holders of subordinated debt securities held in book-entry form will be given to DTC in accordance with its procedures.

**Governing Law**

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



## DESCRIPTION OF TRUST PREFERRED SECURITIES GUARANTEES

### General

We will execute a trust preferred securities guarantee (“preferred securities guarantee”), which benefits the holders of trust preferred securities, at the time that a trust issues those trust preferred securities. Each preferred securities guarantee will be qualified as an indenture under the Trust Indenture Act. The Bank of New York will act as indenture trustee (“guarantee trustee”) under each preferred securities guarantee for the purposes of compliance with the Trust Indenture Act.

The guarantee trustee will hold each preferred securities guarantee for the benefit of the trust preferred securities holders of the applicable trust.

We will irrevocably agree, as described in each preferred securities guarantee, to pay in full, to the holders of the trust preferred securities issued by the applicable trust, the preferred securities guarantee payments (as defined below) (except to the extent previously paid), when and as due, regardless of any defense, right of set-off or counterclaim which the trust may have or assert. The following payments, to the extent not paid by a trust (“guarantee payments”), will be covered by the applicable preferred securities guarantee:

- (a) any accrued and unpaid distributions required to be paid on the applicable trust preferred securities, to the extent that the trust has funds available to make the payment;
- (b) the redemption price, to the extent that the trust has funds available to make the payment; and
- (c) upon a voluntary or involuntary dissolution and liquidation of the trust (other than in connection with a distribution of subordinated debt securities to holders of the trust preferred securities or the redemption of all the trust preferred securities), the lesser of:
  - (1) the aggregate of the liquidation amount specified in the prospectus supplement for each trust preferred security plus all accrued and unpaid distributions on the trust preferred security to the date of payment, to the extent the trust has funds available to make the payment; and
  - (2) the amount of assets of the trust remaining available for distribution to holders of its trust preferred securities upon a dissolution and liquidation of the trust.

Our obligation to make a guarantee payment may be satisfied by directly paying the required amounts to the holders of the trust preferred securities or by causing the trust to pay the amounts to the holders.

No single document executed by us relating to the issuance of trust preferred securities will provide for its full, irrevocable and unconditional guarantee of the trust preferred securities. It is only the combined operation of our obligations under the subordinated indenture, the applicable series of subordinated debt securities and the applicable preferred securities guarantee and related Declaration that has the effect of providing a full, irrevocable and unconditional guarantee of a trust’s obligations under its trust preferred securities.

### Status of the Preferred Securities Guarantees

Each preferred securities guarantee will constitute our unsecured obligation and will rank:

- (a) subordinate and junior in right of payment to all of our other liabilities, except any guarantee now or hereafter issued by us in respect of any preferred or preference stock of any of our affiliates;
- (b) equal with any guarantee now or hereafter issued by us in respect of the most senior preferred or preference stock now or hereafter issued by us, and with any guarantee now or hereafter issued by us in respect of any preferred or preference stock of any of our affiliates; and
- (c) senior to our common stock.

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Each Declaration will require that the holder of trust preferred securities accept the subordination provisions and other terms of the preferred securities guarantee. Each preferred securities guarantee will constitute a guarantee of payment and not of collection. As a result, the holder of the guaranteed security may sue us, or seek other remedies, to enforce its rights under the preferred securities guarantee without first suing any other person or entity. A preferred securities guarantee will not be discharged except by payment of the preferred securities guarantee payments in full to the extent not previously paid or upon distribution to the applicable trust preferred securities holders of the corresponding series of subordinated debt securities pursuant to the appropriate Declaration.

### **Amendments and Assignment**

Except with respect to any changes which do not adversely affect the rights of holders of a series of trust preferred securities in any material respect (in which case no consent of the holders will be required), a preferred securities guarantee may be amended only with the prior approval of the holders of at least a majority in aggregate liquidation amount of the trust preferred securities (excluding any trust preferred securities held by us or any of our affiliates). A description of the way to obtain any approval is described under “Description of Trust Preferred Securities—Voting Rights; Amendment of Declaration.” All guarantees and agreements contained in a preferred securities guarantee will be binding on our successors, assigns, receivers, trustees and representatives and are for the benefit of the holders of the applicable trust preferred securities.

### **Preferred Securities Guarantee Events of Default**

An event of default under a preferred securities guarantee occurs if we fail to make any of our required payments or perform our obligations under the preferred securities guarantee.

The holders of at least a majority in aggregate liquidation amount of the trust preferred securities relating to each preferred securities guarantee, excluding any trust preferred securities held by us or any of our affiliates, will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the guarantee trustee relating to the preferred securities guarantee or to direct the exercise of any trust or power given to the guarantee trustee under the preferred securities guarantee.

### **Information Concerning the Guarantee Trustees**

The guarantee trustee under a preferred securities guarantee, other than during the occurrence and continuance of a default under the preferred securities guarantee, will perform only the duties that are specifically described in the preferred securities guarantee. After such a default, the guarantee trustee will exercise the same degree of care and skill as a prudent person would exercise or use in the conduct of his or her own affairs. Subject to this provision, a guarantee trustee is under no obligation to exercise any of its powers as described in the applicable preferred securities guarantee at the request of any holder of covered trust preferred securities unless it is offered reasonable indemnity against the costs, expenses and liabilities that it might incur.

### **Termination of the Preferred Securities Guarantees**

Each preferred securities guarantee will terminate once the applicable trust preferred securities are paid in full or upon distribution of the corresponding series of subordinated debt securities to the holders of the trust preferred securities. Each preferred securities guarantee will continue to be effective or will be reinstated if at any time any holder of trust preferred securities issued by the applicable trust must restore payment of any sums paid under the trust preferred securities or the preferred securities guarantee.

### **Governing Law**

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

**RELATIONSHIP AMONG TRUST PREFERRED SECURITIES, PREFERRED SECURITIES GUARANTEES AND SUBORDINATED DEBT SECURITIES HELD BY EACH TRUST**

Payments of distributions and redemption and liquidation payments due on each series of trust preferred securities, to the extent the applicable trust has funds available for the payments, will be guaranteed by us to the extent described under “Description of Trust Preferred Securities Guarantees.” No single document executed by us in connection with the issuance of any series of trust preferred securities will provide for our full, irrevocable and unconditional guarantee of the trust preferred securities. It is only the combined operation of our obligations under the applicable preferred securities guarantee, Declaration, subordinated indenture and subordinated debt securities that has the effect of providing a full, irrevocable and unconditional guarantee of a trust’s obligations under its trust preferred securities.

As long as we make payments of interest and other payments when due on the subordinated debt securities held by a trust, the payments will be sufficient to cover the payment of distributions and redemption and liquidation payments due on the trust preferred securities issued by that trust, primarily because:

- (a) the aggregate principal amount of the subordinated debt securities will be equal to the sum of the aggregate liquidation amount of the trust preferred and common securities;
- (b) the interest rate and interest and other payment dates on the subordinated debt securities will match the distribution rate and distribution and other payment dates for the trust preferred securities;
- (c) we shall pay for any and all costs, expenses and liabilities of each trust except the trust’s obligations under its trust preferred securities (and we have agreed to guarantee such payment); and
- (d) each Declaration provides that the related trust will not engage in any activity that is not consistent with the limited purposes of such trust.

If and to the extent that we do not make payments on the related subordinated debt securities, a trust will not have funds available to make payments of distributions or other amounts due on its trust preferred securities. In those circumstances, holders of such trust preferred securities will not be able to rely upon the preferred securities guarantee for payment of these amounts. Instead, holders of such trust preferred securities may directly sue us or seek other remedies to collect their pro rata share of payments owed. If holders of such trust preferred securities sue us to collect payment, then we will assume their rights as a holder of trust preferred securities under such trust’s Declaration to the extent we make a payment to them in any legal action.

A holder of any trust preferred security may sue us, or seek other remedies, to enforce its rights under the applicable preferred securities guarantee without first suing the applicable guarantee trustee, the trust which issued the trust preferred security or any other person or entity.

## GLOBAL SECURITIES

### Book-Entry, Delivery and Form

Unless the company issuing the debt securities, trust preferred securities, warrants, common stock, preferred stock, stock purchase contracts, stock purchase units or depositary shares indicates differently in a supplemental prospectus, the securities initially will be issued in book-entry form and represented by one or more global notes or global securities (collectively, “global securities”). The global securities will be deposited with, or on behalf of, The Depositary Trust Company, New York, New York, as depositary (“DTC”), and registered in the name of Cede & Co., the nominee of DTC. Unless and until it is exchanged for individual certificates evidencing securities under the limited circumstances described below, a global security may not be transferred except as a whole by the depositary to its nominee or by the nominee to the depositary, or by the depositary or its nominee to a successor depositary or to a nominee of the successor depositary.

DTC has advised each of the issuing companies that it is:

- a limited-purpose trust company organized under the New York Banking Law;
- a “banking organization” within the meaning of the New York Banking Law;
- a member of the Federal Reserve System;
- a “clearing corporation” within the meaning of the New York Uniform Commercial Code; and
- a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934.

DTC holds securities that its participants deposit with DTC. DTC also facilitates the settlement among its participants of securities transactions, including transfers and pledges, in deposited securities through electronic computerized book-entry changes in participants’ accounts, which eliminates the need for physical movement of securities certificates. “Direct participants” in DTC include securities brokers and dealers, including underwriters, banks, trust companies, clearing corporations and other organizations. DTC is owned by a number of its direct participants and by the New York Stock Exchange, Inc., the American Stock Exchange LLC and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others, which we sometimes refer to as “indirect participants,” that clear transactions through or maintain a custodial relationship with a direct participant either directly or indirectly. The rules applicable to DTC and its participants are on file with the SEC.

Purchases of securities within the DTC system must be made by or through direct participants, which will receive a credit for those securities on DTC’s records. The ownership interest of the actual purchaser of a security, which we sometimes refer to as a “beneficial owner,” is in turn recorded on the direct and indirect participants’ records. Beneficial owners of securities will not receive written confirmation from DTC of their purchases. However, beneficial owners are expected to receive written confirmations providing details of their transactions, as well as periodic statements of their holdings, from the direct or indirect participants through which they purchased securities. Transfers of ownership interests in global securities are to be accomplished by entries made on the books of participants acting on behalf of beneficial owners. Beneficial owners will not receive certificates representing their ownership interests in the global securities except under the limited circumstances described below.

To facilitate subsequent transfers, all global securities deposited with DTC will be registered in the name of DTC’s nominee, Cede & Co. The deposit of securities with DTC and their registration in the name of Cede & Co. will not change the beneficial ownership of the securities. DTC has no knowledge of the actual beneficial owners of the securities. DTC’s records reflect only the identity of the direct participants to whose accounts the securities are credited, which may or may not be the beneficial owners. The participants are responsible for keeping account of their holdings on behalf of their customers.

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So long as the securities are in book-entry form, you will receive payments and may transfer securities only through the facilities of the depositary and its direct and indirect participants. The company issuing the securities will maintain an office or agency in the Borough of Manhattan, the City of New York, where notices and demands in respect of the securities and the applicable indenture may be delivered to us and where certificated securities may be surrendered for payment, registration of transfer or exchange. That office or agency, with respect to the applicable indenture, will initially be the office of the trustee which is currently located at 100 Wall Street, Suite 1600, New York, New York 10005, in the case of U.S. Bank National Association, and 101 Barclay Street, Floor 21, New York, New York 10286, in the case of The Bank of New York.

Conveyance of notices and other communications by DTC to direct participants, by direct participants to indirect participants and by direct participants and indirect participants to beneficial owners will be governed by arrangements among them, subject to any legal requirements in effect from time to time.

Redemption notices will be sent to DTC or its nominee. If less than all of the securities of a particular series are being redeemed, DTC will determine the amount of the interest of each direct participant in the securities of such series to be redeemed in accordance with DTC's procedures.

In any case where a vote may be required with respect to securities of a particular series, neither DTC nor Cede & Co. will give consents for or vote the global securities. Under its usual procedures, DTC will mail an omnibus proxy to us as soon as possible after the record date. The omnibus proxy assigns the consenting or voting rights of Cede & Co. to those direct participants to whose accounts the securities of such series are credited on the record date identified in a listing attached to the omnibus proxy.

So long as securities are in book-entry form, the company issuing such securities will make payments on those securities to the depositary or its nominee, as the registered owner of such securities, by wire transfer of immediately available funds. If securities are issued in definitive certificated form under the limited circumstances described below, the company issuing the securities will have the option of paying interest by check mailed to the addresses of the persons entitled to payment or by wire transfer to bank accounts in the United States designated in writing to the applicable trustee at least 15 days before the applicable payment date by the persons entitled to payment.

Principal and interest payments on the securities will be made to Cede & Co., as nominee of DTC. DTC's practice is to credit direct participants' accounts on the relevant payment date unless DTC has reason to believe that it will not receive payment on the payment date. Payments by direct and indirect participants to beneficial owners will be governed by standing instructions and customary practices, as is the case with securities held for the account of customers in bearer form or registered in "street name." Those payments will be the responsibility of participants and not of DTC or us, subject to any legal requirements in effect from time to time. Payment of principal and interest to Cede & Co. is our responsibility, disbursement of payments to direct participants is the responsibility of DTC and disbursement of payments to the beneficial owners is the responsibility of direct and indirect participants.

Except under the limited circumstances described below, purchasers of securities will not be entitled to have securities registered in their names and will not receive physical delivery of securities. Accordingly, each beneficial owner must rely on the procedures of DTC and its participants to exercise any rights under the securities and the applicable indenture.

The laws of some jurisdictions may require that some purchasers of securities take physical delivery of securities in definitive form. Those laws may impair the ability to transfer or pledge beneficial interests in securities.

DTC is under no obligation to provide its services as depositary for the securities and may discontinue providing its services at any time. Neither the company issuing the securities nor the applicable trustee will have

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any responsibility for the performance by DTC or its direct participants or indirect participants under the rules and procedures governing DTC.

As noted above, beneficial owners of a particular series of securities generally will not receive certificates representing their ownership interests in those securities. However, if:

- DTC notifies the company issuing such securities that it is unwilling or unable to continue as a depository for the global security or securities representing such series of securities or if DTC ceases to be a clearing agency registered under the Securities Exchange Act at a time when it is required to be registered and a successor depository is not appointed within 90 days of the notification to us or of our becoming aware of DTC's ceasing to be so registered, as the case may be;
- the company issuing such securities determines, in its sole discretion, not to have such securities represented by one or more global securities; or
- an Event of Default under the indenture has occurred and is continuing with respect to such series of securities, the company issuing such securities will prepare and deliver certificates for such securities in exchange for beneficial interests in the global securities. Any beneficial interest in a global security that is exchangeable under the circumstances described in the preceding sentence will be exchangeable for securities in definitive certificated form registered in the names that the depository directs. It is expected that these directions will be based upon directions received by the depository from its participants with respect to ownership of beneficial interests in the global securities.

Each company has obtained the information in this section and elsewhere in this prospectus concerning DTC and DTC's book-entry system from sources that are believed to be reliable, but neither company takes responsibility for the accuracy of this information.

**EXPERTS**

The consolidated financial statements and the related financial statement schedule incorporated in this prospectus by reference from Sempra Energy's Annual Report on Form 10-K for the year ended December 31, 2002 have been audited by Deloitte & Touche LLP, independent auditors, as stated in their reports, which are incorporated herein by reference and have been so incorporated in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.

**VALIDITY OF THE SECURITIES AND THE GUARANTEES**

Latham & Watkins LLP, Los Angeles, California, will pass upon certain legal matters relating to the issuance and sale of the securities and the guarantees on behalf of Sempra Energy. Gary N. Kyle, Esq., Chief Corporate Counsel of Sempra Energy, will pass upon the validity of the securities and the guarantees. Richards, Layton & Finger, P.A., special Delaware counsel to Sempra Energy and the trusts, will pass upon certain matters of Delaware law relating to the validity of the preferred securities.

## PLAN OF DISTRIBUTION

We may sell the securities described in this prospectus from time to time in one or more transactions

- (a) to purchasers directly;
- (b) to underwriters for public offering and sale by them;
- (c) through agents;
- (d) through dealers; or
- (e) through a combination of any of the foregoing methods of sale.

We may distribute the securities from time to time in one or more transactions at:

- (a) a fixed price or prices, which may be changed;
- (b) market prices prevailing at the time of sale;
- (c) prices related to such prevailing market prices; or
- (d) negotiated prices.

### *Direct Sales*

We may sell the securities directly to institutional investors or others. A prospectus supplement will describe the terms of any sale of securities we are offering hereunder.

### *To Underwriters*

The applicable prospectus supplement will name any underwriter involved in a sale of securities. Underwriters may offer and sell securities at a fixed price or prices, which may be changed, or from time to time at market prices or at negotiated prices. Underwriters may be deemed to have received compensation from us from sales of securities in the form of underwriting discounts or commissions and may also receive commissions from purchasers of securities for whom they may act as agent.

Underwriters may sell securities to or through dealers, and such dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions (which may be changed from time to time) from the purchasers for whom they may act as agent.

Unless otherwise provided in a prospectus supplement, the obligations of any underwriters to purchase securities or any series of securities will be subject to certain conditions precedent, and the underwriters will be obligated to purchase all such securities if any are purchased.

### *Through Agents and Dealers*

We will name any agent involved in a sale of securities, as well as any commissions payable by us to such agent, in a prospectus supplement. Unless we indicate differently in the prospectus supplement, any such agent will be acting on a reasonable efforts basis for the period of its appointment.

If we utilize a dealer in the sale of the securities being offered pursuant to this prospectus, we will sell the securities to the dealer, as principal. The dealer may then resell the securities to the public at varying prices to be determined by the dealer at the time of resale.



*Delayed Delivery Contracts*

If we so specify in the applicable prospectus supplement, we will authorize underwriters, dealers and agents to solicit offers by certain institutions to purchase securities pursuant to contracts providing for payment and delivery on future dates. Such contracts will be subject to only those conditions set forth in the applicable prospectus supplement.

The underwriters, dealers and agents will not be responsible for the validity or performance of the contracts. We will set forth in the prospectus supplement relating to the contracts the price to be paid for the securities, the commissions payable for solicitation of the contracts and the date in the future for delivery of the securities.

*General Information*

Underwriters, dealers and agents participating in a sale of the securities may be deemed to be underwriters as defined in the Securities Act, and any discounts and commissions received by them and any profit realized by them on resale of the securities may be deemed to be underwriting discounts and commissions, under the Securities Act. We may have agreements with underwriters, dealers and agents to indemnify them against certain civil liabilities, including liabilities under the Securities Act, and to reimburse them for certain expenses.

Underwriters or agents and their associates may be customers of, engage in transactions with or perform services for us or our affiliates in the ordinary course of business.

Unless we indicate differently in a prospectus supplement, we will not list the securities on any securities exchange, other than shares of our common stock. The securities, except for our common stock, will be a new issue of securities with no established trading market. Any underwriters that purchase securities for public offering and sale may make a market in such securities, but such underwriters will not be obligated to do so and may discontinue any market making at any time without notice. We make no assurance as to the liquidity of or the trading markets for any securities.

**PART II.**  
**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 14. Other Expenses of Issuance and Distribution.**

Securities and Exchange Commission registration fee	\$	161,800
Printing expenses		150,000
Trustee fees and expenses		75,000
Legal fees and expenses		100,000
Accounting fees and expenses		250,000
Blue Sky fees and expenses		50,000
Rating Agency fees		250,000
Miscellaneous		50,000
<b>Total</b>	<b>\$</b>	<b>1,086,800</b>

All of the above except the Securities and Exchange Commission registration fee are estimated.

**Item 15. Indemnification of Officers and Directors.**

Section 317 of the Corporations Code of the State of California permits a corporation to provide indemnification to its directors and officers under certain circumstances. The Sempra Energy Amended and Restated Articles of Incorporation and the Amended and Restated Bylaws eliminate the liability of directors for monetary damages to the fullest extent permissible under California law and provide that indemnification for liability for monetary damages incurred by directors, officers and other agents of Sempra Energy shall be allowed, subject to certain limitations, in excess of the indemnification otherwise permissible under California law. In addition, Sempra Energy and Sempra Energy Global Enterprises have indemnification agreements with each of their officers and directors that provide for indemnification for monetary damages to the fullest extent permissible under California law. Sempra Energy and Sempra Energy Global Enterprises maintain liability insurance and are also insured against loss for which they may be required or permitted by law to indemnify their directors and officers for their related acts.

The directors and officers of Sempra Energy and Sempra Energy Global Enterprises are covered by insurance policies indemnifying them against certain liabilities, including certain liabilities arising under the Securities Act, which might be incurred by them in such capacities and against which they cannot be indemnified by Sempra Energy or Sempra Energy Global Enterprises.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling the registrant pursuant to the foregoing provisions, the registrant has been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

**Item 16. Exhibits.**

See the Exhibit Index attached to this Registration Statement and incorporated herein by reference.

**Item 17. Undertakings.**

The undersigned registrants hereby undertake:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:
  - (i) to include any prospectus required by Section 10(a)(3) of the Securities Act;

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

provided, however, that (i) and (ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Securities and Exchange Commission by the registrants pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (4) That, for purposes of determining any liability under the Securities Act, each filing of Sempra Energy's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (5) To file an application for the purpose of determining the eligibility of the trustees to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Securities and Exchange Commission under Section 305(b) (2) of the Securities Act.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrants pursuant to the provisions described under Item 15 above, or otherwise, the registrants have been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by a registrant of expenses incurred or paid by a director, officer or controlling person in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, such registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.



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<u>Signature</u>	<u>Title</u>
/s/ RICHARD A. COLLATO	Director
<b>Richard A. Collato</b>	
/s/ WILFORD D. GODBOLD, JR.	Director
<b>Wilford D. Godbold, Jr.</b>	
/s/ WILLIAM D. JONES	Director
<b>William D. Jones</b>	
/s/ RICHARD G. NEWMAN	Director
<b>Richard G. Newman</b>	
/s/ RALPH R. OCAMPO	Director
<b>Ralph R. Ocampo</b>	
/s/ WILLIAM G. OUCHI	Director
<b>William G. Ouchi</b>	
<b>William C. Rusnack</b>	Director
/s/ WILLIAM P. RUTLEDGE	Director
<b>William P. Rutledge</b>	
/s/ THOMAS C. STICKEL	Director
<b>Thomas C. Stickel</b>	
<b>Diana L. Walker</b>	Director

### SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, Sempra Energy Global Enterprises certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Diego, and State of California, on the 28th day of February, 2003.

SEMPRA ENERGY GLOBAL ENTERPRISES

By    /s/ DONALD E. FELSINGER

Donald E. Felsing  
President

### POWER OF ATTORNEY

Each director and/or officer of the registrant whose signature appears below hereby appoints Stephen L. Baum, John R. Light and Neal E. Schmale, and each of them severally, as his true and lawful attorney-in-fact and agent to sign in his name and behalf, in any and all capacities stated below, and to file with the Securities and Exchange Commission, any and all amendments, including post-effective amendments and any registration statement for the same offering that is to be effective under Rule 462(b) of the Securities Act, to this registration statement, and the registrant hereby also appoints each such person as its attorney-in-fact and agent with like authority to sign and file any such amendments in its name and behalf.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed below by the following persons in the capacities indicated on the 28th day of February, 2003.

<u>Signature</u>	<u>Title</u>
/s/ DONALD E. FELSINGER <u>Donald E. Felsing</u>	Principal Executive Officer; Chief Executive Officer, President and Director
/s/ JOHN R. LIGHT <u>John R. Light</u>	Director
/s/ NEAL E. SCHMALE <u>Neal E. Schmale</u>	Director
/s/ MARK A. FISHER <u>Mark A. Fisher</u>	Principal Accounting Officer; Vice President and Controller
/s/ MARK A. SNELL <u>Mark A. Snell</u>	Principal Financial Officer; Chief Financial Officer

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, Sempra Energy Capital Trust II certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Diego, and State of California, on the 28th day of February, 2003.

SEMPRA ENERGY CAPITAL TRUST II

By    /s/ NEAL E. SCHMALE

    
Neal E. Schmale

**POWER OF ATTORNEY**

Each person whose signature appears below hereby appoints Stephen L. Baum, John R. Light and Neal E. Schmale, and each of them severally, as his true and lawful attorney-in-fact and agent to sign in his name and behalf, in any and all capacities stated below, and to file with the Securities and Exchange Commission, any and all amendments and any registration statement for the same offering that is to be effective under Rule 462(b) of the Securities Act, including post-effective amendments, to this registration statement, and the registrant hereby also appoints each such person as its attorney-in-fact and agent with like authority to sign and file any such amendments in its name and behalf.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed below by the following persons in the capacities indicated on the 28th day of February, 2003.

**Signature**  
  

**Title**  
  

    
/s/ NEAL E. SCHMALE

Regular Trustee

Neal E. Schmale

    
/s/ FRANK H. AULT

Regular Trustee

Frank H. Ault

    
/s/ CHARLES A. MCMONAGLE

Regular Trustee

Charles A. McMonagle





**SEMPRA ENERGY**  
**SEMPRA ENERGY GLOBAL ENTERPRISES**  
**SEMPRA ENERGY CAPITAL TRUST II**  
**SEMPRA ENERGY CAPITAL TRUST III**  
**REGISTRATION STATEMENT ON FORM S-3**

**EXHIBIT INDEX**

<u>Exhibit No.</u>	<u>Description</u>
1.1	Underwriting Agreement (Preferred Securities—Sempra Energy Capital Trust II and Sempra Energy Capital Trust III).*
1.2	Underwriting Agreement (Debt Securities—Sempra Energy).*
1.3	Underwriting Agreement (Debt Securities—Sempra Energy Global Enterprises).*
1.4	Underwriting Agreement (Equity Securities—Sempra Energy).*
3.1	Amended and Restated Articles of Incorporation of Sempra Energy (Incorporated by reference from the Registration Statement on Form S-3 File No. 333-51309 dated April 29, 1998 (Exhibit 3.1)).
3.2	Amended and Restated Bylaws of Sempra Energy effective May 26, 1998 (Incorporated by reference from the Registration Statement on Form S-8 File No. 333-56161 dated June 5, 1998 (Exhibit 3.2)).
3.3	Articles of Incorporation of Sempra Energy Global Enterprises (Incorporated by reference from the Registration Statement on Form S-3 File No. 333-52192 dated January 8, 2001 (Exhibit 3.3)).
3.4	Bylaws of Sempra Energy Global Enterprises (Incorporated by reference from the Registration Statement on Form S-3 File No. 333-52192 dated January 8, 2001 ) Exhibit 3.4).
3.5	Certificate of Trust of Sempra Energy Capital Trust II (Incorporated by reference from the Registration Statement on Form S-3 File No. 333-52192 dated January 8, 2001 (Exhibit 3.5)).
3.6	Certificate of Trust of Sempra Energy Capital Trust III (Incorporated by reference from the Registration Statement on Form S-3 File No. 333-52192 dated January 8, 2001 (Exhibit 3.6)).
4.1	Indenture for Senior Debt Securities (Sempra Energy) (Incorporated by reference from the Current Report on Form 8-K filed February 22, 2000 (Exhibit 4.1)).
4.2	Indenture for Subordinated Debt Securities (Sempra Energy) (Incorporated by reference from the Current Report on Form 8-K filed February 18, 2000 (Exhibit 4.1)).
4.3	Indenture for Senior Debt Securities (Sempra Energy Global Enterprises) (Incorporated by reference from the Registration Statement on Form S-3 File No. 333-52912 dated January 8, 2001 (Exhibit 4.3)).
4.4	Form of Senior Note—Sempra Energy (included in Exhibit 4.1).
4.5	Form of Subordinated Note—Sempra Energy (included in Exhibit 4.2).
4.6	Form of Senior Note—Sempra Energy Global Enterprises (included in Exhibit 4.3).
4.7	Form of Trust Preferred Security (included in Exhibit 4.12).
4.8	Form of Trust Preferred Security Guarantee—Sempra Energy Capital Trust II.
4.9	Form of Trust Preferred Security Guarantee—Sempra Energy Capital Trust III.
4.10	Declaration of Trust of Sempra Energy Capital Trust II (Incorporated by reference from the Registration Statement on Form S-3 File No. 333-70640 dated October 1, 2001 (Exhibit 4.10)).
4.11	Declaration of Trust of Sempra Energy Capital Trust III (Incorporated by reference from the Registration Statement on Form S-3 File No. 333-70640 dated October 1, 2001 (Exhibit 4.11)).
4.12	Form of Amended and Restated Declaration of Trust for each of Sempra Energy Capital Trust II and Sempra Energy Capital Trust III.

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<u>Exhibit No.</u>	<u>Description</u>
4.13	Rights Agreement dated May 26, 1998 between Sempra Energy and First Chicago Trust Company of New York, as rights agent (Incorporated by reference from the Registration Statement on Form 8-A File No. 001-14201 filed June 5, 1998 (Exhibit 1)).
4.14	Form of Warrant Agreement—Sempra Energy.*
4.15	Form of Warrant Certificate—Sempra Energy (to be included in Exhibit 4.14).
4.16	Form of Deposit Agreement—Sempra Energy.*
4.17	Form of Depositary Receipt—Sempra Energy (to be included in Exhibit 4.15).
4.18	Form of Purchase Contract.*
4.19	Form of Purchase Unit.*
5.1	Opinion of Gary W. Kyle, Esq.*
5.2	Opinion of Richards, Layton & Finger, PA. relating to Sempra Energy Capital Trust II.
5.3	Opinion of Richards, Layton & Finger, PA. relating to Sempra Energy Capital Trust III.
5.4	Opinion of Latham & Watkins LLP.*
12.1	Statement regarding the computation of ratio of earnings to combined fixed charges and preferred stock dividends for the years ended December 31, 2002, 2001, 2000, 1999 and 1998.
23.1	Consent of Gary W. Kyle, Esq. (to be included in Exhibit 5.1).
23.2	Consent of Richards, Layton & Finger, P.A. (included in Exhibits 5.2 and 5.3).
23.3	Consent of Independent Auditors (Deloitte & Touche LLP).
23.4	Consent of Latham & Watkins LLP (to be included in Exhibit 5.4).
24.1	Powers of Attorney (included on pages II-5, 7, 8 and 9).
25.1	Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939, as amended, of U.S. Bank Trust Company, as Trustee under the Indenture (Senior Debt Securities—Sempra Energy) (Incorporated by reference from the Registration Statement on Form S-3 File No. 333-70640 dated October 1, 2001 (Exhibit 25.1)).
25.2	Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939, as amended, of The Bank of New York, as Trustee under the Indenture (Subordinated Debt Securities—Sempra Energy) (Incorporated by reference from the Registration Statement on Form S-3 File No. 333-70640 dated October 1, 2001 (Exhibit 25.2)).
25.3	Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939, as amended, of U.S. Bank Trust Company, as Trustee under the Indenture (Senior Debt Securities—Sempra Energy Global Enterprises) (Incorporated by reference from the Registration Statement on Form S-3 File No. 333-70640 dated October 1, 2001 (Exhibit 25.3)).
25.4	Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939, as amended, of The Bank of New York, as Property Trustee—Sempra Energy Capital Trust II (Incorporated by reference from the Registration Statement on Form S-3 File No. 333-70640 dated October 1, 2001 (Exhibit 25.4)).
25.5	Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939, as amended, of The Bank of New York, as Property Trustee—Sempra Energy Capital Trust III (Incorporated by reference from the Registration Statement on Form S-3 File No. 333-70640 dated October 1, 2001 (Exhibit 25.5)).
25.6	Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939, as amended, of The Bank of New York, as Preferred Securities Guarantee Trustee—Sempra Energy Capital Trust II (Incorporated by reference from the Registration Statement on Form S-3 File No. 333-70640 dated October 1, 2001 (Exhibit 25.6)).

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<u>Exhibit No.</u>	<u>Description</u>
25.7	Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939, as amended, of The Bank of New York, as preferred Securities Guarantee Trustee—Sempra Energy Capital Trust III (Incorporated by reference from the Registration Statement on Form S-3 File No. 333-70640 dated October 1, 2001 (Exhibit 25.7)).
25.8	Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939, as amended, of The Bank of New York, as Debt Securities Guarantee Trustee—Sempra Energy Global Enterprises (Incorporated by reference from the Registration Statement on Form S-3 File No. 333-70640 dated October 1, 2001 (Exhibit 25.8)).

\* To be filed by amendment or as an exhibit to a report filed under the Securities Exchange Act of 1934, as amended, and incorporated herein by reference.

**GUARANTEE AGREEMENT**

**BETWEEN**

**SEMPRA ENERGY**

**(as Guarantor)**

**AND**

**THE BANK OF NEW YORK**

**(as Trustee)**

DATED AS OF

CROSS-REFERENCE TABLE\*

<u>Section of Trust Indenture Act of 1939, as amended</u>	<u>Section of Guarantee Agreement</u>
310(a)	4.1(a)
310(b)	4.1(c), 2.8
310(c)	Inapplicable
311(a)	2.2(b)
311(b)	2.2(b)
311(c)	Inapplicable
312(a)	2.2(a)
312(b)	2.2(b)
313	2.3
314(a)	2.4
314(b)	Inapplicable
314(c)	2.5
314(d)	Inapplicable
314(e)	1.1, 2.5, 3.2
314(f)	2.1, 3.2
315(a)	3.1 (d)
315(b)	2.7
315(c)	3.1
315(d)	3.1(d)
316(a)	1.1, 2.6, 5.4
316(b)	5.3
316(c)	8.2
317(a)	Inapplicable
317(b)	Inapplicable
318(a)	2.1(b)
318(b)	2.1
318(c)	2.1(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

GUARANTEE AGREEMENT, dated as of \_\_\_\_\_ (this "Guarantee Agreement"), entered into between SEMPRA ENERGY, a California corporation having its principal office at 101 Ash Street, San Diego, California 92101 (the "Guarantor"), and THE BANK OF NEW YORK, a New York banking corporation, as trustee (the "Guarantee Trustee"), for the benefit of the Holders (as defined herein) from time to time of the Preferred Securities (as defined herein) of SEMPRA ENERGY CAPITAL TRUST II, a Delaware statutory trust (the "Issuer").

WHEREAS, pursuant to an Amended and Restated Declaration of Trust, dated as of \_\_\_\_\_ (the "Declaration"), among Sempra Energy, a California corporation (the "Company"), as Sponsor, the Property Trustee named therein, the Delaware Trustee named therein, the Regular Trustees named therein and the several Holders as defined therein, the Issuer is issuing \$ \_\_\_\_\_ aggregate Liquidation Amount (as defined in the Declaration) of its % Preferred Securities, Series \_\_\_\_\_ (Liquidation Amount \$ \_\_\_\_\_ per Preferred Security) (the "Preferred Securities"), representing undivided beneficial interests in the assets of the Issuer and having the terms set forth in the Declaration;

WHEREAS, the Preferred Securities will be issued by the Issuer and the proceeds thereof, together with the proceeds from the issuance of the Common Securities (as defined in the Declaration), will be used to purchase the Subordinated Debt Securities (as defined in the Declaration) of the Company which will be deposited with The Bank of New York, as Property Trustee under the Declaration, as trust assets; and

WHEREAS, as incentive for the Holders to purchase Preferred Securities the Guarantor desires irrevocably and unconditionally to agree, to the extent set forth herein, to pay to the Holders of the Preferred 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 Preferred Securities, which purchase the Guarantor hereby agrees shall benefit the Guarantor, the Guarantor executes and delivers this Guarantee Agreement for the benefit of the Holders from time to time of the Preferred Securities.

### Article I. DEFINITIONS

Section 1.1 Definitions. As used in this Guarantee Agreement, the terms set forth below shall, unless the context otherwise requires, have the following meanings. Capitalized or otherwise defined terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Declaration as in effect on the date hereof.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or



indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Event of Default” means (i) a default by the Guarantor on any of its payment obligations under this Guarantee Agreement and (ii) a default by the Guarantor on any other obligation hereunder that remains uncured after 30 days from the occurrence thereof.

“Guarantee Payments” means the following payments or distributions, without duplication, with respect to the Preferred Securities, to the extent not paid or made by or on behalf of the Issuer: (i) any accumulated and unpaid Distributions (as defined in the Declaration) required to be paid on the Preferred Securities, to the extent the Issuer shall have funds on hand available therefor at such time, (ii) the redemption price, including all accumulated and unpaid Distributions to the date of redemption (the “Redemption Price”), with respect to any Preferred Securities called for redemption by the Issuer, to the extent the Issuer shall have funds on hand available therefor at such time, and (iii) upon a voluntary or involuntary termination, winding-up or liquidation of the Issuer, unless Subordinated Debt Securities are distributed to the Holders, the lesser of (a) the aggregate of the Liquidation Amount of \$                      per Preferred Security plus accumulated and unpaid Distributions on the Preferred Securities to the date of payment, to the extent the Issuer shall have funds on hand available therefor at such time and (b) the amount of assets of the Issuer remaining available for distribution to Holders in liquidation of the Issuer (in either case, the “Liquidation Distribution”).

“Guarantee Trustee” has the meaning set forth in the preamble to this Guarantee Agreement.

“Holder” means any holder, as registered on the books and records of the Issuer, of any Preferred Securities; provided, however, that in determining whether the holders of the requisite percentage of Preferred Securities have given any request, notice, consent or waiver hereunder, “Holder” shall not include the Guarantor, the Guarantee Trustee, or any Affiliate of the Guarantor or the Guarantee Trustee.

“Indenture” means the Subordinated Indenture dated as of February 23, 2000 among the Company and The Bank of New York, as trustee thereunder.

“List of Holders” has the meaning specified in Section 2.2(a).

“Majority in Liquidation Amount of the Preferred Securities” means, except as provided in the Declaration and by the Trust Indenture Act, Holder(s) of Preferred Securities voting separately as a class, who vote Preferred Securities and the aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentage is determined) of the Preferred Securities voted by such Holders represents more than 50% of the above stated aggregate liquidation amount of all Preferred Securities.

“Officer’s Certificate” means a certificate signed by any one of the Chairman of the Board, Chief Executive Officer, President, a Vice President, the Treasurer, an Associate Treasurer, an Assistant Treasurer, the Controller, the Secretary or an Assistant Secretary, of the Company, and delivered to the Guarantee Trustee. Any Officer’s Certificate delivered with

respect to compliance with a condition or covenant provided for in this Guarantee Agreement shall include:

- (a) a statement that the officer signing the Officer's Certificate has read the covenant or condition and the definitions relating thereto;
- (b) a brief statement of the nature and scope of the examination or investigation undertaken by such officer in rendering the Officer's Certificate;
- (c) a statement that 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 such officer, such condition or covenant has been complied with.

"Person" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

"Record Date" means, with respect to Preferred Securities that are held in book-entry form, the date that is one Business Day before the relevant Distribution Date, and with respect to Preferred Securities that are held in definitive form, the 15th day, whether or not a Business Day, before the relevant Distribution Date.

"Responsible Officer" means, with respect to the Guarantee Trustee, any vice-president, any assistant vice-president, any assistant secretary, any assistant treasurer, any trust officer or assistant trust officer or any other officer 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.

"Successor Guarantee Trustee" means a successor Guarantee Trustee possessing the qualifications to act as Guarantee Trustee under Section 4.1.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended.

## **Article II.**

### **TRUST INDENTURE ACT**

Section 2.1 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.

Section 2.2 List of Holders; Preferential Claims.

(a) The Guarantor shall furnish or cause to be furnished to the Guarantee Trustee (a) not later than 15 days after each Record Date of each year, a list, in such form as the Guarantee Trustee may reasonably require, containing all the information in the possession or control of the Guarantor, as to of the names and addresses of the Holders (“List of Holders”) as of the preceding respective Record Date, and (b) 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 similar form and content as of a date not more than 15 days prior to the time such list is furnished. The Guarantee Trustee shall preserve, in as current a form as is reasonably practicable, all information contained in Lists of Holders given to it, provided that the Guarantee Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

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

Section 2.3 Reports by the Guarantee Trustee. Not later than 60 days following \_\_\_\_\_ of each year, commencing \_\_\_\_\_, 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 2.4 Periodic Reports to the Guarantee Trustee. The Guarantor shall provide to the Guarantee Trustee 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, in the manner and at the times required by Section 314(a)(4) of the Trust Indenture Act.

Section 2.5 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. Any certificate or opinion required to be given by an officer pursuant to such Section 314(c)(1) may be given in the form of an Officer’s Certificate.

Section 2.6 Events of Default; Waiver. The Holders of a Majority in Liquidation Amount of the Preferred Securities may, by vote, on behalf of the Holders, waive any past Event of Default and its consequences. Upon such waiver, any such Event of Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Guarantee Agreement, but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent therefrom.

(a) Event of Default; Notice. The Guarantee Trustee shall, within 90 days after the occurrence of an Event of Default actually known to a Responsible Officer of the

Guarantee Trustee, transmit by mail, first class postage prepaid, to the Holders, notices of all such defaults unless such defaults have been cured before the giving of such notice (the term “defaults” for the purposes of this Section 2.6(a) being hereby defined to be an Event of Default as, not including any periods of grace provided for therein and irrespective of the giving of any notice provided therein); 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.

Section 2.7 Conflicting Interests. The Declaration and the Indenture shall be deemed to be specifically described in this Guarantee Agreement for the purposes of clause (i) of the first proviso contained in Section 310(b) of the Trust Indenture Act.

**Article III.**  
**POWERS, DUTIES AND RIGHTS OF THE GUARANTEE TRUSTEE**

Section 3.1 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 5.4(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 conveying documents have been executed and delivered pursuant to the appointment of such Successor Guarantee Trustee.

(b) The Guarantee Trustee, before the occurrence of any Event of Default and after the curing or waiving of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Guarantee Agreement, and no implied covenants, duties or obligations shall be read into this Guarantee Agreement against the Guarantee Trustee. In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.6), the Guarantee Trustee shall enforce this Guarantee Agreement for the benefit of the Holders and shall exercise such of the rights and powers vested in it by this Guarantee Agreement, and use the same degree of care and skill in its exercise thereof, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(c) 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) this Subsection shall not be construed to limit Subsection (b) of this Section;

(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 not less than a Majority in Liquidation Amount of the Preferred Securities relating to the time, method and place of conducting any proceeding for any remedy available to the 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 indemnity reasonably satisfactory to it against such risk or liability is not reasonably assured to it.

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

### Section 3.2 Certain Rights of Guarantee Trustee.

Subject to the provisions of Section 3.1:

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

(b) any direction or act of the Guarantor contemplated by this Guarantee Agreement shall be sufficiently evidenced by an Officer's Certificate unless otherwise prescribed herein;

(c) 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 conclusively rely upon an Officer's Certificate which, upon receipt of such request from the Guarantee Trustee, shall be promptly delivered by the Guarantor;

(d) the Guarantee Trustee shall have no duty to see to any recording, filing or registration of any instrument (including any financing or continuation statement or any filing under tax or securities laws) or any rerecording, refiling or reregistration thereof;

(e) the Guarantee Trustee may consult with legal counsel of its selection, and the written advice of such legal counsel or any 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 reliance thereon and in accordance with such advice or Opinion of Counsel. Such legal counsel may be legal counsel to the Guarantor or any of its Affiliates and may be one of its employees;

(f) 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 Holders, unless such Holders shall have provided to the Guarantee Trustee such adequate security and indemnity reasonably satisfactory to it, against the costs, expenses (including reasonable attorneys' fees and expenses) and liabilities that might be incurred by it in complying with such request or direction;

(g) 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 may make such further inquiry or investigation into such facts or matters as it considers reasonably necessary in order to carry out its obligations in the administration of this Guarantee Agreement, and if the Guarantee Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Guarantor, personally or by agent or attorney;

(h) 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;

(i) 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:

(i) may request written instructions from the Holders which written instructions may only be given by the Holders of the same proportion in aggregate Liquidation Amount of the Preferred Securities as would be entitled to direct the Guarantee Trustee under the terms of the Preferred Securities;

(ii) may refrain from enforcing such remedy or right or taking such other action until such written instructions are received; and

(iii) shall be protected in acting in accordance with such written instructions;

(j) except as otherwise expressly provided by this Guarantee Agreement, the Guarantee Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Guarantee Agreement;

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

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

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 3.3 Compensation; Indemnity; Fees. The Guarantor agrees:

(a) to pay to the Guarantee Trustee from time to time such reasonable compensation as shall be agreed to in writing between the Guarantor and the Guarantee 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);

(b) except as otherwise expressly provided herein, to reimburse the Guarantee Trustee upon request for all reasonable expenses, disbursements and advances incurred or made by the Guarantee Trustee in accordance with any provision of this Guarantee Agreement (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or willful misconduct; and

(c) to the fullest extent permitted by applicable law, to indemnify and hold harmless (i) the Guarantee Trustee, (ii) any Affiliate of the Guarantee Trustee, (iii) any officer, director, shareholder, employee, representative or agent of the Guarantee Trustee and (iv) any employee or agent of the Guarantee Trustee or its Affiliates (referred to herein as an "Indemnified Person") from and against any loss, damage, liability, tax, penalty, expense or claim of any kind or nature whatsoever incurred by such Indemnified Person by or in connection with the administration of this Guarantee Agreement and in a manner such Indemnified Person reasonably believed to be within the scope of authority conferred on such Indemnified Person by this Guarantee Agreement, except that no Indemnified Person shall be entitled to be indemnified

in respect of any loss, damage or claim incurred by such Indemnified Person by reason of negligence or willful misconduct with respect to such acts or omissions.

The provisions of this Section 3.3 shall survive the termination of this Guarantee Agreement or the resignation or removal of the Guarantee Trustee.

The Guarantee Trustee may not claim any lien or charge on any Trust Property as a result of any amount due pursuant to this Section 3.3.

The Guarantor and the Guarantee Trustee (subject to Section 3.4) may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Guarantor, and neither the Guarantor nor the Holders shall have any rights by virtue of this Guarantee Agreement in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Guarantor, shall not be deemed wrongful or improper. The Guarantee Trustee shall not be obligated to present any particular investment or other opportunity to the Guarantor even if such opportunity is of a character that, if presented to the Guarantor, could be taken by the Guarantor, and the Guarantee Trustee shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment or other opportunity. The Guarantee Trustee may engage or be interested in any financial or other transaction with the Guarantor or any Affiliate of the Guarantor, or may act as depository for, trustee or agent for, or act on any committee or body of holders of, securities or other obligations of the Guarantor or its Affiliates.

Section 3.4 Conflicting Interests. If the Guarantee Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Guarantee 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 Guarantee Agreement. The Guarantee Agreement is hereby excluded for purposes of Section 310(b)(1) of the Trust Indenture Act.

**Article IV.**  
**GUARANTEE TRUSTEE**

Section 4.1 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 \$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 4.1(a), the Guarantee Trustee shall immediately resign in the manner and with the effect set out in Section 4.2(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.

#### Section 4.2 Appointment, Removal and Resignation of the Guarantee Trustee.

(a) Subject to Section 4.2(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 a Successor Guarantee Trustee has been appointed and has accepted such appointment by written instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor.

(c) The Guarantee Trustee appointed hereunder shall hold office until a Successor Guarantee Trustee shall have been appointed or until its removal or resignation. 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 4.2 within 30 days after delivery to the Guarantor of an instrument of resignation or notice of removal pursuant to this Section 4.2, the Guarantee Trustee resigning or being removed, as the case may be, 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 5.1 Guarantee. The Guarantor irrevocably and unconditionally agrees to pay in full to the Holders the Guarantee Payments (without duplication of amounts theretofore paid by or on behalf of the Issuer), as and when due, regardless of any defense, right of set-off or counterclaim which the Issuer may have or assert. The Guarantor’s obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the Issuer to pay such amounts to the Holders.

Section 5.2 Waiver of Notice and Demand. The Guarantor hereby waives notice of acceptance of this Guarantee Agreement and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Guarantee

Trustee, 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 5.3 Obligations Not Affected. The obligations, covenants, agreements and duties of the Guarantor under this Guarantee Agreement shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

(a) the release or waiver, by operation of law or otherwise, of the performance or observance by the Issuer of any express or implied agreement, covenant, term or condition relating to the Preferred Securities to be performed or observed by the Issuer;

(b) the extension of time for the payment by the Issuer of all or any portion of the Distributions (other than an extension of time for payment of Distributions that results from the extension of any interest payment period on the Subordinated Debt Securities as provided in the Indenture), Redemption Price, Liquidation Distribution or any other sums payable under the terms of the Preferred Securities or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the Preferred Securities;

(c) any failure, omission, delay or lack of diligence on the part of the Holders or the Guarantee Trustee to enforce, assert or exercise any right, privilege, power or remedy conferred on the Holders pursuant to the terms of the Preferred Securities, or any action on the part of the Issuer granting indulgence or extension of any kind;

(d) the voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Issuer or any of the assets of the Issuer;

(e) any invalidity of, or defect or deficiency in, the Preferred Securities;

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

(g) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Section 5.3 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 5.4 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 Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the

Guarantee Trustee in respect of this Guarantee Agreement or exercising any trust or power conferred upon the Guarantee Trustee under this Guarantee Agreement; and (iv) any Holder may institute a legal proceeding directly against the Guarantor to enforce its rights under this Guarantee Agreement, without first instituting a legal proceeding against the Guarantee Trustee, the Issuer or any other Person.

Section 5.5 Guarantee of Payment. This Guarantee Agreement creates a guarantee of payment and not of performance or 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 Subordinated Debt Securities to Holders as provided in the Declaration.

Section 5.6 Subordination. 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 5.1; 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 against the Issuer 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 5.7 Independent Obligations. The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Issuer with respect to the Preferred Securities and that the Guarantor shall be liable as principal and as debtor hereunder to make Guarantee Payments pursuant to the terms of this Guarantee Agreement notwithstanding the occurrence of any event referred to in subsections (a) through (g), inclusive, of Section 5.3 hereof.

**Article VI.**  
**COVENANTS AND SUBORDINATION**

The obligations of the Guarantor under this Guarantee Agreement will constitute unsecured obligations of the Guarantor and will rank:

(a) *pari passu* with any other preferred securities guarantee similar to the guarantee under this Guarantee Agreement issued by the Guarantor on behalf of the holders of preferred securities issued by any trust established by the Guarantor or its Affiliates other than the Trust;

(b) subordinate and junior in right of payment to all of the Guarantor's other liabilities, except those that rank *pari passu* or are subordinate by their terms;

(c) *pari passu* with any guarantee now or hereafter issued by the Guarantor in respect of the most senior preferred or preference stock now or hereafter issued by the Guarantor, and with any guarantee now or hereafter issued by it in respect of any preferred or preference stock of any of its Affiliates; and

(d) senior to the Guarantor's common stock.

**Article VII.  
TERMINATION**

Section 7.1 Termination. This Guarantee Agreement shall terminate and be of no further force and effect upon (i) full payment of the Redemption Price of all Preferred Securities, (ii) the distribution of Subordinated Debt Securities to the Holders in exchange for all of the Preferred Securities or (iii) full payment of the amounts payable in accordance with the Declaration upon liquidation of the 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 Securities or this Guarantee Agreement.

**Article VIII.  
MISCELLANEOUS**

Section 8.1 Successors and Assigns. All guarantees and agreements contained in this Guarantee Agreement shall bind the successors, assigns, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders of the Preferred Securities from time to time outstanding. Except in connection with a consolidation, merger or sale involving the Guarantor that is permitted under the Indenture and pursuant to which the successor or assignee agrees in writing to perform the Guarantor's obligations hereunder, the Guarantor shall not assign its obligations hereunder.

Section 8.2 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 written approval of the Holders of a Majority in Liquidation Amount of the Preferred Securities. The provisions of Article VI of the Declaration concerning meetings of the Holders shall apply to the giving of such approval.

Section 8.3 Notices. Any notice, request or other communication required or permitted to be given hereunder shall be in writing, duly signed by the party giving such notice, and delivered, telecopied or mailed by first class mail as follows:

(a) if given to the Guarantor, to the address set forth below or such other address, facsimile number or to the attention of such other Person as the Guarantor may give notice to the Holders:

Sempra Energy  
101 Ash Street  
San Diego, California 92101  
Facsimile No.: 619-696-4577  
Attention: Treasurer

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

Sempra Energy Capital Trust II  
101 Ash Street  
San Diego, California 92101  
Facsimile No.: 619-696-4577  
Attention: Regular Trustees of Sempra Energy Capital Trust II

with a copy to:

The Bank of New York  
101 Barclay Street, 21-W  
New York, New York 10286  
Facsimile No.: 212-815-5915  
Attention: Corporate Trust Administration

(c) if given to the Guarantee Trustee, at the Guarantee Trustee's address set forth below or such other address as the Guarantee Trustee may give notice to the Holders:

The Bank of New York  
101 Barclay Street, 21-W  
New York, New York 10286  
Facsimile No.: 212-815-5915  
Attention: Corporate Trust Administration

(d) if given to any Holder, at the address set forth on the books and records of the Issuer.

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

Section 8.4 Benefit. This Guarantee Agreement is solely for the benefit of the Holders and is not separately transferable from the Preferred Securities.

Section 8.5 Interpretation. In this Guarantee Agreement, unless the context otherwise requires:

- (a) capitalized terms used in this Guarantee Agreement but not defined in the preamble hereto have the respective meanings assigned to them in Section 1.1;
- (b) a term defined anywhere in this Guarantee Agreement has the same meaning throughout;

(c) all references to “the Guarantee Agreement” or “this Guarantee Agreement” are to this Guarantee Agreement as modified, supplemented or amended from time to time;

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

(e) a term defined in the Trust Indenture Act has the same meaning when used in this Guarantee Agreement unless otherwise defined in this Guarantee Agreement or unless the context otherwise requires;

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

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

Section 8.6 Governing Law. THIS GUARANTEE AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICTS OF LAWS 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.

(Signatures follow)

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

SEMPRA ENERGY

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

**Name:**

**Title:**

THE BANK OF NEW YORK,  
as Guarantee Trustee

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

**Name:**

**Title:**

**GUARANTEE AGREEMENT**

**Between**

**SEMPRA ENERGY**

**(as Guarantor)**

**and**

**THE BANK OF NEW YORK**

**(as Trustee)**

dated as of



CROSS-REFERENCE TABLE\*

Section of Trust Indenture Act of 1939, as amended	Section of Guarantee Agreement
310(a)	4.1(a)
310(b)	4.1(c), 2.8
310(c)	Inapplicable
311(a)	2.2(b)
311(b)	2.2(b)
311(c)	Inapplicable
312(a)	2.2(a)
312(b)	2.2(b)
313	2.3
314(a)	2.4
314(b)	Inapplicable
314(c)	2.5
314(d)	Inapplicable
314(e)	1.1, 2.5, 3.2
314(f)	2.1, 3.2
315(a)	3.1(d)
315(b)	2.7
315(c)	3.1
315(d)	3.1(d)
316(a)	1.1, 2.6, 5.4
316(b)	5.3
316(c)	8.2
317(a)	Inapplicable
317(b)	Inapplicable
318(a)	2.1(b)
318(b)	2.1
318(c)	2.1(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

GUARANTEE AGREEMENT, dated as of \_\_\_\_\_ (this "Guarantee Agreement"), entered into between SEMPRA ENERGY, a California corporation having its principal office at 101 Ash Street, San Diego, California 92101 (the "Guarantor"), and THE BANK OF NEW YORK, a New York banking corporation, as trustee (the "Guarantee Trustee"), for the benefit of the Holders (as defined herein) from time to time of the Preferred Securities (as defined herein) of SEMPRA ENERGY CAPITAL TRUST III, a Delaware statutory trust (the "Issuer").

WHEREAS, pursuant to an Amended and Restated Declaration of Trust, dated as of \_\_\_\_\_ (the "Declaration"), among Sempra Energy, a California corporation (the "Company"), as Sponsor, the Property Trustee named therein, the Delaware Trustee named therein, the Regular Trustees named therein and the several Holders as defined therein, the Issuer is issuing \$ \_\_\_\_\_ aggregate Liquidation Amount (as defined in the Declaration) of its \_\_\_\_\_ % Preferred Securities, Series \_\_\_\_\_ (Liquidation Amount \$ \_\_\_\_\_ per Preferred Security) (the "Preferred Securities"), representing undivided beneficial interests in the assets of the Issuer and having the terms set forth in the Declaration;

WHEREAS, the Preferred Securities will be issued by the Issuer and the proceeds thereof, together with the proceeds from the issuance of the Common Securities (as defined in the Declaration), will be used to purchase the Subordinated Debt Securities (as defined in the Declaration) of the Company which will be deposited with The Bank of New York, as Property Trustee under the Declaration, as trust assets; and

WHEREAS, as incentive for the Holders to purchase Preferred Securities the Guarantor desires irrevocably and unconditionally to agree, to the extent set forth herein, to pay to the Holders of the Preferred 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 Preferred Securities, which purchase the Guarantor hereby agrees shall benefit the Guarantor, the Guarantor executes and delivers this Guarantee Agreement for the benefit of the Holders from time to time of the Preferred Securities.

### Article I. DEFINITIONS

Section 1.1 Definitions. As used in this Guarantee Agreement, the terms set forth below shall, unless the context otherwise requires, have the following meanings. Capitalized or otherwise defined terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Declaration as in effect on the date hereof.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or

indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Event of Default” means (i) a default by the Guarantor on any of its payment obligations under this Guarantee Agreement and (ii) a default by the Guarantor on any other obligation hereunder that remains uncured after 30 days from the occurrence thereof.

“Guarantee Payments” means the following payments or distributions, without duplication, with respect to the Preferred Securities, to the extent not paid or made by or on behalf of the Issuer: (i) any accumulated and unpaid Distributions (as defined in the Declaration) required to be paid on the Preferred Securities, to the extent the Issuer shall have funds on hand available therefor at such time, (ii) the redemption price, including all accumulated and unpaid Distributions to the date of redemption (the “Redemption Price”), with respect to any Preferred Securities called for redemption by the Issuer, to the extent the Issuer shall have funds on hand available therefor at such time, and (iii) upon a voluntary or involuntary termination, winding-up or liquidation of the Issuer, unless Subordinated Debt Securities are distributed to the Holders, the lesser of (a) the aggregate of the Liquidation Amount of \$ \_\_\_\_\_ per Preferred Security plus accumulated and unpaid Distributions on the Preferred Securities to the date of payment, to the extent the Issuer shall have funds on hand available therefor at such time and (b) the amount of assets of the Issuer remaining available for distribution to Holders in liquidation of the Issuer (in either case, the “Liquidation Distribution”).

“Guarantee Trustee” has the meaning set forth in the preamble to this Guarantee Agreement.

“Holder” means any holder, as registered on the books and records of the Issuer, of any Preferred Securities; provided, however, that in determining whether the holders of the requisite percentage of Preferred Securities have given any request, notice, consent or waiver hereunder, “Holder” shall not include the Guarantor, the Guarantee Trustee, or any Affiliate of the Guarantor or the Guarantee Trustee.

“Indenture” means the Subordinated Indenture dated as of February 23, 2000 among the Company and The Bank of New York, as trustee thereunder.

“List of Holders” has the meaning specified in Section 2.2(a).

“Majority in Liquidation Amount of the Preferred Securities” means, except as provided in the Declaration and by the Trust Indenture Act, Holder(s) of Preferred Securities voting separately as a class, who vote Preferred Securities and the aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentage is determined) of the Preferred Securities voted by such Holders represents more than 50% of the above stated aggregate liquidation amount of all Preferred Securities.

“Officer’s Certificate” means a certificate signed by any one of the Chairman of the Board, Chief Executive Officer, President, a Vice President, the Treasurer, an Associate Treasurer, an Assistant Treasurer, the Controller, the Secretary or an Assistant Secretary, of the Company, and delivered to the Guarantee Trustee. Any Officer’s Certificate delivered with

respect to compliance with a condition or covenant provided for in this Guarantee Agreement shall include:

- (a) a statement that the officer signing the Officer's Certificate has read the covenant or condition and the definitions relating thereto;
- (b) a brief statement of the nature and scope of the examination or investigation undertaken by such officer in rendering the Officer's Certificate;
- (c) a statement that 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 such officer, such condition or covenant has been complied with.

"Person" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

"Record Date" means, with respect to Preferred Securities that are held in book-entry form, the date that is one Business Day before the relevant Distribution Date, and with respect to Preferred Securities that are held in definitive form, the 15th day, whether or not a Business Day, before the relevant Distribution Date.

"Responsible Officer" means, with respect to the Guarantee Trustee, any vice-president, any assistant vice-president, any assistant secretary, any assistant treasurer, any trust officer or assistant trust officer or any other officer 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.

"Successor Guarantee Trustee" means a successor Guarantee Trustee possessing the qualifications to act as Guarantee Trustee under Section 4.1.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended.

## **Article II. TRUST INDENTURE ACT**

Section 2.1 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.

#### Section 2.2 List of Holders; Preferential Claims.

(a) The Guarantor shall furnish or cause to be furnished to the Guarantee Trustee (a) not later than 15 days after each Record Date of each year, a list, in such form as the Guarantee Trustee may reasonably require, containing all the information in the possession or control of the Guarantor, as to of the names and addresses of the Holders (“List of Holders”) as of the preceding respective Record Date, and (b) 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 similar form and content as of a date not more than 15 days prior to the time such list is furnished. The Guarantee Trustee shall preserve, in as current a form as is reasonably practicable, all information contained in Lists of Holders given to it, provided that the Guarantee Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

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

#### Section 2.3 Reports by the Guarantee Trustee.

Not later than 60 days following \_\_\_\_\_ of each year, commencing \_\_\_\_\_, 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 2.4 Periodic Reports to the Guarantee Trustee. The Guarantor shall provide to the Guarantee Trustee 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, in the manner and at the times required by Section 314(a)(4) of the Trust Indenture Act.

Section 2.5 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. Any certificate or opinion required to be given by an officer pursuant to such Section 314(c)(1) may be given in the form of an Officer’s Certificate.

Section 2.6 Events of Default; Waiver. The Holders of a Majority in Liquidation Amount of the Preferred Securities may, by vote, on behalf of the Holders, waive any past Event of Default and its consequences. Upon such waiver, any such Event of Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Guarantee Agreement, but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent therefrom.

(a) Event of Default; Notice. The Guarantee Trustee shall, within 90 days after the occurrence of an Event of Default actually known to a Responsible Officer of the Guarantee Trustee, transmit by mail, first class postage prepaid, to the Holders, notices of all such defaults unless such defaults have been cured before the giving of such notice (the term “defaults” for the purposes of this Section 2.6(a) being hereby defined to be an Event of Default as, not including any periods of grace provided for therein and irrespective of the giving of any notice provided therein); 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.

Section 2.7 Conflicting Interests. The Declaration and the Indenture shall be deemed to be specifically described in this Guarantee Agreement for the purposes of clause (i) of the first proviso contained in Section 310(b) of the Trust Indenture Act.

**Article III.**  
**POWERS, DUTIES AND RIGHTS OF THE GUARANTEE TRUSTEE**

Section 3.1 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 5.4(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 conveying documents have been executed and delivered pursuant to the appointment of such Successor Guarantee Trustee.

(b) The Guarantee Trustee, before the occurrence of any Event of Default and after the curing or waiving of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Guarantee Agreement, and no implied covenants, duties or obligations shall be read into this Guarantee Agreement against the Guarantee Trustee. In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.6), the Guarantee Trustee shall enforce this Guarantee Agreement for the benefit of the Holders and shall exercise such of the rights and powers vested in it by this Guarantee Agreement, and use the same degree of care and skill in its exercise thereof, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(c) 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) this Subsection shall not be construed to limit Subsection (b) of this Section;

(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 not less than a Majority in Liquidation Amount of the Preferred Securities relating to the time, method and place of conducting any proceeding for any remedy available to the 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 indemnity reasonably satisfactory to it against such risk or liability is not reasonably assured to it.

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

Section 3.2 Certain Rights of Guarantee Trustee. Subject to the provisions of Section 3.1:

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

(b) any direction or act of the Guarantor contemplated by this Guarantee Agreement shall be sufficiently evidenced by an Officer's Certificate unless otherwise prescribed herein;

(c) whenever, in the administration of this Guarantee Agreement, the Guarantee Trustee shall deem it desirable that a matter be proved or established 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 conclusively rely

upon an Officer's Certificate which, upon receipt of such request from the Guarantee Trustee, shall be promptly delivered by the Guarantor;

(d) the Guarantee Trustee shall have no duty to see to any recording, filing or registration of any instrument (including any financing or continuation statement or any filing under tax or securities laws) or any rerecording, refiling or reregistration thereof;

(e) the Guarantee Trustee may consult with legal counsel of its selection, and the written advice of such legal counsel or any 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 reliance thereon and in accordance with such advice or Opinion of Counsel. Such legal counsel may be legal counsel to the Guarantor or any of its Affiliates and may be one of its employees;

(f) 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 Holders, unless such Holders shall have provided to the Guarantee Trustee such adequate security and indemnity reasonably satisfactory to it, against the costs, expenses (including reasonable attorneys' fees and expenses) and liabilities that might be incurred by it in complying with such request or direction;

(g) 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 may make such further inquiry or investigation into such facts or matters as it considers reasonably necessary in order to carry out its obligations in the administration of this Guarantee Agreement, and if the Guarantee Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Guarantor, personally or by agent or attorney;

(h) 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;

(i) 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:

(i) may request written instructions from the Holders which written instructions may only be given by the Holders of the same proportion in aggregate Liquidation Amount of the Preferred Securities as would be entitled to direct the Guarantee Trustee under the terms of the Preferred Securities;

(ii) may refrain from enforcing such remedy or right or taking such other action until such written instructions are received; and

(iii) shall be protected in acting in accordance with such written instructions;

(j) except as otherwise expressly provided by this Guarantee Agreement, the Guarantee Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Guarantee Agreement;

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

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

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 3.3 Compensation; Indemnity; Fees. The Guarantor agrees:

(a) to pay to the Guarantee Trustee from time to time such reasonable compensation as shall be agreed to in writing between the Guarantor and the Guarantee 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);

(b) except as otherwise expressly provided herein, to reimburse the Guarantee Trustee upon request for all reasonable expenses, disbursements and advances incurred or made by the Guarantee Trustee in accordance with any provision of this Guarantee Agreement (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or willful misconduct; and

(c) to the fullest extent permitted by applicable law, to indemnify and hold harmless (i) the Guarantee Trustee, (ii) any Affiliate of the Guarantee Trustee, (iii) any officer, director, shareholder, employee, representative or agent of the Guarantee Trustee and (iv) any employee or agent of the Guarantee Trustee or its Affiliates (referred to herein as an "Indemnified Person") from and against any loss, damage, liability, tax, penalty, expense or claim of any kind or nature whatsoever incurred by such Indemnified Person by or in connection with the administration of this Guarantee Agreement and in a manner such Indemnified Person reasonably believed to be within the scope of authority conferred on such Indemnified Person by

this Guarantee Agreement, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Indemnified Person by reason of negligence or willful misconduct with respect to such acts or omissions.

The provisions of this Section 3.3 shall survive the termination of this Guarantee Agreement or the resignation or removal of the Guarantee Trustee.

The Guarantee Trustee may not claim any lien or charge on any Trust Property as a result of any amount due pursuant to this Section 3.3.

The Guarantor and the Guarantee Trustee (subject to Section 3.4) may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Guarantor, and neither the Guarantor nor the Holders shall have any rights by virtue of this Guarantee Agreement in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Guarantor, shall not be deemed wrongful or improper. The Guarantee Trustee shall not be obligated to present any particular investment or other opportunity to the Guarantor even if such opportunity is of a character that, if presented to the Guarantor, could be taken by the Guarantor, and the Guarantee Trustee shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment or other opportunity. The Guarantee Trustee may engage or be interested in any financial or other transaction with the Guarantor or any Affiliate of the Guarantor, or may act as depository for, trustee or agent for, or act on any committee or body of holders of, securities or other obligations of the Guarantor or its Affiliates.

Section 3.4 Conflicting Interests. If the Guarantee Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Guarantee 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 Guarantee Agreement. The Guarantee Agreement is hereby excluded for purposes of Section 310(b)(1) of the Trust Indenture Act.

#### **Article IV. GUARANTEE TRUSTEE**

Section 4.1 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 \$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 4.1(a), the Guarantee Trustee shall immediately resign in the manner and with the effect set out in Section 4.2(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.

#### Section 4.2 Appointment, Removal and Resignation of the Guarantee Trustee.

(a) Subject to Section 4.2(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 a Successor Guarantee Trustee has been appointed and has accepted such appointment by written instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor.

(c) The Guarantee Trustee appointed hereunder shall hold office until a Successor Guarantee Trustee shall have been appointed or until its removal or resignation. 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 4.2 within 30 days after delivery to the Guarantor of an instrument of resignation or notice of removal pursuant to this Section 4.2, the Guarantee Trustee resigning or being removed, as the case may be, 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 5.1 Guarantee. The Guarantor irrevocably and unconditionally agrees to pay in full to the Holders the Guarantee Payments (without duplication of amounts theretofore paid by or on behalf of the Issuer), as and when due, regardless of any defense, right of set-off or counterclaim which the Issuer may have or assert. The Guarantor’s obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the Issuer to pay such amounts to the Holders.

Section 5.2 Waiver of Notice and Demand. The Guarantor hereby waives notice of acceptance of this Guarantee Agreement and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Guarantee

Trustee, 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 5.3 Obligations Not Affected. The obligations, covenants, agreements and duties of the Guarantor under this Guarantee Agreement shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

(a) the release or waiver, by operation of law or otherwise, of the performance or observance by the Issuer of any express or implied agreement, covenant, term or condition relating to the Preferred Securities to be performed or observed by the Issuer;

(b) the extension of time for the payment by the Issuer of all or any portion of the Distributions (other than an extension of time for payment of Distributions that results from the extension of any interest payment period on the Subordinated Debt Securities as provided in the Indenture), Redemption Price, Liquidation Distribution or any other sums payable under the terms of the Preferred Securities or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the Preferred Securities;

(c) any failure, omission, delay or lack of diligence on the part of the Holders or the Guarantee Trustee to enforce, assert or exercise any right, privilege, power or remedy conferred on the Holders pursuant to the terms of the Preferred Securities, or any action on the part of the Issuer granting indulgence or extension of any kind;

(d) the voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Issuer or any of the assets of the Issuer;

(e) any invalidity of, or defect or deficiency in, the Preferred Securities;

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

(g) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Section 5.3 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 5.4 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 Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee in respect of this Guarantee Agreement or exercising any trust or power conferred upon the Guarantee Trustee under this Guarantee

Agreement; and (iv) any Holder may institute a legal proceeding directly against the Guarantor to enforce its rights under this Guarantee Agreement, without first instituting a legal proceeding against the Guarantee Trustee, the Issuer or any other Person.

Section 5.5 Guarantee of Payment. This Guarantee Agreement creates a guarantee of payment and not of performance or 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 Subordinated Debt Securities to Holders as provided in the Declaration.

Section 5.6 Subordination. 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 5.1; 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 against the Issuer 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 5.7 Independent Obligations. The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Issuer with respect to the Preferred Securities and that the Guarantor shall be liable as principal and as debtor hereunder to make Guarantee Payments pursuant to the terms of this Guarantee Agreement notwithstanding the occurrence of any event referred to in subsections (a) through (g), inclusive, of Section 5.3 hereof.

## **Article VI. COVENANTS AND SUBORDINATION**

The obligations of the Guarantor under this Guarantee Agreement will constitute unsecured obligations of the Guarantor and will rank:

- (a) pari passu with any other preferred securities guarantee similar to the guarantee under this Guarantee Agreement issued by the Guarantor on behalf of the holders of preferred securities issued by any trust established by the Guarantor or its Affiliates other than the Trust;
- (b) subordinate and junior in right of payment to all of the Guarantor's other liabilities, except those that rank pari passu or are subordinate by their terms;
- (c) pari passu with any guarantee now or hereafter issued by the Guarantor in respect of the most senior preferred or preference stock now or hereafter issued by the Guarantor, and with any guarantee now or hereafter issued by it in respect of any preferred or preference stock of any of its Affiliates; and
- (d) senior to the Guarantor's common stock.

**Article VII.**  
**TERMINATION**

Section 7.1 Termination. This Guarantee Agreement shall terminate and be of no further force and effect upon (i) full payment of the Redemption Price of all Preferred Securities, (ii) the distribution of Subordinated Debt Securities to the Holders in exchange for all of the Preferred Securities or (iii) full payment of the amounts payable in accordance with the Declaration upon liquidation of the 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 Securities or this Guarantee Agreement.

**Article VIII.**  
**MISCELLANEOUS**

Section 8.1 Successors and Assigns. All guarantees and agreements contained in this Guarantee Agreement shall bind the successors, assigns, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders of the Preferred Securities from time to time outstanding. Except in connection with a consolidation, merger or sale involving the Guarantor that is permitted under the Indenture and pursuant to which the successor or assignee agrees in writing to perform the Guarantor's obligations hereunder, the Guarantor shall not assign its obligations hereunder.

Section 8.2 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 written approval of the Holders of a Majority in Liquidation Amount of the Preferred Securities. The provisions of Article VI of the Declaration concerning meetings of the Holders shall apply to the giving of such approval.

Section 8.3 Notices. Any notice, request or other communication required or permitted to be given hereunder shall be in writing, duly signed by the party giving such notice, and delivered, telecopied or mailed by first class mail as follows:

(a) if given to the Guarantor, to the address set forth below or such other address, facsimile number or to the attention of such other Person as the Guarantor may give notice to the Holders:

Sempra Energy  
101 Ash Street  
San Diego, California 92101  
Facsimile No.: 619-696-4577  
Attention: Treasurer

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



Sempra Energy Capital Trust III  
101 Ash Street  
San Diego, California 92101  
Facsimile No.: 619-696-4577  
Attention: Regular Trustees of Sempra Energy Capital Trust III

with a copy to:

The Bank of New York  
101 Barclay Street, 21-W  
New York, New York 10286  
Facsimile No.: 212-815-5915  
Attention: Corporate Trust Administration

(c) if given to the Guarantee Trustee, at the Guarantee Trustee's address set forth below or such other address as the Guarantee Trustee may give notice to the Holders:

The Bank of New York  
101 Barclay Street, 21-W  
New York, New York 10286  
Facsimile No.: 212-815-5915  
Attention: Corporate Trust Administration

(d) if given to any Holder, at the address set forth on the books and records of the Issuer.

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

Section 8.4 Benefit. This Guarantee Agreement is solely for the benefit of the Holders and is not separately transferable from the Preferred Securities.

Section 8.5 Interpretation. In this Guarantee Agreement, unless the context otherwise requires:

- (a) capitalized terms used in this Guarantee Agreement but not defined in the preamble hereto have the respective meanings assigned to them in Section 1.1;
- (b) a term defined anywhere in this Guarantee Agreement has the same meaning throughout;
- (c) all references to "the Guarantee Agreement" or "this Guarantee Agreement" are to this Guarantee Agreement as modified, supplemented or amended from time to time;

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

(e) a term defined in the Trust Indenture Act has the same meaning when used in this Guarantee Agreement unless otherwise defined in this Guarantee Agreement or unless the context otherwise requires;

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

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

Section 8.6 Governing Law. THIS GUARANTEE AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICTS OF LAWS 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.

(Signatures follow)

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

SEMPRA ENERGY

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

**Name:**

**Title:**

THE BANK OF NEW YORK,  
as Guarantee Trustee

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

**Name:**

**Title:**

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**AMENDED AND RESTATED DECLARATION  
OF TRUST**

**of**

**Sempra Energy Capital Trust [ ]**

**Dated as of [ ], 200[ ]**

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**SEMPRA ENERGY CAPITAL TRUST [ ]**

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

Trust Indenture Act Section	Declaration Section
(S)310(a)(1)	9.4
(a)(2)	9.4
(a)(3)	9.6
(a)(4)	3.6
(b)	9.5
(S)311(a)	9.10
(b)	9.10
(S)312(a)	2.2
(b)	2.2
(c)	2.2
(S)313(a)	2.3(a)
(a)(4)	2.3(b)
(b)	2.3(c)
(c)	11.8
(d)	2.3(c)
(S)314(a)	2.4
(b)	Not Applicable
(c)(1)	2.5
(c)(2)	2.5
(c)(3)	Not Applicable
(d)	Not Applicable
(e)	2.5
(S)315(a)	3.6
(b)	2.7, 11.8
(c)	3.6
(d)	3.6
(e)	Not Applicable
(S)316(a)	Not Applicable
(a)(1)(A)	Not Applicable
(a)(1)(B)	Not Applicable
(a)(2)	Not Applicable
(b)	2.6
(c)	7.7
(S)317(a)(1)	Not Applicable
(a)(2)	Not Applicable
(b)	6.8
(S)318(a)	2.1

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

**AMENDED AND RESTATED DECLARATION**

**OF TRUST**

**OF**

**SEMPRA ENERGY CAPITAL TRUST [ ]**

Dated as of [ ], 200[ ]

THIS AMENDED AND RESTATED DECLARATION OF TRUST, dated and effective as of [ ], 200[ ] (this "Declaration"), by and among the undersigned trustees (together with all other Persons from time to time duly appointed and serving as trustees in accordance with the provisions of this Declaration, the "Trustees"), Sempra Energy, a California corporation, as trust sponsor (the "Sponsor"), and by the holders, from time to time, of the securities representing undivided beneficial interests in the assets of the Sempra Energy Capital Trust [ ] (the "Trust") to be issued pursuant to this Declaration;

WHEREAS, certain of the Trustees and the Sponsor established the Trust under the Business Trust Act (as defined herein) pursuant to a Declaration of Trust, dated as of April 22, 1999 (the "Original Declaration") and a Certificate of Trust filed with the Secretary of State of Delaware on April 22, 1999, for the sole purpose of issuing and selling certain securities representing undivided beneficial interests in the assets of the Trust and investing the proceeds thereof in certain Subordinated Debt Securities (as defined herein) of the Subordinated Debt Securities Issuer (as defined herein);

WHEREAS, the parties hereto desire to amend and restate the Original Declaration as set forth herein to provide for, among other things, (i) the issuance of the Common Securities by the Trust to the Sponsor, (ii) the issuance and sale of the Preferred Securities by the Trust pursuant to the Underwriting Agreement (as defined herein), and (iii) the acquisition by the Trust from the Sponsor of all of the right, title and interest in the Subordinated Debt Securities (as defined herein); provided, however, that none of the amendments hereto are intended to amend any of the provisions included in the Declaration that are required be included in an indenture pursuant to the Trust Indenture Act.

NOW, THEREFORE, it being the intention of the parties hereto to continue the Trust as a statutory trust under the Statutory Trust Act and that this Declaration constitute the governing instrument of such statutory trust, the Trustees declare that all assets contributed to the Trust will be held in trust for the benefit of the holders, from time to time, of the securities representing undivided beneficial interests in the assets of the Trust issued hereunder, subject to the provisions of this Declaration.

ARTICLE I.

INTERPRETATION AND DEFINITIONS

Section 1.1 Definitions.

Unless the context otherwise requires:

(a) Capitalized terms used in this Declaration but not defined in the preamble above have the respective meanings assigned to them in this Section 1.1;

(b) a term defined anywhere in this Declaration has the same meaning throughout;

(c) all references to “the Declaration” or “this Declaration” are to this Amended and Restated Declaration of Trust, as modified, supplemented or amended from time to time, including (i) all exhibits hereto and (ii) for all purposes of this Declaration 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 Declaration and any such modification, amendment or supplement, respectively;

(d) all references in this Declaration to “Articles” and “Sections” and “Exhibits” are to Articles and Sections of and Exhibits to this Declaration unless otherwise specified;

(e) the words “herein,” “hereof,” and “hereunder” and other words of similar import refer to this Declaration as a whole and not to any particular Article, Section or subdivision;

(f) a term defined in the Trust Indenture Act has the same meaning when used in this Declaration unless otherwise defined in this Declaration; and

(g) a reference to the singular includes the plural and vice versa.

In addition, the following terms shall have the meanings set forth below.

“Act” has the meaning specified in Section 7.8.

“Additional Amount” means, with respect to Securities of a given Liquidation Amount and/or a given period, the amount of Additional Interest (as defined in the Officers’ Certificate establishing the terms of the Subordinated Debt Securities pursuant to Section 303 of the Indenture) paid by the Sponsor on a Like Amount of Subordinated Debt Securities for such period.

“Additional Sums” has the meaning specified in Section \_\_\_\_\_ of the Officers’ Certificate establishing the terms of the Subordinated Debt Securities pursuant to Section 303 of the Indenture.

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

“Bank” means The Bank of New York, a New York banking corporation, other than in its capacity as Property Trustee or a Subordinated Debt Securities Trustee.

“Bankruptcy Event” means, with respect to any Person:

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

(b) the institution by such Person of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or similar official) of such Person or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due and its willingness to be adjudicated a bankrupt, or the taking of corporate action by such Person in furtherance of any such action.

“Bankruptcy Laws” has the meaning specified in Section 11.9.

“Board Resolution” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Sponsor to have been duly adopted by the Sponsor’s Board of Directors, or such committee of the Board of Directors or officers of the Sponsor to which authority to act on behalf of the Board of Directors has been delegated, and to be in full force and effect on the date of such certification, and delivered to the Trustees.

“Book-Entry Preferred Securities Certificates” means a beneficial interest in the Preferred Securities Certificates, ownership and transfers of which shall be evidenced through book entries by a Clearing Agency as described in Section 6.10.

“Business Day” means a day other than (a) a Saturday or Sunday, (b) a day on which banking institutions in The City of New York are authorized or required by law or executive order to remain closed, or (c) a day on which the Property Trustee’s Corporate Trust



Office or the Corporate Trust Office of the Subordinated Debt Securities Trustee is closed for business.

“Certificate” means a Common Security Certificate or a Preferred Security Certificate.

“Clearing Agency” means an organization registered as a “Clearing Agency” pursuant to Section 17A of the Exchange Act that is acting as depository for the Preferred Securities and in whose name or in the name of a nominee of that organization, the Preferred Securities shall be registered in global form and which shall undertake to effect book entry transfers and pledges of the Preferred Securities. The Depository Trust Company will be the initial Clearing Agency.

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

“Closing Date” means [ ], 200[ ].

“Code” means the Internal Revenue Code of 1986, as amended, or any successor legislation.

“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 instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

“Common Securities Guarantee” means the guarantee agreement dated as of [ ], 200[ ] of the Sponsor in respect of the Common Securities.

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

“Common Securityholder” means the Holder from time to time of the Common Securities.

“Common Security Certificate” means a definitive certificate in fully registered form representing a Common Security substantially in the form of Annex II to Exhibit A.

“Corporate Trust Office” means (i) when used with respect to the Property Trustee, the principal office of the Property Trustee located at 101 Barclay Street, Floor 21 West, New York, New York 10286, and (ii) when used with respect to the Subordinated Debt

Securities Trustee, the principal office of the Subordinated Debt Securities Trustee located at 101 Barclay Street, Floor 21 West, New York, New York 10286.

“Definitive Preferred Securities Certificates” means either or both (as the context requires) of (a) Preferred Securities Certificates issued as Book-Entry Preferred Securities Certificates as provided in Section 6.10(a) and (b) Preferred Securities Certificates issued in certificated, fully registered form as provided in Section 6.12.

“Delaware Trustee” means The Bank of New York (Delaware), a Delaware banking corporation, 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.

“Direct Action” has the meaning set forth in Section 3.6(c).

“Distribution” means a distribution payable to Securityholders in accordance with Section 5.1.

“Distribution Date” has the meaning specified in Section 5.1(a).

“DTC” means The Depository Trust Company, the initial Clearing Agency.

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

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

(b) default by the Trust in the payment of any Distribution when it becomes due and payable, and continuation of such default for a period of 30 days, provided that no Deferral Period (as defined in the Officers’ Certificate establishing the Subordinated Debt Securities pursuant to Section 303 of the Indenture) is continuing; or

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

(d) default in the performance, or breach, in any material respect, of any provision of this Declaration (other than a covenant or warranty a default in the performance or breach of which is dealt with in clause (b) or (c) above) and continuation of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to the defaulting Trustee or Trustees by the Holders of at least 25% in aggregate Liquidation Amount of the Outstanding Preferred Securities a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” hereunder; or

(e) the occurrence of a Bankruptcy Event with respect to the Property Trustee and the failure by the Sponsor to appoint a Successor Property Trustee within 60 days thereof.

“Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time, or any successor legislation.

“Guarantee” means the Guarantee Agreement executed and delivered by the Guarantor and The Bank of New York, a New York banking corporation, as trustee, contemporaneously with the execution and delivery of this Declaration, for the benefit of the holders of the Preferred Securities, as amended from time to time.

“Guarantor” means Sempra Energy, a California corporation, and its successors and assigns.

“Indemnified Person” has the meaning specified in Section 9.3(a).

“Indenture” means the Indenture dated as of [ ], 200[ ] among the Subordinated Debt Securities Issuer and The Bank of New York, as trustee, as supplemented by an Officers’ Certificate (as defined in the Indenture) dated as of [ ], 200[ ] pursuant to Section 301 of the Indenture.

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

“Indenture Redemption Date” means, with respect to any Subordinated Debt Securities to be redeemed under the Indenture, the date fixed for redemption under the Indenture.

“Investment Company” means an investment company as defined in the Investment Company Act.

“Investment Company Act” means the Investment Company Act of 1940, as amended from time to time, or any successor legislation.

“Legal Action” means any action to bring or defend, pay, collect, compromise, arbitrate, resort to legal action, or otherwise adjust claims or demands of or against the Trust.

“Like Amount” means (a) with respect to a redemption of Securities, Securities having an aggregate Liquidation Amount equal to the aggregate principal amount of Subordinated Debt Securities to be contemporaneously redeemed or repaid in accordance with the Indenture the proceeds of which will be used to pay the Redemption Price of such Securities, and (b) with respect to a distribution of Subordinated Debt Securities to Securityholders in connection with a dissolution or liquidation of the Trust, Subordinated Debt Securities having an aggregate principal amount equal to the aggregate Liquidation Amount of the Securities of the Holder to whom such Subordinated Debt Securities are distributed.

“Liquidation Amount” means the stated amount of \$ per Security.

“Liquidation Date” means the date on which Subordinated Debt Securities are to be distributed to Securityholders in connection with a dissolution and liquidation of the Trust pursuant to Section 10.4(a).

“Liquidation Distribution” has the meaning specified in Section 10.4(d).

“Majority in Liquidation Amount of the Securities” means, except as provided in the terms of the Preferred Securities and by the Trust Indenture Act, Holder(s) of Preferred Securities or Common Securities voting together as a single class or, as the context may require, Holder(s) of Preferred Securities or Common Securities voting separately as a class, who vote Securities of a relevant class and the aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of the Securities voted by such Securityholders represents more than 50% of the above stated aggregate liquidation amount of all Securities of such class.

“Officer’s Certificate” means a certificate signed by any one of the Chairman of the Board, Chief Executive Officer, President, a Vice President, the Treasurer, an Associate Treasurer, an Assistant Treasurer, the Controller, the Secretary or an Assistant Secretary, of the Sponsor, and delivered to the appropriate Trustee. The officer signing an Officer’s Certificate given pursuant to Section 3.7 shall be the principal executive, financial or accounting officer of the Sponsor. Any Officer’s Certificate delivered with respect to compliance with a condition or covenant provided for in this Declaration shall include:

- (a) a statement that the officer signing the Officer’s Certificate has read the covenant or condition and the definitions relating thereto;
- (b) a brief statement of the nature and scope of the examination or investigation undertaken by such officer in rendering the Officer’s Certificate;
- (c) a statement that 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 such officer, such condition or covenant has been complied with.

“Opinion of Counsel” means a written opinion of counsel, who may be counsel for the Trust, the Property Trustee or the Sponsor, and who shall be reasonably acceptable to the Property Trustee.

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

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

- (a) Securities theretofore canceled by the Property Trustee or delivered to the Property Trustee for cancellation;
- (b) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Property Trustee or any Paying Agent for the

Holders of such Securities; provided that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Declaration; and

(c) Securities which have been paid or in exchange for or in lieu of which other Preferred Securities have been executed and delivered pursuant to Sections 6.4, 6.5, 6.10 and 6.12; provided, however, that in determining whether the Holders of the requisite Liquidation Amount of the Outstanding Preferred Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Preferred Securities owned by the Sponsor, any Trustee or any Affiliate of the Sponsor or any Trustee shall be disregarded and deemed not to be Outstanding, except that (i) in determining whether any Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Preferred Securities that such Trustee knows to be so owned shall be so disregarded and (ii) the foregoing proviso shall not apply at any time when all of the outstanding Preferred Securities are owned by the Sponsor, one or more of the Trustees and/or any such Affiliate. Preferred Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Regular Trustees the pledgee's right so to act with respect to such Preferred Securities and that the pledgee is not the Sponsor or any Affiliate of the Sponsor.

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

"Paying Agent" means any paying agent or co-paying agent appointed pursuant to Section 6.8 and shall initially be the Bank.

"Payment Account" means a segregated non-interest-bearing corporate trust account maintained by the Property Trustee with the Bank in its trust department for the benefit of the Securityholders in which all amounts paid in respect of the Subordinated Debt Securities will be held and from which the Property Trustee, through the Paying Agent, shall make payments to the Securityholders in accordance with Sections 5.1 and 5.2.

"Person" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

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

"Preferred Security Certificate" means a certificate representing a Preferred Security substantially in the form of Annex I to Exhibit A.

“Property Trustee” means The Bank of New York, a New York banking corporation, 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 Declaration; provided that each Indenture Redemption Date and the Stated Maturity (as defined in the Indenture) of the Subordinated Debt Securities shall be a Redemption Date for a Like Amount of Securities.

“Redemption Price” means, with respect to any Trust Security, the Liquidation Amount of such Trust Security, plus accumulated and unpaid Distributions to the Redemption Date, allocated on a pro rata basis (based on Liquidation Amounts) among the Securities.

“Regular Trustees” means each of \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, solely in such Person’s capacity as Regular Trustee of the Trust formed and continued hereunder and not in such Person’s individual capacity, or such Regular Trustee’s successor in interest in such capacity, or any successor trustee appointed as herein provided.

“Relevant Trustee” shall have the meaning specified in Section 9.7.

“Responsible Officer” means, with respect to the Property Trustee, any Vice-President, any Assistant Vice-President, any Assistant Secretary, any Assistant Treasurer, any Trust Officer or Assistant Trust Officer or any other officer 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 that officer’s knowledge of and familiarity with the particular subject.

“Securities” means the Common Securities and the Preferred Securities.

“Securities Act” means the Securities Act of 1933, as amended, or any successor legislation.

“Securities Register” and “Securities Registrar” have the respective meanings specified in Section 6.4.

“Securityholder” or “Holder” means a Person in whose name a Security or Securities is registered in the Securities Register, any such Person being a beneficial owner within the meaning of the Statutory Trust Act; provided, however, that in determining whether the Holders of the requisite amount of Preferred Securities have voted on any matter provided for in this Declaration, then for the purpose of any such determination, so long as Definitive Preferred Securities Certificates have not been issued, the term Securityholders or Holders as used herein shall refer to the Owners.

“Sponsor” means Sempra Energy, a California corporation, or any permitted successor thereof under the Indenture, in its capacity as sponsor of the Trust.

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

“Subordinated Debt Securities” means the % Subordinated Deferrable Interest Notes, Series , due to be issued by the Subordinated Debt Securities Issuer under the Indenture and to be held by the Property Trustee pursuant to Section 3.14. A specimen certificate for such series of Subordinated Debt Securities is attached hereto as Exhibit B.

“Subordinated Debt Securities Issuer” means Sempra Energy, a California corporation.

“Subordinated Debt Securities Trustee” means The Bank of New York, as trustee under the Indenture until a successor is appointed thereunder and thereafter means such successor trustee.

“Successor Property Trustee” means a successor Trustee possessing the qualifications to act as Property Trustee under Section 9.4.

“Tax Event” means the receipt by the Trust of an Opinion of Counsel from counsel 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, 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 which pronouncement or decision is announced on or after the date of issuance of the Preferred Securities under this Declaration, there is more than an insubstantial risk that (i) the Trust is, or will be within 90 days after the date of such Opinion of Counsel, subject to United States federal income tax with respect to income received or accrued on the Subordinated Debt Securities, (ii) interest payable by the Sponsor on the Subordinated Debt Securities is not, or within 90 days after the date of such Opinion of Counsel, will not be, deductible by the Sponsor, in whole or in part, for United States federal income tax purposes or (iii) the Trust is, or will be within 90 days after the date of such Opinion of Counsel, subject to more than a de minimis amount of other taxes, duties, assessments or other governmental charges.

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

“Trust Property” means (a) the Subordinated 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 Declaration.

“Trustee” or “Trustees” means each Person who has signed this Declaration as a trustee, so long as such Person shall continue in office in accordance with the terms hereof, and all other Persons who may from time to time be duly appointed, qualified and serving as Trustees in accordance with the provisions hereof, and references herein to a Trustee or the Trustees shall refer to such Person or Persons solely in their capacity as trustees hereunder.

“Underwriting Agreement” means the Pricing Agreement (including the Underwriting Agreement incorporated by reference therein), dated [ ], 200[ ], among the Trust, the Sponsor and the underwriters named therein.

“25% in aggregate Liquidation Amount of the Securities” means, except as provided in the terms of the Preferred Securities and by the Trust Indenture Act, Holder(s) of Securities voting together as a single class or, as the context may require, Holder(s) of Preferred Securities or Common Securities, voting separately as a class, who vote Securities of a relevant class and the Liquidation Amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of the Securities voted by such Holders represents 25% of the above stated aggregate Liquidation Amount of all Securities of such class.

## ARTICLE II.

### TRUST INDENTURE ACT

#### Section 2.1 Trust Indenture Act; Application.

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

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

(c) if and to the extent that any provision of this Declaration limits, qualifies or conflicts with the duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control; and

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

#### Section 2.2 Lists of Securityholders.

(a) Each of the Sponsor and the Regular Trustees, on behalf of the Trust, shall provide the Property Trustee (i) not later than 15 days after each of , and (each such date a “Regular Record Date”) of each year a list, in such form as the Property Trustee may reasonably require, containing all the information in the possession or control of the Sponsor, or any of its Paying Agents other than the Property Trustee, as to the names and addresses of the Securityholders (“List of Holders”) as of the preceding respective Regular Record Date, and (ii) at such other times as the Property Trustee may request in writing, within 30 days after the receipt by the Trust of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished. The Property Trustee shall preserve, in as current a form as is reasonably practicable, all information contained in Lists of Holders given to it or which it receives in its capacity as Paying Agent (if



acting in such capacity), provided that the Property Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders; and

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

#### Section 2.3 Reports by the Property Trustee.

(a) Within 60 days after \_\_\_\_\_ of each year, commencing \_\_\_\_\_, 200\_\_\_\_\_, the Property Trustee shall provide to the Securityholders 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 Property Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

(b) In addition, the Property Trustee shall transmit to all Securityholders in accordance with Section 11.8, and to the Sponsor, a brief report dated as of such \_\_\_\_\_ with respect to:

(i) its eligibility under Section 9.4 or, in lieu thereof, if to the best of its knowledge it has continued to be eligible under said Section, a written statement to such effect; and

(ii) any change in the property and funds in its possession as Property Trustee since the date of its last report and any action taken by the Property Trustee in the performance of its duties hereunder which it has not previously reported and which in its opinion materially affects the Securities.

(c) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Property Trustee with each national stock exchange, the NASDAQ National Market or such other interdealer quotation system or self-regulatory organization upon which the Securities are listed or traded (information regarding each such listing to be provided to the Property Trustee by the Sponsor), with the Commission and with the Sponsor.

#### Section 2.4 Periodic Reports to the Property Trustee.

Each of the Sponsor and the Regular Trustees, on behalf of the Trust, shall provide to the Property Trustee 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 of the Trust Indenture Act in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act.

#### Section 2.5 Evidence of Compliance with Conditions Precedent.

Each of the Sponsor and the Regular Trustees, on behalf of the Trust, shall provide to the Property Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Declaration which relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant

to Section 314(c)(1) of the Trust Indenture Act may be given in the form of an Officers' Certificate.

Section 2.6 Rights of Securityholders; Events of Default; Waiver.

(a) The legal title to the Trust Property is vested exclusively in the Property Trustee (in its capacity as such) in accordance with Section 3.14, and the Securityholders shall not have any right or title therein other than the undivided beneficial interest in the assets of the Trust conferred by their 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 Securities shall be personal property giving only the rights specifically set forth therein and in this Declaration. The 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 Securityholders, 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.

(b) For so long as any Preferred Securities remain Outstanding, if, upon an Indenture Event of Default, the Subordinated Debt Securities Trustee fails or the holders of not less than 25% in principal amount of the outstanding Subordinated Debt Securities fail to declare the principal of all of the Subordinated Debt Securities to be immediately due and payable, the Holders of at least 25% in aggregate Liquidation Amount of the Preferred Securities then Outstanding shall have such right by a notice in writing to the Sponsor and the Subordinated Debt Securities Trustee; and upon any such declaration such principal amount of and the accrued interest on all of the Subordinated Debt Securities shall become immediately due and payable, provided that the payment of principal and interest on such Subordinated Debt Securities shall remain subordinated to the extent provided in the Indenture.

(c) At any time after such a declaration of acceleration with respect to the Subordinated Debt Securities has been made and before a judgment or decree for payment of the money due has been obtained by the Subordinated Debt Securities Trustee as in the Indenture provided, the Holders of a majority in aggregate Liquidation Amount of the Outstanding Preferred Securities, by written notice to the Property Trustee, the Sponsor and the Subordinated Debt Securities Trustee, may rescind and annul such declaration and its consequences if:

(i) the Sponsor has paid or deposited with the Subordinated Debt Securities Trustee a sum sufficient to pay

(A) all overdue interest on all of the Subordinated Debt Securities which has become due otherwise than by such declaration of acceleration;

(B) the principal of (and premium, if any, on) any Subordinated Debt Securities which have become due otherwise than by such declaration of acceleration and any interest thereon at the rate or rates prescribed therefor in the Subordinated Debt Securities or, if no such rate or rates are so provided, at the rate of interest borne by the Subordinated Debt Securities;

(C) to the extent that payment of such interest is lawful, interest upon overdue interest which has become due otherwise than by such declaration of acceleration at the rate or rates prescribed therefor in the Subordinated Debt Securities or, if no such rate or rates are so provided, at the rate of interest borne by the Subordinated Debt Securities; and

(D) all sums paid or advanced by the Subordinated Debt Securities Trustee under the Indenture and the reasonable compensation, expenses, disbursements and advances of the Subordinated Debt Securities Trustee and the Property Trustee, their agents and counsel and any amounts due the Subordinated Debt Securities Trustee under Section 607 of the Indenture; and

(ii) all Events of Default with respect to the Subordinated Debt Securities, other than the non-payment of the principal of the Subordinated Debt Securities which has become due solely by such acceleration, have been cured or waived as provided in Section 513 of the Indenture.

(d) The Holders of a majority in aggregate Liquidation Amount of the Outstanding Preferred Securities may, on behalf of the Holders of all the Outstanding Preferred Securities, waive any past default under the Indenture, except a default in the payment of principal or interest on the Subordinated Debt Securities (unless such default has been cured and a sum sufficient to pay all matured installments of interest and principal and accrued and unpaid interest, if any, due otherwise than by acceleration has been deposited with the Subordinated Debt Securities Trustee) or a default in respect of a covenant or provision which under the Indenture cannot be modified or amended without the consent of the holder of each outstanding Subordinated Debt Security. No such rescission shall affect any subsequent default or impair any right consequent thereon.

(e) Upon receipt by the Property Trustee of written notice declaring such an acceleration, or rescission and annulment thereof, by Holders of the Preferred Securities all or part of which is represented by Book-Entry Preferred Securities Certificates, a record date shall be established for determining Holders of Outstanding Preferred Securities entitled to join in such notice, which record date shall be at the close of business on the day the Property Trustee receives such notice. The Holders on such record date, or their duly designated proxies, and only such Persons, shall be entitled to join in such notice, whether or not such Holders remain Holders after such record date; provided, that, unless such declaration of acceleration, or rescission and annulment, as the case may be, shall have become effective by virtue of the requisite percentage having joined in such notice prior to the day which is 90 days after such record date, such notice of declaration of acceleration, or rescission and annulment, as the case may be, shall automatically and without further action by any Holder be canceled and of no further effect. Nothing in this paragraph shall prevent a Holder, or a proxy of a Holder, from giving, after expiration of such 90-day period, a new written notice of declaration of acceleration, or rescission and annulment thereof, as the case may be, that is identical to a written notice which has been canceled pursuant to the proviso to the preceding sentence, in which event a new record date shall be established pursuant to the provisions of this Section 2.6(e).

(f) A waiver of any Event of Default under the Indenture by the Property Trustee at the direction of the Holders of the Preferred Securities constitutes a waiver of the corresponding Event of Default with respect to the Preferred Securities under this Declaration. Any waiver of an Event of Default under the Indenture by the Property Trustee at the direction of the Holders of the Preferred Securities shall also be deemed to constitute a waiver by the Holders of the Common Securities of the corresponding Event of Default under this Declaration with respect to the Common Securities for all purposes of this Declaration without further act, vote or consent of the Holders of the Common Securities.

(g) The foregoing provisions of Sections 2.6(b) through (f) shall be in lieu of Section 316(a)(1)(B) of the Trust Indenture Act and such Section 316(a)(1)(B) of the Trust Indenture Act is hereby expressly excluded from this Declaration and the Securities, as permitted by the Trust Indenture Act.

Section 2.7 Event of Default; Notice.

The Property Trustee shall, within 90 days after the occurrence of an Event of Default with respect to the Securities known to the Property Trustee, transmit by mail, first class postage prepaid, to the Securityholders, the Regular Trustees and the Sponsor, notices of all such defaults unless such defaults have been cured or waived before the giving of such notice (the term “defaults” for the purposes of this Section 2.7 being hereby defined to be an Event of Default as, not including any periods of grace provided for herein or in the Indenture and irrespective of the giving of any notice provided herein or in the Indenture); provided, that, except for a default in the payment of principal of (or premium, if any) or interest on any of the Subordinated Debt Securities or Preferred Securities, the Property Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or Responsible Officers, of the Property Trustee in good faith determine that the withholding of such notice is in the interests of the Securityholders.

### **ARTICLE III.**

#### **ESTABLISHMENT OF THE TRUST**

Section 3.1 Name.

The Trust is named “Sempra Energy Capital Trust [            ],” as such name may be modified from time to time by the Regular Trustees following written notice to the Securityholders. The Trust’s activities may be conducted under the name of the Trust or any other name deemed advisable by the Regular Trustees.

Section 3.2 Office of the Delaware Trustee; Principal Place of Business.

The address of the Delaware Trustee in the State of Delaware is White Clay Center, Route 273, Newark, Delaware 19711, or such other address in the State of Delaware as the Delaware Trustee may designate by written notice to the Sponsor. The address of the principal office of the Trust is c/o Sempra Energy, 101 Ash Street, San Diego, California, 92101.

On ten (10) Business Days written notice to the Property Trustee and Securityholders, the Regular Trustees may designate another principal office.

### Section 3.3 Declaration of Trust; Purpose.

The exclusive purposes and functions of the Trust are (i) to issue and sell Securities and use the proceeds from such sale to acquire the Subordinated Debt Securities, (ii) to distribute the cash payments it receives on the Subordinated Debt Securities it owns to the Securityholders, and (iii) to engage in only those activities necessary, appropriate, 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 Trust and the Securityholders. The Regular Trustees shall have all rights, powers and duties set forth herein and in accordance with applicable law with respect to accomplishing the purposes of the Trust. The Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities, of the Trustees set forth herein. The Delaware Trustee shall be one of the Trustees of the Trust for the sole and limited purpose of fulfilling the requirements of Section 3807(a) of the Delaware Business Trust Act.

### Section 3.4 Authority of Trustees.

The Trustees shall conduct the affairs of the Trust in accordance with the terms of this Declaration. Subject to the limitations set forth in Section 3.8, and in accordance with the following Sections 3.5 and 3.6, the Trustees shall have the authority to enter into all transactions and agreements determined by the Trustees to be appropriate in exercising the authority, express or implied, otherwise granted to the Trustees under this Declaration, and to perform all acts in furtherance thereof.

### Section 3.5 Power and Authority of Regular Trustees.

(a) Without limiting Section 3.4, each Regular Trustee, acting singly or collectively, shall have the power and authority to act on behalf of the Trust, including, without limitation, with respect to the following matters:

(i) the issuance and sale of the Securities;

(ii) to cause the Trust to enter into, and to execute, deliver and perform on behalf of the Trust such other agreements as may be necessary or desirable in connection with the purposes and function of the Trust, including the execution and delivery of the Underwriting Agreement providing for the sale of the Preferred Securities;

(iii) assisting in the registration of the Preferred Securities under the Securities Act of 1933, as amended, including the execution of the registration statement, and any amendments thereto, including post-effective amendments, on the appropriate form in relation to the Preferred Securities, and under state securities or blue sky laws, and the qualification of this Declaration as a trust indenture under the Trust Indenture Act;

(iv) assisting in the listing of the Preferred Securities upon such securities exchange or exchanges as shall be determined by the Sponsor and the registration of the Preferred 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;

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

(vi) consenting to the appointment of a Paying Agent in accordance with this Declaration;

(vii) execution of the Securities on behalf of the Trust in accordance with this Declaration;

(viii) execution and delivery of closing certificates pursuant to the Underwriting Agreement and application for a taxpayer identification number for the Trust;

(ix) unless otherwise determined by the Sponsor, the Property Trustee or the Holders of Preferred Securities representing more than 50% of the aggregate Liquidation Amount of the Outstanding Preferred Securities, or as otherwise required by the Statutory Trust Act or the Trust Indenture Act, to execute on behalf of the Trust (either acting alone or together with any or all of the Regular Trustees) any documents that the Regular Trustees have the power to execute pursuant to this Declaration; and

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

(b) Notwithstanding anything herein to the contrary, the Trustees are authorized, and the Regular Trustees are 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, (ii) the Trust will be classified as a grantor trust for United States Federal income tax purposes and (iii) so that the Subordinated Debt Securities will be treated as indebtedness of the Sponsor for United States Federal income tax purposes and shall not take any action which is inconsistent with or contrary to these purposes. In this connection, the Sponsor and the Trustees are authorized to take any action, not inconsistent with applicable law, the Certificate of Trust or this Declaration, that each of the Sponsor and the Trustees determines in its discretion to be necessary or desirable for such purposes, as long as such action does not adversely affect in any material respect the interests of the Holders of the Preferred Securities.

(c) Subject to this Section 3.5, the Regular Trustees shall have none of the powers or the authority of the Property Trustee set forth in Section 3.6.

(d) The Trust initially appoints the Property Trustee as transfer agent and registrar for the Preferred Securities.

Section 3.6 Powers and Duties of the Property Trustee.

(a) The Property Trustee shall have the power, duty and authority to act on behalf of the Trust with respect to the following matters:

- (i) the establishment of the Payment Account;
- (ii) the receipt of the Subordinated Debt Securities;
- (iii) the collection of interest, principal and any other payments made in respect of the Subordinated Debt Securities in the Payment Account;
- (iv) the distribution through the Paying Agent of amounts owed to the Securityholders in respect of the Securities;
- (v) the exercise of all of the rights, powers and privileges of a holder of the Subordinated Debt Securities;
- (vi) the sending of notices of default and other information regarding the Securities and the Subordinated Debt Securities to the Securityholders in accordance with this Declaration;
- (vii) the distribution of the Trust Property in accordance with the terms of this Declaration;
- (viii) to the extent provided in this Declaration, assisting in the winding up of the affairs of and liquidation of the Trust and the preparation, execution and filing of the certificate of cancellation with the Secretary of State of the State of Delaware;
- (ix) after an Event of Default (other than under paragraph (b), (c), (d) or (e) of the definition of such term if such Event of Default is by or with respect to the Property Trustee) the taking of any action incidental to the foregoing as the Property Trustee may from time to time determine is necessary or advisable to give effect to the terms of this Declaration 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);
- (x) any Legal Action which arises out of or in connection with an Event of Default or the Property Trustee's duties and obligations under this Declaration, the Business Trust Act or the Trust Indenture Act; and
- (xi) any of the duties, liabilities, powers or the authority of the Regular Trustees set forth in Section 3.5(a)(v), (vi) and (x);

and in the event of a conflict between the actions of the Regular Trustees and those of the Property Trustee, the actions of the Property Trustee shall prevail.

(b) The Property Trustee shall take all actions and perform such duties as may be specifically required of the Property Trustee pursuant to the terms of the Securities and this Declaration.

(c) If the Property Trustee fails to enforce its rights under the Subordinated Debt Securities after a Holder of Preferred Securities has made a written request, such Holder may, to the fullest extent permitted by law, institute a legal proceeding against the Subordinated Debt Securities Issuer, to enforce the Property Trustee's rights under the Subordinated Debt Securities, without first instituting any legal proceeding against the Property Trustee or any other Person. Notwithstanding the foregoing, if an Event of Default has occurred and is continuing and such event is attributable to the failure of the Subordinated Debt Securities Issuer to pay interest, premium, if any, or principal on the Subordinated Debt Securities on the date such interest, premium, if any, or principal is otherwise payable (or in the case of redemption, on the redemption date), then Holders of at least 25% in aggregate Liquidation Amount of the Preferred Securities may directly institute a proceeding for enforcement of payment to such Holder of the principal of, premium, if any, or interest on, the Subordinated Debt Securities having a principal amount equal to the aggregate liquidation amount of the Preferred Securities of such Holder (a "Direct Action"). Notwithstanding any payments made to any Holders of Preferred Securities by the Subordinated Debt Securities Issuer in connection with a Direct Action, the Subordinated Debt Securities Issuer shall remain obligated to pay the principal of, premium, if any, or interest on the Subordinated Debt Securities held by the Trust or the Property Trustee of the Trust, and the Subordinated Debt Securities Issuer shall be subrogated to the rights of the Holders of such Preferred Securities with respect to payments on the Preferred Securities. Except as provided in the preceding sentences and in the Preferred Securities Guarantee, the Holders of Preferred Securities will not be able to exercise directly any other remedy available to the holders of the Subordinated Debt Securities.

(d) No resignation of the Property Trustee shall be effective unless either:

(i) the Trust has been completely liquidated and the proceeds of the liquidation distributed to the Securityholders pursuant to the terms of the Securities; or

(ii) a Successor Property Trustee has been appointed and accepted that appointment in accordance with Section 9.8.

(e) The Property Trustee shall have the legal power to exercise all of the rights, powers and privileges of a holder of Subordinated Debt Securities under the Indenture and, if an Event of Default occurs and is continuing, the Property Trustee shall, for the benefit of Securityholders, enforce its rights as holder of the Subordinated Debt Securities subject to the rights of the Holders pursuant to the terms of such Securities and this Declaration.

(f) The Property Trustee may authorize one or more Paying Agents to pay Distributions, redemption payments or liquidation payments on behalf of the Trust with respect to the Preferred Securities and any such Paying Agent shall comply with Section 317(b) of the Trust Indenture Act. Any Paying Agent may be removed by the Property Trustee at any time and a successor Paying Agent or additional Paying Agents may be appointed at any time by the Property Trustee.



(g) Subject to this Section 3.6, the Property Trustee shall have none of the powers or the authority of the Regular Trustees set forth in Section 3.5 of this Declaration.

(h) The Property Trustee must exercise the powers set forth in this Section 3.6 in a manner which is consistent with the purposes, functions and characterization for United States federal income tax purposes of the Trust set forth in Section 3.5(b) and the Property Trustee shall not take any action which is inconsistent with or contrary to the purposes, functions and characterization for United States federal income tax purposes of the Trust set out in Section 3.5(b) of this Declaration.

(i) The Property Trustee, before the occurrence of any Event of Default and after the curing or waiver of all Events of Default that may have occurred:

(i) shall undertake to perform only such duties as are specifically set forth in this Declaration and in the terms of the Securities, and no implied covenants, duties or obligations shall be read into this Declaration against the Property Trustee; and

(ii) in the absence of bad faith on the part of the Property Trustee, the Property Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Property Trustee and conforming to the requirements of this Declaration; but in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Property Trustee, the Property Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Declaration.

In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.6), the Property Trustee shall exercise such of the rights and powers vested in it by this Declaration, and use the same degree of care and skill in their exercise or use, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs;

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

(i) this Subsection shall not be construed to limit Subsection (i) of this Section;

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

(iii) the Property Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a Majority in liquidation amount of the Securities at the time outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or exercising any trust or power conferred upon

the Property Trustee under this Declaration including, without limitation, with respect to the Securities;

(iv) the Property Trustee shall not be liable for any interest on any money received by it except as it may otherwise agree with the Sponsor; and money held by the Property Trustee need not be segregated from other funds held by it except in relation to the Payment Account maintained by the Property Trustee pursuant to Section 3.1 and except to the extent otherwise required by law;

(v) the Property Trustee shall not be responsible for monitoring the compliance by the Regular Trustees or the Sponsor with their respective duties under this Declaration, nor shall the Property Trustee be liable for the default or misconduct of the Regular Trustees or the Sponsor; and

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

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

### Section 3.7 Certain Rights of the Property Trustee.

Subject to the provisions of Section 3.6:

(a) if (i) in performing its duties under this Declaration the Property Trustee is required to decide between alternative courses of action or (ii) in construing any of the provisions of this Declaration 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 Declaration, then, except as to any matter as to which the Preferred Securityholders are entitled to vote under the terms of this Declaration, the Property Trustee shall take such action, or refrain from taking such action, not inconsistent with this Declaration as it shall deem advisable and in the best interests of the Securityholders, in which event the Property Trustee shall have no liability except for its own bad faith, negligence or willful misconduct;

(b) any direction or act of the Sponsor or the Regular Trustees contemplated by this Declaration shall be sufficiently evidenced by an Officer's Certificate;

(c) whenever in the administration of this Declaration, the Property Trustee shall deem it desirable that a matter be established before undertaking, suffering or omitting any action hereunder, the Property Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and rely upon an Officer's Certificate which, upon receipt of such request, shall be promptly delivered by the Sponsor or the Regular Trustees;

(d) the Property Trustee shall have no duty to see to any recording, filing or registration of any instrument (including any financing or continuation statement or any filing under tax or securities laws) or any rerecording, refiling or reregistration thereof;

(e) the Property Trustee may consult with counsel of its selection (which counsel may be counsel to the Sponsor or any of its Affiliates, and may include any of its employees) 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 and in accordance with such advice, such counsel may be counsel to the Sponsor or any of its Affiliates, and may include any of its employees; the Property Trustee shall have the right at any time to seek instructions concerning the administration of this Declaration from any court of competent jurisdiction at the expense of the Sponsor;

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

(g) 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, 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, and if the Property Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Trust, personally or by agent or attorney at the expense of the Sponsor and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;

(h) 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;

(i) whenever in the administration of this Declaration the Property Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder the Property Trustee:

(i) may request written instructions from the Securityholders which written instructions may only be given by the Holders of the same proportion in aggregate Liquidation Amount of the Securities as would be entitled to direct the Property Trustee under the terms of the Securities in respect of such remedy, right or action;

(ii) may refrain from enforcing such remedy or right or taking such other action until such written instructions are received; and

(iii) shall be protected in acting in accordance with such written instructions; and

(j) except as otherwise expressly provided by this Declaration, the Property Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Declaration.

No provision of this Declaration shall be deemed to impose any duty or obligation on the Property 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 Property 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 Property Trustee shall be construed to be a duty.

#### Section 3.8 Prohibition of Actions by the Trust and the Trustees.

(a) So long as this Declaration remains in effect, the Trust (or the Trustees acting on behalf of the Trust) shall not undertake any business, activities or transaction except as expressly provided herein or contemplated hereby. In particular, the Trustees (acting on behalf of the Trust) shall not:

- (i) acquire any investments other than the Subordinated Debt Securities,
- (ii) engage in any activities not authorized by this Declaration,
- (iii) 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,
- (iv) 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,
- (v) incur any indebtedness for borrowed money or issue any other debt or
- (vi) take or consent to any action that would result in the placement of a Lien on any of the Trust Property.

(b) The Property 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; provided, however, that (x) all expenses relating to such defense shall be borne by the Sponsor and (y) the Property Trustee shall be fully indemnified by the Sponsor for all costs incurred in connection with such defense.

#### Section 3.9 Not Responsible for Recitals or Issuance of Securities.

The recitals contained herein and in the Certificates shall be taken as the statements of the Sponsor, 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 Subordinated Debt Securities.

Section 3.10 Organizational Expenses.

The Sponsor shall pay organizational expenses of the Trust as they arise or shall, upon request of any Trustee, promptly reimburse such Trustee for any such expenses paid by such Trustee. The Sponsor shall make no claim upon the Trust Property for the payment of such expenses.

Section 3.11 Rights and Responsibilities of Sponsor.

In connection with the issue and sale of the Preferred 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 Declaration are hereby ratified and confirmed in all respects):

(i) the preparation and filing by the Trust with the Commission of prospectus supplements relating to the Preferred Securities;

(ii) the determination of the States in which to take appropriate action to qualify or register for sale all or part of the Preferred Securities and the determination of any and all such acts, other than actions which must be taken by or on behalf of the Trust, and the advice to the Trustees of actions they must take on behalf of the Trust, and the preparation for execution and filing of 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) the preparation for filing by the Trust and execution on behalf of the Trust of an application to the New York Stock Exchange or any other national stock exchange or the Nasdaq National Market for listing upon notice of issuance of any Preferred Securities;

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

(v) the negotiation of the terms of the Underwriting Agreement providing for the sale of the Preferred Securities; and

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

Section 3.12 Issuance of Preferred Securities.

The Sponsor and the Trust have executed and delivered the Underwriting Agreement. On the Closing Date, a Regular Trustee, on behalf of the Trust, shall execute in accordance with Section 6.2, and upon written direction the Property Trustee shall make

available to the Underwriters named in the Underwriting Agreement, Preferred Securities Certificates, registered in the name of the nominee of the initial Clearing Agency, evidencing an aggregate of Preferred Securities having an aggregate Liquidation Amount of \$ , against receipt by the Property Trustee of the aggregate purchase price of such Preferred Securities of \$ , less applicable discounts and commissions.

#### Section 3.13 Issuance of Common Securities.

On the Closing Date, a Regular Trustee, on behalf of the Trust, shall execute in accordance with Section 6.2, and the Property Trustee shall deliver to the Sponsor, Common Securities Certificates, registered in the name of the Sponsor, evidencing an aggregate of Common Securities having an aggregate Liquidation Amount of \$ against receipt by the Property Trustee from the Sponsor of such amount. Contemporaneously therewith, a Regular Trustee, on behalf of the Trust, shall subscribe to and purchase from the Sponsor the Subordinated Debt Securities, registered in the name of the Property Trustee (in its capacity as such) and having an aggregate principal amount equal to \$ , and, in satisfaction of the purchase price for such Subordinated Debt Securities, the Property Trustee, on behalf of the Trust, shall deliver to the Sponsor the sum of \$ (being the sum of the amounts delivered to the Property Trustee pursuant to (i) the second sentence of Section 3.12 and (ii) the first sentence of this Section 3.13).

#### Section 3.14 Title to Property of the Trust.

Except as provided in Section 3.6 with respect to the Subordinated Debt Securities and the Payment Account or as otherwise provided in this Declaration, 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 Trust and the Securityholders in accordance with this Declaration.

### ARTICLE IV.

#### PAYMENT ACCOUNT

##### Section 4.1 Payment Account.

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

(b) The Property Trustee shall deposit in the Payment Account, promptly upon receipt, all payments of principal of or interest on, and any other payments or proceeds with

respect to, the Subordinated Debt Securities. Amounts held in the Payment Account shall not be invested by the Property Trustee pending distribution thereof.

## ARTICLE V.

### DISTRIBUTIONS; REDEMPTION

#### Section 5.1 Distributions.

(a) The Securities represent undivided beneficial interests in the Trust Property, and Distributions (including of Additional Amounts) will be made on the Securities at the rate and on the dates that payments of interest (including of Additional Interest, as defined in the Officers' Certificate establishing the terms of the Subordinated Debt Securities pursuant to Section 303 of the Indenture) are made on the Subordinated Debt Securities. Accordingly:

(i) Distributions on the Securities shall be cumulative, and will accumulate whether or not there are funds of the Trust available for the payment of Distributions. Distributions shall accrue from \_\_\_\_\_, 200\_\_\_\_\_, and, except in the event (and to the extent) that the Sponsor exercises its right to defer the payment of interest on the Subordinated 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 \_\_\_\_\_, 200[\_\_\_\_\_] . If any date on which a Distribution is otherwise payable on the Securities is not a Business Day, then the payment of such Distribution shall be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day is in the next succeeding calendar year, payment of such Distribution 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 5.1(a), a "Distribution Date").

(ii) Assuming payments of interest on the Subordinated Debt Securities are made when due (and before giving effect to Additional Amounts, if applicable), Distributions on the Securities shall be payable at a rate \_\_\_\_\_ % per annum of the Liquidation Amount of the Securities. The amount of Distributions payable for any full period shall be computed on the basis of a 360-day year of twelve 30-day months. The amount of Distributions for any partial period shall be computed on the basis of the number of days elapsed in a 360-day year of twelve 30-day months. The amount of Distributions payable for any period shall include the Additional Amounts, if any.

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

(b) Distributions on the Securities with respect to a Distribution Date shall be payable to the Holders thereof as they appear on the Securities Register for the 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 Securities do not remain in book-entry-only form, the relevant record date shall be the date 15 days prior to the relevant Distribution Date.

#### Section 5.2 Redemption.

(a) On each Indenture Redemption Date and on the stated maturity of the Subordinated Debt Securities, the Trust will be required to redeem a Like Amount of Securities at the Redemption Price.

(b) Notice of redemption shall be given by the Property Trustee at the expense of the Sponsor by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date (or, in the event that the redemption results from acceleration after the occurrence of an Indenture Event of Default and the Property Trustee is unable to give such notice within such period, as soon as practicable) to each Securityholder to be redeemed, at such Holder's address appearing in the Security Register. All notices of redemption shall state:

(i) the Redemption Date;

(ii) the Redemption Price;

(iii) the CUSIP number;

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

(v) that on the Redemption Date the Redemption Price will become due and payable upon each such Trust Security to be redeemed and that Distributions thereon will cease to accrue on and after said date, except as provided in Section 5.2(d).

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

(d) If the Property Trustee gives a notice of redemption in respect of any Preferred Securities, then, by 2:00 p.m., New York City time, on the Redemption Date, subject to Section 5.2(c), the Property Trustee will, so long as the Preferred Securities are in book-entry-only form, irrevocably deposit with the Clearing Agency for the Preferred Securities funds sufficient to pay the applicable Redemption Price and will give such Clearing Agency instructions with respect to payment of the Redemption Price to the holders of the Preferred Securities in accordance with the procedures set forth in the applicable agreement between the Property Trustee and such Clearing Agency. If the Preferred Securities are no longer in book-entry-only form, the Property Trustee, subject to Section 5.2(c), will irrevocably deposit with the Paying Agent funds sufficient to pay the applicable Redemption Price and will give the Paying



Agent instructions and authority to pay the Redemption Price to the Holders thereof upon surrender of their Preferred Securities Certificates in accordance with the notice of redemption. Notwithstanding the foregoing, Distributions payable on or prior to the Redemption Date for any Securities called for redemption shall be payable to the Holders of such Securities as they appear on the Securities Register on the relevant record dates for the related Distribution Dates. If notice of redemption shall have been given and funds deposited as required, then upon the date of such deposit, all rights of Securityholders holding Securities so called for redemption will cease, except the right of such Securityholders to receive the Redemption Price and any Distribution payable on or prior to the Redemption Date, but without interest, and such 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 that is a Business Day (and without any interest or other payment in respect of any such delay), except that, if such Business Day falls in the next calendar year, such payment will be made on the immediately preceding Business Day, in each case, with the same force and effect as if made on such date. In the event that payment of the Redemption Price in respect of any Securities called for redemption is improperly withheld or refused and not paid either by the Trust or by the Guarantor pursuant to the Guarantee, Distributions on such Securities will continue to accrue, at the then applicable rate, from the Redemption Date originally established by the Trust for such 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) Payment of the Redemption Price on the Securities shall be made to the recordholders thereof as they appear on the Securities Register for the Securities on the relevant record date, which shall be one Business Day prior to the relevant Redemption Date; provided, however, that in the event that the Preferred Securities do not remain in book-entry-only form, the relevant record date shall be the date 15 days prior to the relevant Redemption Date.

(f) Subject to Section 5.3(a), if less than all the Outstanding Securities are to be redeemed on a Redemption Date, then the aggregate Liquidation Amount of Securities to be redeemed shall be allocated on a pro rata basis (based on Liquidation Amounts) among the Common Securities and the Preferred Securities. The particular Preferred Securities and Common Securities to be redeemed shall be selected on a pro rata basis (based upon Liquidation Amounts) not more than 60 days prior to the Redemption Date by the Property Trustee from the Outstanding Preferred Securities and Common Securities, respectively, not previously called for redemption, by such method (including, without limitation, by lot) as the Property Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions (equal to \$ or an integral multiple of \$ in excess thereof) of the Liquidation Amount of Preferred Securities and Common Securities, respectively, of a denomination larger than \$ . The Property Trustee shall promptly notify the Security Registrar in writing of the Preferred Securities and Common Securities selected for redemption and, in the case of any Preferred Securities or Common Securities selected for partial redemption, the Liquidation Amount thereof to be redeemed. For all purposes of this Declaration, unless the context otherwise requires, all provisions relating to the redemption of Preferred Securities or Preferred Securities shall relate, in the case of any Preferred Securities or Common Securities, as applicable, redeemed or to be redeemed only in part, to the portion of the Liquidation Amount of Preferred Securities or Common Securities, as applicable, that has been or is to be redeemed.

### Section 5.3 Subordination of Common Securities.

(a) Payment of Distributions (including Additional Amounts, if applicable) on, and the Redemption Price of, the Securities, as applicable, shall be made, subject to Section 5.2(f), pro rata among the Common Securities and the Preferred Securities based on the Liquidation Amount of the Securities; provided, however, that if on any Distribution Date or Redemption Date any Event of Default resulting from an Indenture Event of Default shall have occurred and be continuing, no payment of any Distribution (including Additional Amounts, if applicable) on, or Redemption Price of, any Common Security, and no other payment on account of the redemption, liquidation or other acquisition of Common Securities, shall be made unless payment in full in cash of all accumulated and unpaid Distributions (including Additional Amounts, if applicable) on all Outstanding Preferred Securities for all Distribution periods terminating on or prior thereto, or in the case of payment of the Redemption Price the full amount of such Redemption Price on all Outstanding Preferred Securities, shall have been made or provided for, and all funds immediately available to the Property Trustee shall first be applied to the payment in full in cash of all Distributions (including Additional Amounts, if applicable) on, or the Redemption Price of, Preferred Securities then due and payable.

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

### Section 5.4 Payment Procedures.

Payments of Distributions (including Additional Amounts, if applicable) in respect of the Preferred Securities shall be made by check mailed to the address of the Person entitled thereto as such address shall appear on the Securities Register or, if the Preferred Securities are held by a Clearing Agency, such Distributions shall be made to the Clearing Agency in immediately available funds, which shall credit the relevant Persons' accounts at such Clearing Agency on the applicable Distribution Dates. Payments in respect of the Common Securities shall be made in such manner as shall be mutually agreed between the Property Trustee and the Common Securityholder. Any Distributions in respect of Preferred Securities that remain unclaimed for a period of two years following the applicable Distribution Date shall be paid to the Holder of the Common Securities.

### Section 5.5 Tax Returns and Reports.

The Regular Trustees shall prepare (or cause to be prepared), at the Sponsor's expense, and file all United States federal, state and local tax and information returns, payee statements and reports required to be filed by or in respect of the Trust. In this regard, the Regular Trustees shall (a) prepare and file (or cause to be prepared and filed) the appropriate

Internal Revenue Service form required to be filed in respect of the Trust in each taxable year of the Trust and (b) prepare and furnish (or cause to be prepared and furnished) to each Securityholder the appropriate Internal Revenue Service form required to be provided. The Regular Trustees shall provide the Sponsor and the Property Trustee with a copy of all such returns and reports promptly after such filing or furnishing. The Trustees and the Paying Agent 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 Securities.

Section 5.6 Payment of Taxes, Duties, Etc. of the Trust.

Upon receipt under the Subordinated Debt Securities of Additional Sums, the Property Trustee, pursuant to written instructions from the Sponsor detailing the payments to be made, shall promptly pay at the expense of the Sponsor any taxes, duties or governmental charges of whatsoever nature (other than withholding taxes) imposed on the Trust by the United States or any other taxing authority.

Section 5.7 Payments under Indenture or Pursuant to Direct Actions.

Any amount payable hereunder to any Holder of Preferred Securities shall be reduced by the amount of any corresponding payment such Holder has directly received pursuant to [Section 2.19] of the Officers' Certificate establishing the Subordinated Debt Securities pursuant to Section 303 of the Indenture or Section 3.6(c) of this Declaration.

**ARTICLE VI.**

**TRUST SECURITIES CERTIFICATES**

Section 6.1 Initial Ownership.

Upon the formation of the Trust and until the issuance of the Securities, and at any time during which no Securities are outstanding, the Sponsor shall be the sole beneficial owner of the Trust.

Section 6.2 Certificates.

The Preferred Securities Certificates shall be issued in minimum denominations of \$ \_\_\_\_\_ Liquidation Amount and integral multiples of \$ \_\_\_\_\_ in excess thereof, and the Common Securities Certificates shall be issued in minimum denominations of \$ \_\_\_\_\_ Liquidation Amount and integral multiples thereof. The Certificates shall be executed on behalf of the Trust by manual signature of at least one Regular Trustee. Certificates bearing the manual signatures of individuals who were, at the time when such signatures shall have been affixed, authorized to sign on behalf of the Trust, shall be validly issued and entitled to the benefits of this Declaration, notwithstanding that such individuals or any of them shall have ceased to be so authorized prior to the delivery of such Certificates or did not hold such offices at the date of delivery of such Certificates. A transferee of a 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 Certificate in such transferee's name pursuant to Sections 6.4, 6.10 and 6.12.

### Section 6.3 Execution and Delivery of Certificates.

At the Closing Date the Regular Trustees shall cause Certificates to be executed on behalf of the Trust and delivered by the Property Trustee as provided in Sections 3.12 and 3.13.

### Section 6.4 Registration and Transfer and Exchange of Preferred Securities Certificates.

(a) The Sponsor shall keep or cause to be kept, at the office or agency maintained pursuant to Section 6.7, a register or registers for the purpose of registering Certificates and transfers and exchanges of Preferred Securities Certificates (the "Securities Register") in which the registrar designated by the Sponsor (the "Securities Registrar"), subject to such reasonable regulations as it may prescribe, shall provide for the registration of Preferred Securities Certificates and Common Securities Certificates (subject to Section 6.9 in the case of the Common Securities Certificates) and registration of transfers and exchanges of Preferred Securities Certificates as herein provided. The Bank shall be the initial Securities Registrar.

(b) Upon surrender for registration of transfer of any Preferred Securities Certificate at the office or agency maintained pursuant to Section 6.7, the Regular Trustees or any one of them shall execute and deliver to the Property Trustee, and the Property Trustee shall deliver, in the name of the designated transferee or transferees, one or more new Preferred Securities Certificates in authorized denominations of a like aggregate Liquidation Amount dated the date of execution by such Regular Trustee or Trustees.

(c) The Securities Registrar shall not be required to register the transfer of any Preferred Securities that have been called for redemption. At the option of a Holder, Preferred Securities Certificates may be exchanged for other Preferred Securities Certificates in authorized denominations of the same class and of a like aggregate Liquidation Amount upon surrender of the Preferred Securities Certificates to be exchanged at the office or agency maintained pursuant to Section 6.7.

(d) Every Preferred Securities Certificate presented or surrendered for registration of transfer or exchange shall be accompanied by a written instrument of transfer in form satisfactory to the Securities Registrar duly executed by the Holder or his attorney duly authorized in writing. Each Preferred Securities Certificate surrendered for registration of transfer or exchange shall be canceled and subsequently disposed of by the Property Trustee in accordance with such Person's customary practice. No service charge shall be made for any registration of transfer or exchange of Preferred Securities Certificates, 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 Securities Certificates.

### Section 6.5 Mutilated, Destroyed, Lost or Stolen Trust Certificates.

If (a) any mutilated 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 Certificate and (b) there shall be delivered to the Securities Registrar and the Regular Trustees such security or indemnity as may be required by them to save each of them harmless,

then in the absence of notice that such Certificate shall have been acquired by a bona fide purchaser, the Regular Trustees, or any one of them, on behalf of the Trust shall execute and make available for delivery, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Certificate, a new Certificate of like class, tenor and denomination. In connection with the issuance of any new Certificate under this Section, the Regular Trustees or the Securities Registrar may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith. Any duplicate 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 Certificate shall be found at any time.

#### Section 6.6 Persons Deemed Securityholders.

The Trustees or the Securities Registrar shall treat the Person in whose name any Certificate shall be registered in the Securities Register as the owner of such 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.

#### Section 6.7 Maintenance of Office or Agency.

The Property Trustee shall designate, with the consent of the Regular Trustees (which consent shall not be unreasonably withheld), an office or offices or agency or agencies where Preferred Securities Certificates may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Trustees in respect of the Certificates may be served. The Property Trustee initially designates its Corporate Trust Office as its office and agency for such purposes. 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.

#### Section 6.8 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 Regular Trustees. Any Paying Agent shall have the revocable power to withdraw funds from the Payment Account for the purpose of making the distributions referred to above. The Property Trustee may revoke such power and remove the Paying Agent in its sole discretion. The Paying Agent shall initially be the Bank, and any co-paying agent chosen by the Bank, and reasonably acceptable to the Regular Trustees. Any Person acting as Paying Agent shall be permitted to resign as Paying Agent upon 30 days' written notice to the Regular Trustees and the Property Trustee. In the event that the Bank shall no longer be the Paying Agent or a successor Paying Agent shall resign or its authority to act be revoked, the Property Trustee shall appoint a successor that is acceptable to the Regular Trustees to act as Paying Agent (which shall be a bank or trust company). The Property Trustee shall cause such successor Paying Agent or any additional Paying Agent appointed by the Property Trustee to execute and deliver to the Trustees an instrument in which such successor Paying Agent or additional Paying Agent shall agree with the Trustees that as Paying Agent, such successor Paying Agent or additional Paying Agent will hold all sums, if any, held by it for payment to the Securityholders in trust for the benefit of the

Securityholders entitled thereto until such sums shall be paid to such Securityholders. The Paying Agent shall return all unclaimed funds to the Property Trustee and upon removal of a Paying Agent such Paying Agent shall also return all funds in its possession to the Property Trustee. The provisions of Sections 3.6, 3.7 and 9.3 shall apply to the Bank also in its role as Paying Agent, for so long as the Bank shall act as Paying Agent and, to the extent applicable, to any other paying agent appointed hereunder. Any reference in this Agreement to the Paying Agent shall include any co-paying agent unless the context requires otherwise.

#### Section 6.9 Ownership of Common Securities by Sponsor.

On the Closing Date the Sponsor shall acquire and retain beneficial and record ownership of the Common Securities. To the fullest extent permitted by law, other than a transfer in connection with a consolidation or merger of the Sponsor into another corporation, or any conveyance, transfer or lease by the Sponsor of its properties and assets substantially as an entirety to any Person, pursuant to Section 801 of the Indenture, any attempted transfer of the Common Securities shall be void. The Regular Trustees shall cause each Common Securities Certificate issued to the Sponsor to contain a legend stating "THIS CERTIFICATE IS NOT TRANSFERABLE EXCEPT IN CERTAIN LIMITED CIRCUMSTANCES SET FORTH IN THE DECLARATION (AS DEFINED BELOW)."

#### Section 6.10 Book-Entry Preferred Securities Certificates; Common Securities Certificate.

(a) The Preferred Securities Certificates, upon original issuance, will be issued in the form of a typewritten Preferred Securities Certificate or Certificates representing Book-Entry Preferred Securities Certificates, to be delivered to The Depository Trust Company, the initial Clearing Agency, by, or on behalf of, the Trust. Such Preferred Securities Certificate or Certificates shall initially be registered on the Securities Register in the name of Cede & Co., the nominee of the initial Clearing Agency, and no Owner will receive a Definitive Preferred Securities Certificate representing such Owner's interest in such Preferred Securities, except as provided in Section 6.12. Unless and until Definitive Preferred Securities Certificates have been issued to Owners pursuant to Section 6.12:

(i) the provisions of this Section 6.10(a) shall be in full force and effect;

(ii) the Securities Registrar, the Sponsor and the Trustees shall be entitled to deal with the Clearing Agency for all purposes of this Declaration relating to the Book-Entry Preferred Securities Certificates (including the payment of the Liquidation Amount of and Distributions or Redemption Price on the Preferred Securities evidenced by Book-Entry Preferred Securities Certificates and the giving of instructions or directions to Owners of Preferred Securities evidenced by Book-Entry Preferred Securities Certificates) as the sole Holder of Preferred Securities evidenced by Book-Entry Preferred Securities Certificates and shall have no obligations to the Owners thereof;

(iii) to the extent that the provisions of this Section 6.10 conflict with any other provisions of this Declaration, the provisions of this Section 6.10 shall control; and

(iv) the rights of the Owners of the Book-Entry Preferred Securities Certificates shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreements between such Owners and the Clearing Agency and/or the Clearing Agency Participants. Pursuant to the Trust's agreement with the DTC, unless and until Definitive Preferred Securities Certificates are issued pursuant to Section 6.12, the initial Clearing Agency will make book-entry transfers among the Clearing Agency Participants and receive and transmit payments on the Preferred Securities to such Clearing Agency Participants.

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

#### Section 6.11 Notices to Clearing Agency.

To the extent that a notice or other communication to the Owners is required under this Declaration, unless and until Definitive Preferred Securities Certificates shall have been issued to Owners pursuant to Section 6.12, the Trustees shall give all such notices and communications specified herein to be given to Owners to the Clearing Agency, and shall have no obligations to the Owners.

#### Section 6.12 Definitive Preferred 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 Securities Certificates, and the Sponsor is unable to locate a qualified successor, (b) the Sponsor at its option advises the Trustees in writing that it elects to terminate the book-entry system through the Clearing Agency or (c) after the occurrence of an Indenture Event of Default, Owners of Preferred Securities Certificates representing beneficial interests aggregating at least a majority of the aggregate Liquidation Amount of the Outstanding Preferred Securities advise the Regular Trustees in writing that the continuation of a book-entry system through the Clearing Agency is no longer in the best interest of the Owners of Preferred Securities Certificates, then the Regular Trustees shall notify the Clearing Agency and the Clearing Agency shall notify all Owners of Preferred Securities Certificates and the other Trustees of the occurrence of any such event and of the availability of the Definitive Preferred Securities Certificates to Owners of such class or classes, as applicable, requesting the same. Upon surrender to the Regular Trustees or the Securities Registrar of the typewritten Preferred Securities Certificate or Certificates representing the Book Entry Preferred Securities Certificates by the Clearing Agency, accompanied by registration instructions, the Regular Trustees, or any one of them, shall execute the Definitive Preferred Securities Certificates in accordance with the instructions of the Clearing Agency. Neither the Securities Registrar nor the Trustees shall be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be protected in relying on, such instructions. Upon the issuance of Definitive Preferred Securities Certificates, the Trustees

shall recognize the Holders of the Definitive Preferred Securities Certificates as Securityholders. The Definitive Preferred Securities Certificates shall be printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Regular Trustees, as evidenced by the execution thereof by the Regular Trustees or any one of them.

## ARTICLE VII.

### ACTS OF SECURITYHOLDERS; MEETINGS; VOTING

#### Section 7.1 Limitation on Voting Rights.

(a) Except as provided in this Section, in Sections 3.6, 9.7 and 11.2 and in the Indenture and as otherwise required by law, no Holder of Preferred Securities shall have any right to vote or in any manner otherwise control the administration, operation and management of the Trust or the obligations of the parties hereto, nor shall anything herein set forth, or contained in the terms of the Certificates, be construed so as to constitute the Securityholders from time to time as partners or members of an association.

(b) So long as any Subordinated Debt Securities are held by the Property Trustee, the Trustees shall not (i) direct the time, method and place of conducting any proceeding for any remedy available to the Subordinated Debt Securities Trustee, or executing any trust or power conferred on the Property Trustee with respect to such Subordinated Debt Securities, (ii) waive any past default which is waivable under Section 513 of the Indenture, (iii) exercise any right to rescind or annul a declaration that the principal of all the Subordinated Debt Securities shall be due and payable or (iv) consent to any amendment, modification or termination of the Indenture or the Subordinated Debt Securities, where such consent shall be required, without, in each case, obtaining the prior approval of the Holders of a majority in aggregate Liquidation Amount of all Outstanding Preferred Securities, provided, however, that where a consent under the Indenture would require the consent of each Holder of Subordinated Debt Securities affected thereby, no such consent shall be given by the Property Trustee without the prior written consent of each Holder of Preferred Securities. The Trustees shall not revoke any action previously authorized or approved by a vote of the Holders of Preferred Securities, except by a subsequent vote of the Holders of Preferred Securities. The Property Trustee shall notify all Holders of the Preferred Securities of any notice of default received from the Subordinated Debt Securities Trustee with respect to the Subordinated Debt Securities. In addition to obtaining the foregoing approvals of the Holders of the Preferred Securities, prior to taking any of the foregoing actions, the Trustees shall, at the expense of the Sponsor, obtain an Opinion of Counsel experienced in such matters to the effect that such action shall not cause the Trust to fail to be classified as a grantor trust for United States Federal income tax purposes.

(c) If any proposed amendment to this Declaration 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 Securities, whether by way of amendment to this Declaration or otherwise, or (ii) the dissolution, winding-up or termination of the Trust, other than pursuant to the terms of this Declaration, then the Holders of Outstanding Preferred Securities as a class will be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of the Holders of at least a



majority in aggregate Liquidation Amount of the Outstanding Preferred Securities. Notwithstanding any other provision of this Declaration, no amendment to this Declaration may be made if, as a result of such amendment, it would cause the Trust to fail to be classified as a grantor trust for United States Federal income tax purposes.

#### Section 7.2 Notice of Meetings.

Notice of all meetings of the Preferred Securityholders, stating the time, place and purpose of the meeting, shall be given by the Property Trustee pursuant to Section 11.8 to each Preferred Securityholder of record, at his registered address, at least 15 days and not more than 90 days before the meeting. At any such meeting, any business properly before the meeting may be so considered whether or not stated in the notice of the meeting. Any adjourned meeting may be held as adjourned without further notice.

#### Section 7.3 Meetings of Preferred Securityholders.

(a) No annual meeting of Securityholders is required to be held. The Property Trustee, however, shall call a meeting of Preferred Securityholders to vote on any matter upon the written request of the Preferred Securityholders of record of 25% or more of the Preferred Securities (based upon their aggregate Liquidation Amount) and the Regular Trustees or the Property Trustee may, at any time in their discretion, call a meeting of Preferred Securityholders to vote on any matters as to which Preferred Securityholders are entitled to vote.

(b) Preferred Securityholders of record of 50% of the Outstanding Preferred Securities (based upon their aggregate Liquidation Amount), present in person or by proxy, shall constitute a quorum at any meeting of Securityholders.

(c) If a quorum is present at a meeting, an affirmative vote by the Preferred Securityholders of record present, in person or by proxy, holding a majority of the Preferred Securities (based upon their aggregate Liquidation Amount) held by the Preferred Securityholders of record present, either in person or by proxy, at such meeting shall constitute the action of the Preferred Securityholders, unless this Declaration requires a greater number of affirmative votes.

#### Section 7.4 Voting Rights.

Securityholders shall be entitled to one vote for each \$ \_\_\_\_\_ of Liquidation Amount represented by their Securities in respect of any matter as to which such Securityholders are entitled to vote.

#### Section 7.5 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 Property Trustee, or with such other officer or agent of the Trust as the Property 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 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 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 Securities. A proxy purporting to be executed by or on behalf of a Securityholder shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger. No proxy shall be valid more than three years after its date of execution.

#### Section 7.6 Securityholder Action by Written Consent.

Any action which may be taken by Securityholders at a meeting may be taken without a meeting and without prior notice if Securityholders holding a majority of all Outstanding Securities (based upon their Liquidation Amount) entitled to vote in respect of such action (or such larger proportion thereof as shall be required by any express provision of this Declaration) shall consent to the action in writing.

#### Section 7.7 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 to act by written consent, or to participate in any distribution on the Securities in respect of which a record date is not otherwise provided for in this Declaration, or for the purpose of any other action, the Regular Trustees or the Property Trustee may from time to time fix a date, not more than 90 days prior to the date of any meeting of Securityholders or the payment of a distribution or other action, as the case may be, as a record date for the determination of the identity of the Securityholders of record for such purposes.

#### Section 7.8 Acts of Securityholders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Declaration to be given, made or taken by Securityholders or Owners may be embodied in and evidenced by one or more written instruments of substantially similar tenor signed by such Securityholders or Owners in person or by an agent duly appointed in writing; and, except as otherwise expressly provided herein, such action shall become effective when such written instrument or instruments are delivered to the Property Trustee. Such written instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Securityholders or Owners signing such written instrument or instruments. Proof of execution of any such written instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Declaration and (subject to Section 8.1) conclusive in favor of the Trustees, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual

capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which any Trustee receiving the same deems sufficient.

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

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

(e) 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.

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

#### Section 7.9 Inspection of Records.

Upon reasonable notice to the Regular Trustees 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 VIII.**

#### **REPRESENTATIONS AND WARRANTIES**

##### Section 8.1 Representations and Warranties of the Property Trustee.

The Property Trustee and the Delaware Trustee, each severally on behalf of and as to itself, hereby represents and warrants for the benefit of the Sponsor and the Securityholders that:

(a) the Property Trustee is a New York banking corporation validly existing and in good standing under the laws of the State of New York;

(b) the Property Trustee has the requisite power and authority to execute, deliver and perform its obligations under this Declaration and has taken all necessary action to authorize the execution, delivery and performance by it of this Declaration;

(c) the Delaware Trustee is a Delaware banking corporation duly organized, validly existing and in good standing in the State of Delaware;

(d) the Delaware Trustee has full corporate power, authority and legal right to execute, deliver and perform its obligations under this Declaration and has taken all necessary action to authorize the execution, delivery and performance by it of this Declaration;

(e) this Declaration has been duly authorized, executed and delivered by the Property Trustee and the Delaware Trustee and constitutes the valid and legally binding agreement of each of the Property Trustee and the Delaware Trustee enforceable against each of them in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles; and

(f) the execution, delivery and performance of this Declaration has been duly authorized by all necessary corporate or other action on the part of the Property Trustee and the Delaware Trustee and does not require any approval of stockholders of the Property Trustee or the Delaware Trustee.

#### Section 8.2 Representations and Warranties of Sponsor.

The Sponsor hereby represents and warrants that:

(a) this Declaration has been duly authorized, executed and delivered by the Sponsor and constitutes the valid and legally binding agreement of the Sponsor enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles;

(b) the Certificates issued on the Closing Date on behalf of the Trust have been duly authorized and will have been duly and validly executed, issued and delivered by the Trustees pursuant to the terms and provisions of, and in accordance with the requirements of, this Declaration and the Securityholders will be, as of each such date, entitled to the benefits of this Declaration; and

(c) there are no taxes, fees or other governmental charges payable by the Trust (or the Trustees on behalf of the Trust) under the laws of the State of Delaware or any political subdivision thereof in connection with the execution, delivery and performance by the Property Trustee or the Delaware Trustee, as the case may be, of this Declaration.

**ARTICLE IX.**

**OTHER PROVISIONS WITH RESPECT TO THE TRUSTEES**

Section 9.1 Certain Notices.

Within ten Business Days after the receipt of notice of the Sponsor's exercise of its right to defer the payment of interest on the Subordinated Debt Securities pursuant to the Indenture, the Property Trustee shall transmit, in the manner and to the extent provided in Section 11.8, notice of such exercise to the Securityholders and the Regular Trustees, unless such exercise shall have been revoked.

Section 9.2 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 Securities and, subject to Sections 9.5 and 9.10 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.

Section 9.3 Compensation; Indemnity; Fees.

(a) The Sponsor agrees:

(i) to pay to the Trustees from time to time such compensation as shall be agreed to in writing between the Sponsor and each Trustee 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);

(ii) except as otherwise expressly provided herein, to reimburse the Trustees upon request for all reasonable expenses, disbursements and advances incurred or made by the Trustees in accordance with any provision of this Declaration (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or willful misconduct; and

(iii) to the fullest extent permitted by applicable law, to indemnify and hold harmless (i) each Trustee, (ii) any Affiliate of any Trustee, (iii) any officer, director, shareholder, employee, representative or agent of any Trustee and (iv) any employee or agent of the Trust or its Affiliates, (referred to herein as an "Indemnified Person") from and against any loss, damage, liability, tax, penalty, expense or claim of any kind or nature whatsoever incurred by such Indemnified Person by reason of the creation, operation or termination of the Trust or any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of authority conferred on such Indemnified Person by this Declaration, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such

Indemnified Person by reason of negligence or willful misconduct with respect to such acts or omissions.

(b) The provisions of this Section 9.3 shall survive the termination of this Declaration or the resignation or removal of any Trustee.

(c) No Trustee may claim any lien or charge on any Trust Property as a result of any amount due pursuant to this Section 9.3.

(d) The Sponsor and any Trustee (subject to Section 9.5) may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Trust, and the Trust and the Securityholders shall have no rights by virtue of this Declaration in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Trust, shall not be deemed wrongful or improper. Neither the Sponsor, nor any Trustee, shall be obligated to present any particular investment or other opportunity to the Trust even if such opportunity is of a character that, if presented to the Trust, could be taken by the Trust, and the Sponsor or any Trustee shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment or other opportunity. Any Trustee may engage or be interested in any financial or other transaction with the Sponsor or any Affiliate of the Sponsor, or may act as depository for, trustee or agent for, or act on any committee or body of holders of, securities or other obligations of the Sponsor or its Affiliates.

#### Section 9.4 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 Securities shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

(b) There shall at all times be one or more Regular Trustees hereunder. Each Regular Trustee shall be a natural person at least 21 years of age who is an officer of the Sponsor.

(c) 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.

#### Section 9.5 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. The Indenture and the Guarantee are hereby excluded for purposes of Section 310(b)(1) of the Trust Indenture Act.

#### Section 9.6 Co-Trustees and Separate Trustee.

(a) 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 Regular Trustees, by agreed action of the majority of such Trustees, shall have power to appoint, and upon the written request of the Regular Trustees, the Sponsor shall for such purpose join with the Regular Trustees 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 to vest in such Person or Persons in the capacity aforesaid, any property, title, right or power deemed necessary or desirable, subject to the other provisions of this Section. If the Sponsor does not join in such appointment within 15 days after the receipt by it of a request so to do, or in case an Indenture Event of Default has occurred and is continuing, the 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.

(b) 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.

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

(i) The 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.

(ii) 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.

(iii) 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 Indenture Event of Default 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.

(iv) 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.

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

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

#### Section 9.7 Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of any Trustee (the "Relevant 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 9.8.

(b) Subject to the immediately preceding paragraph, the Relevant Trustee may resign at any time by giving written notice thereof to the Securityholders and the other Trustees. If the instrument of acceptance by the successor Trustee required by Section 9.8 shall not have been delivered to the Relevant Trustee within 30 days after the giving of such notice of resignation, the Relevant Trustee may petition, at the expense of the Sponsor, any court of competent jurisdiction for the appointment of a successor Relevant Trustee.

(c) Unless an Indenture Event of Default shall have occurred and be continuing, any Trustee may be removed at any time by Act of the Common Securityholder. If an Indenture Event of Default shall have occurred and be continuing, the Property Trustee or the Delaware Trustee, or both of them, may be removed at such time by Act of the Holders of a majority in aggregate Liquidation Amount of the Outstanding Preferred Securities, delivered to the Relevant Trustee (in its individual capacity and on behalf of the Trust). A Regular Trustee may be removed by the Common Securityholder at any time.



(d) 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 Indenture Event of Default shall have occurred and be continuing, the Common Securityholder, by Act of the Common Securityholder delivered to the retiring Trustee, shall promptly appoint a successor Trustee or Trustees, which successor Trustee shall be domiciled outside of the State of California, and the retiring Trustee shall comply with the applicable requirements of Section 9.8. If the Property Trustee or the Delaware Trustee shall resign, be removed or become incapable of continuing to act as the Property Trustee or the Delaware Trustee, as the case may be, at a time when an Indenture Event of Default shall have occurred and be continuing, the Preferred Securityholders, by Act of the Securityholders of a majority in aggregate Liquidation Amount of the Preferred Securities then Outstanding delivered to the retiring Relevant Trustee, shall promptly appoint a successor Relevant Trustee or Trustees, and such successor Trustee shall comply with the applicable requirements of Section 9.8. If a Regular Trustee shall resign, be removed or become incapable of acting as Regular Trustee, at a time when an Indenture Event of Default shall have occurred and be continuing, the Common Securityholder by Act of the Common Securityholder delivered to the Regular Trustee shall promptly appoint a successor Regular Trustee and such successor Regular Trustee shall comply with the applicable requirements of Section 9.8. If no successor Relevant Trustee shall have been so appointed by the Common Securityholder or the Preferred Securityholders and accepted appointment in the manner required by Section 9.8, any Securityholder who has been a Securityholder of Securities for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Relevant Trustee.

(e) The Property Trustee shall, at the expense of the Sponsor, 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 11.8 and shall give notice to the Sponsor. Each notice shall include the name of the successor Relevant Trustee and the address of its Corporate Trust Office if it is the Property Trustee.

(f) Notwithstanding the foregoing or any other provision of this Declaration, in the event any Regular Trustee or a Delaware Trustee who is a natural person dies or becomes, 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 Regular 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 requirement for Regular Trustee or Delaware Trustee, as the case may be, set forth in Section 9.4).

#### Section 9.8 Acceptance of Appointment by Successor.

(a) In case of the appointment hereunder of a successor Relevant Trustee, the retiring Relevant Trustee and each successor Relevant Trustee with respect to the Securities shall execute and deliver an amendment hereto wherein each successor Relevant 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 Relevant Trustee all the rights, powers, trusts and duties of the retiring Relevant Trustee with respect to the Securities and the Trust and (b) shall add to or change any of the provisions of this Declaration as shall be necessary to provide for or facilitate the administration of the Trust by more than one Relevant Trustee, it

being understood that nothing herein or in such amendment shall constitute such Relevant Trustees co-trustees and upon the execution and delivery of such amendment the resignation or removal of the retiring Relevant Trustee shall become effective to the extent provided therein and each such successor Relevant Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Relevant Trustee; but, on request of the Trust or any successor Relevant Trustee such retiring Relevant Trustee shall duly assign, transfer and deliver to such successor Relevant Trustee all Trust Property, all proceeds thereof and money held by such retiring Relevant Trustee hereunder with respect to the Securities and the Trust.

(b) Upon request of any such successor Relevant Trustee, the Trust shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Relevant Trustee all such rights, powers and trusts referred to in the first or second preceding paragraph, as the case may be.

(c) No successor Relevant Trustee shall accept its appointment unless at the time of such acceptance such successor Relevant Trustee shall be qualified and eligible under this Article.

#### Section 9.9 Merger, Conversion Consolidation or Succession to Business.

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

#### Section 9.10 Preferential Collection of Claims against Sponsor or Trust.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other similar judicial proceeding relative to the Trust or any other obligor upon the Securities or the property of the Trust or of such other obligor or their creditors, the Property Trustee (irrespective of whether any Distributions on the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Property Trustee shall have made any demand on the Trust for the payment of any past due Distributions) shall be entitled and empowered, to the fullest extent permitted by law, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of any Distributions owing and unpaid in respect of the Securities and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Property Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Property Trustee, its agents and counsel) and of the Holders allowed in such judicial proceeding, and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Property Trustee and, in the event the Property Trustee shall consent to the making of such payments directly to the Holders, to pay to the Property Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Property Trustee, its agents and counsel, and any other amounts due the Property Trustee.

Nothing herein contained shall be deemed to authorize the Property Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement adjustment or compensation affecting the Securities or the rights of any Holder thereof or to authorize the Property Trustee to vote in respect of the claim of any Holder in any such proceeding.

#### Section 9.11 Number of Trustees.

(a) The number of Trustees shall initially be five, provided that the Holder of all of the Common Securities by written instrument may increase or decrease the number of Regular Trustees. The Property Trustee and the Delaware Trustee may be the same Person.

(b) If a Trustee ceases to hold office for any reason and, if such Trustee is a Regular Trustee, the number of Regular Trustees is not reduced pursuant to Section 9.11(a), or if the number of Trustees is increased pursuant to Section 9.11(a), a vacancy shall occur. The vacancy shall be filled with a Trustee appointed in accordance with Section 9.7.

(c) The death, resignation, retirement, removal, bankruptcy, incompetence or incapacity to perform the duties of a Trustee shall not operate to annul, dissolve or terminate the Trust. Whenever a vacancy in the number of Regular Trustees shall occur, until such vacancy is filled by the appointment of a Regular Trustee or Regular Trustees in accordance with Section 9.7, the Regular Trustees in office, regardless of their number (and notwithstanding any other provision of this Agreement), shall have all the powers granted to the Regular Trustees and shall discharge all the duties imposed upon the Regular Trustees by this Declaration.

#### Section 9.12 Delegation of Power.

(a) Any Regular Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purpose of executing any documents contemplated in Section 3.5; and

(b) The Regular Trustees shall have power to delegate from time to time to such of their number 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 Regular Trustees or otherwise as the Regular Trustees may deem expedient, to the extent such delegation is not prohibited by applicable law or contrary to the provisions of this Declaration, as set forth herein.

#### Section 9.13 Delaware Trustee.

It is expressly understood and agreed by the parties hereto that, in fulfilling its obligations as Delaware Trustee hereunder on behalf of the Trust, (i) any agreements or instruments executed and delivered by The Bank of New York (Delaware) are executed and delivered not in its individual capacity but solely as Delaware Trustee under this Declaration in exercise of the powers and authority conferred and vested in it, (ii) each of the representations, undertakings and agreements herein made by The Bank of New York (Delaware) on the part of the Trust is made and intended not as representations, warranties, covenants, undertakings and agreements by The Bank of New York (Delaware) in its individual capacity but is made and intended for the purpose of binding only the Trust, and (iii) under no circumstances shall The Bank of New York (Delaware) in its individual capacity be personally liable for the payment of any indebtedness or expenses of the Trust or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Trust under this Declaration, except if such breach or failure is due to any negligence or willful misconduct of the Delaware Trustee.

#### **ARTICLE X.**

#### **TERMINATION, LIQUIDATION AND MERGER**

##### Section 10.1 Termination upon Expiration Date.

Unless earlier dissolved, the Trust shall automatically dissolve on \_\_\_\_\_ (the “Expiration Date”), and the Trust Property shall be distributed in accordance with Section 10.4.

##### Section 10.2 Early Termination.

The first to occur of any of the following events is an “Early Termination Event,” upon the occurrence of which the Trust shall be dissolved:

(a) a Bankruptcy Event in respect of, or the dissolution or liquidation of, the Sponsor;

(b) the filing of a certificate of dissolution or its equivalent with respect to the Sponsor;

(c) the date that is 90 days after the revocation of the articles of incorporation of the Sponsor (but only if the articles of incorporation are not reinstated during such 90-day period);

(d) the written direction to the Property Trustee from the Sponsor at any time to dissolve the Trust and distribute Subordinated Debt Securities to Securityholders in exchange for the Preferred Securities (which direction is optional and wholly within the discretion of the Sponsor);

(e) the redemption of all of the Preferred Securities in connection with the redemption of all the Subordinated Debt Securities; and

(f) the entry of an order for dissolution of the Trust by a court of competent jurisdiction.

### Section 10.3 Termination.

The respective obligations and responsibilities of the Trustees and the Trust created and continued hereby shall terminate upon the latest to occur of the following: (a) the distribution by the Property Trustee to Securityholders upon the liquidation of the Trust pursuant to Section 10.4, or upon the redemption of all of the Securities pursuant to Section 5.2, of all amounts required to be distributed hereunder upon the final payment of the Securities; (b) the payment of any expenses owed by the Trust; and (c) the discharge of all administrative duties of the Regular Trustees, including the performance of any tax reporting obligations with respect to the Trust or the Securityholders.

### Section 10.4 Liquidation.

(a) If an Early Termination Event specified in clause (a), (b) or (d) of Section 10.2 occurs or upon the Expiration Date, the Trust shall be liquidated 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 Subordinated Debt Securities, subject to Section 10.4(d). Notice of liquidation shall be given by the Property Trustee at the expense of the Sponsor by first-class mail, postage prepaid mailed not later than 30 nor more than 60 days prior to the Liquidation Date to each Securityholder 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 Securities will no longer be deemed to be Outstanding and any Certificates not surrendered for exchange will be deemed to represent a Like Amount of Subordinated Debt Securities; and

(iii) provide such information with respect to the mechanics by which Holders may exchange Certificates for Subordinated Debt Securities, or if Section 10.4(d) applies, receive a Liquidation Distribution.

(b) Except where Section 10.2(c) or 10.4(d) applies, in order to effect the liquidation of the Trust and distribution of the Subordinated Debt Securities to Securityholders, the Property Trustee shall establish a record date for such distribution (which shall be (i) one Business Day prior to the Liquidation Date or (ii) in the event that the Preferred Securities are not in book-entry form, the date 15 days prior to the Liquidation Date) and, either itself acting as exchange agent or through the appointment of a separate exchange agent, shall establish such procedures as it shall deem appropriate to effect the distribution of Subordinated Debt Securities in exchange for the Outstanding Certificates.

(c) Except where Section 10.2(c) or 10.4(d) applies, after the Liquidation Date, (i) the Securities will no longer be deemed to be Outstanding, (ii) certificates representing a Like Amount of Subordinated Debt Securities will be issued to holders of Certificates, upon

surrender of such certificates to the Property Trustee or its agent for exchange, (iii) the Sponsor shall use its best efforts to have the Subordinated Debt Securities listed on the New York Stock Exchange or on such other exchange, interdealer quotation system or self-regulatory organization as the Preferred Securities are then listed, (iv) any Certificates not so surrendered for exchange will be deemed to represent a Like Amount of Subordinated Debt Securities, accruing interest at the rate provided for in the Subordinated Debt Securities from the last Distribution Date on which a Distribution was made on such 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 Certificates with respect to such Subordinated Debt Securities) and (v) all rights of Securityholders holding Securities will cease, except the right of such Securityholders to receive Subordinated Debt Securities upon surrender of Certificates.

(d) In the event that, notwithstanding the other provisions of this Section 10.4, whether because of an order for dissolution entered by a court of competent jurisdiction or otherwise, distribution of the Subordinated 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 wound-up 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 winding up, 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 Securities shall be paid on a pro rata basis (based upon Liquidation Amounts). The Holder of the Common Securities will be entitled to receive Liquidation Distributions upon any such winding-up pro rata (determined as aforesaid) with Holders of Preferred Securities, except that, if an Indenture Event of Default has occurred and is continuing, the Preferred Securities shall have a priority over the Common Securities.

#### Section 10.5 Mergers, Consolidations, Amalgamations or Replacements of Trust.

The Trust may not merge with or into, consolidate, amalgamate, or be replaced by, or convey, transfer or lease its properties and assets substantially as an entirety to any Person, except pursuant to this Section 10.5 or Section 10.4. At the request of the Sponsor, with the consent of the Holders of at least a majority in aggregate Liquidation Amount of the Outstanding Preferred Securities, the Trust may merge with or into, consolidate, amalgamate, or be replaced by or convey, transfer or lease its properties and assets substantially as an entirety to a trust organized as such under the laws of any State; provided, that:

(i) such successor entity either (x) expressly assumes all of the obligations of the Trust with respect to the Preferred Securities or (y) substitutes for the Preferred Securities other securities having substantially the same terms as the Preferred Securities (the "Successor Securities") so long as the Successor Securities rank the same as the Preferred Securities rank in priority with respect to 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 Subordinated Debt Securities;

(iii) the Preferred Securities are listed or traded, or any Successor Securities will be listed upon notification of issuance, on any national securities exchange or other organization on which the Preferred Securities are then listed or traded, if any;

(iv) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not cause the Preferred Securities (including any Successor Securities) to be downgraded by any nationally recognized statistical rating organization;

(v) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the holders of the Preferred Securities (including any Successor Securities) in any material respect;

(vi) such successor entity has a purpose substantially identical to that of the Trust;

(vii) prior to such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, the Sponsor has received an Opinion of Counsel to the effect that (x) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the Holders of the Preferred Securities (including any Successor Securities) in any material respect, and (y) 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

(viii) the Sponsor owns all of the common securities of such successor entity and the Guarantor guarantees the obligations of such successor entity under the Successor Securities at least to the extent provided by the Guarantee.

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

## **ARTICLE XI.**

### **MISCELLANEOUS PROVISIONS**

Section 11.1 Limitation of Rights of Securityholders.

Except as otherwise provided in Section 10.2, the death, dissolution, termination, bankruptcy or incapacity of any Person having an interest, beneficial or otherwise, in Securities shall not operate to terminate this Declaration, nor dissolve, terminate or annul the Trust, nor entitle the legal successors, 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.

#### Section 11.2 Amendment.

(a) This Declaration may be amended from time to time by the Property Trustee, the Regular Trustees and the Sponsor, without the consent of any Securityholders, (i) to cure any ambiguity, correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Declaration, which shall not be inconsistent with the other provisions of this Declaration, or (ii) to modify, eliminate or add to any provisions of this Declaration to such extent as shall be necessary to ensure that the Trust will be classified for United States Federal income tax purposes as a grantor trust at all times that any Securities are outstanding or to ensure that the Trust will not be required to register as an investment company under the 1940 Act; provided, however, that in the case of clause (i), such action shall not adversely affect in any material respect the interests of any Securityholder, and any such amendments of this Declaration shall become effective when notice thereof is given to the Securityholders.

(b) Except as provided in Section 11.2(c) hereof, any provision of this Declaration may be amended by the Trustees and the Sponsor with (i) the consent of Securityholders representing a majority (based upon aggregate Liquidation Amount) of the Securities then Outstanding and (ii) receipt by the Trustees of an Opinion of Counsel to the effect that such amendment or the exercise of any power granted to the Trustees in accordance with such amendment will not affect the Trust's status as a grantor trust for United States Federal income tax purposes or the Trust's exemption from status of an investment company under the 1940 Act.

(c) In addition to and notwithstanding any other provision in this Declaration, without the consent of each affected Securityholder, this Declaration may not be amended to (i) change the amount or timing of any Distribution on the Securities or otherwise adversely affect the amount of any Distribution required to be made in respect of the Securities as of a specified date or (ii) restrict the right of a Securityholder to institute suit for the enforcement of any such payment on or after such date; notwithstanding any other provision herein, without the unanimous consent of the Securityholders, this paragraph (c) of this Section 11.2 may not be amended.

(d) Notwithstanding any other provisions of this Declaration, no Trustee shall enter into or consent to any amendment to this Declaration which would cause the Trust to fail or cease to qualify for the exemption from status of an investment company under the 1940 Act or fail or cease to be classified as a grantor trust for United States Federal income tax purposes.



(e) Notwithstanding anything in this Declaration to the contrary, this Declaration may not be amended in a manner which imposes any additional obligation on the Sponsor, the Property Trustee or the Delaware Trustee without the consent of the Sponsor, the Property Trustee or the Delaware Trustee, as the case may be.

(f) In the event that any amendment to this Declaration is made, the Regular Trustees shall promptly provide to the Sponsor a copy of such amendment.

(g) Neither the Property Trustee nor the Delaware Trustee shall be required to enter into any amendment to this Declaration which affects its own rights, duties or immunities under this Declaration. The Property Trustee shall be entitled to receive an Opinion of Counsel and an Officer's Certificate stating that any amendment to this Declaration is in compliance with this Declaration and that all conditions precedent, if any, to such amendment have been complied with.

#### Section 11.3 Separability.

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

#### Section 11.4 Governing Law.

THIS DECLARATION AND THE RIGHTS AND OBLIGATIONS OF EACH OF THE SECURITYHOLDERS, THE TRUST AND THE TRUSTEES WITH RESPECT TO THIS DECLARATION AND THE TRUST SECURITIES SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF DELAWARE WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

#### Section 11.5 Payments Due on Non-Business Day.

If the date fixed for any payment on any Trust Security shall be a day that is not a Business Day, then such payment need not be made on such date but may be made on the next succeeding day that is a Business Day (except as otherwise provided in Sections 5.1(a) and 5.2(d)), with the same force and effect as though made on the date fixed for such payment, and no interest shall accrue thereon for the period after such date.

#### Section 11.6 Successors.

This Declaration shall be binding upon and shall inure to the benefit of any successor to the Sponsor, the Trust or the Relevant Trustee, including any successor by operation of law. Except in connection with a consolidation, merger, sale or other transaction involving the Sponsor that is permitted under Article Eight 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.

#### Section 11.7 Headings.

The Article and Section headings are for convenience only and shall not affect the construction of this Declaration.

#### Section 11.8 Reports, Notices and Demands

(a) Any report, notice, demand or other communication which by any provision of this Declaration is required or permitted to be given or served to or upon any Securityholder or the Sponsor may be given or served in writing by deposit thereof, first-class postage prepaid, in the United States mail, hand delivery or facsimile transmission, in each case, addressed, (a) in the case of a Preferred Securityholder, to such Preferred Securityholder as such Securityholder's name and address may appear on the Securities Register; and (b) in the case of the Common Securityholder or the Sponsor, to Sempra Energy, 101 Ash Street, San Diego, California 92101, Attention \_\_\_\_\_, facsimile number (619) \_\_\_\_\_. Any notice to Preferred Securityholders shall also be given to such owners as have, within two years preceding the giving of such notice, filed their names and addresses with the Property Trustee for that purpose. 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.

(b) Any notice, demand or other communication which by any provision of this Declaration is required or permitted to be given or served to or upon the Trust, the Property Trustee, the Delaware Trustee or the Regular Trustees shall be given in writing addressed (until another address is published by the Trust) as follows: (a) with respect to the Property Trustee to The Bank of New York, at its Corporate Trust Office, Attention: Corporate Trust Administration; (b) with respect to the Delaware Trustee, to The Bank of New York (Delaware), White Clay Center, Route 273, Newark, Delaware 19711, Attention: Corporate Trust Administration; (c) with respect to the Regular Trustees, to them c/o Sempra Energy, 101 Ash Street, San Diego, California 92101, marked "Attention Regular Trustees of Sempra Energy Capital Trust I"; and (d) with respect to the Trust, to its principal office specified in Section 3.2, with a copy to the Property Trustee. Such notice, demand or other communication to or upon the Trust or the Property Trustee shall be deemed to have been sufficiently given or made only upon actual receipt of the writing by the Trust or the Property Trustee.

#### Section 11.9 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 X, they shall not file, or join in the filing of, a petition against the Trust under any bankruptcy, insolvency, reorganization or other similar law (including, without limitation, the United States Bankruptcy Code) (collectively, "Bankruptcy Laws") or otherwise join in the commencement of any proceeding against the Trust under any Bankruptcy Law. In the event the Sponsor takes action in violation of this Section 11.9, 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 against the Trust or the commencement of such action and raise the defense that the Sponsor has agreed in writing not to take such action and should be stopped and precluded therefrom and such other defenses,

if any, as counsel for the Trustee or the Trust may assert. The provisions of this Section 11.9 shall survive the termination of this Declaration.

Section 11.10 Acceptance of Terms of Declaration; 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 DECLARATION 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 DECLARATION SHALL BE BINDING, OPERATIVE AND EFFECTIVE AS BETWEEN THE TRUST AND SUCH SECURITYHOLDER AND SUCH OTHERS. THE DEPOSITOR, THE TRUST AND EACH HOLDER AND BENEFICIAL OWNER OF A PREFERRED SECURITY (BY ITS ACCEPTANCE OF AN INTEREST THEREIN) SHALL BE DEEMED TO HAVE AGREED TO TREAT THE NOTES AS INDEBTEDNESS FOR ALL U.S. TAX PURPOSES AND THE PREFERRED SECURITY AS EVIDENCE OF AN INDIRECT BENEFICIAL OWNERSHIP INTEREST IN THE NOTES.

(Signature Pages Follow)

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

SEMPRA ENERGY

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

Name:

Title:

THE BANK OF NEW YORK, as Property Trustee

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

Name:

Title:

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

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

Name:

Title:

REGULAR TRUSTEES

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Name:

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Name:

---

Name:

[Letterhead of Richards, Layton &amp; Finger, P.A.]

March 3, 2003

Sempra Energy Capital Trust II  
c/o Sempra Energy  
101 Ash Street  
San Diego, California 92101

Re: Sempra Energy Capital Trust II

Ladies and Gentlemen:

We have acted as special Delaware counsel for Sempra Energy, a California corporation (the "Company"), and Sempra Energy 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 Certificate of Trust of the Trust, dated April 22, 1999 (the "Certificate"), as filed in the office of the Secretary of State of the State of Delaware (the "Secretary of State") on April 22, 1999;
- (b) The Declaration of Trust of the Trust, dated as of April 22, 1999, among the Company and the trustees of the Trust named therein;
- (c) A form of Amended and Restated Declaration of Trust of the Trust (including Exhibit A and Annexes I and II)(the "Declaration"), to be entered into among the Company, as sponsor, the trustees of the Trust named therein, and the holders, from time to time, of undivided beneficial interests in the assets of the Trust, attached as an exhibit to the Registration Statement (as defined below);

(d) The Registration Statement on Form S-3 (the "Registration Statement"), including a prospectus (the "Prospectus"), relating to the Preferred Securities of the Trust representing undivided beneficial interests in the assets of the Trust (each, a "Preferred Security" and collectively, the "Preferred Securities"), as proposed to be filed by the Company, the Trust and others with the Securities and Exchange Commission on or about March 3, 2003; and

(e) A Certificate of Good Standing for the Trust, dated March 3, 2003, obtained from the Secretary of State.

Initially capitalized terms used herein and not otherwise defined are used as defined in the Declaration.

For purposes of this opinion, we have not reviewed any documents other than the documents listed in paragraphs (a) through (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 assumed that there exists no provision in any document that we have not reviewed that is inconsistent with the opinions stated herein. We have conducted no independent factual investigation of our own but rather have relied solely upon the foregoing documents, the statements and information set forth therein and the additional matters recited or assumed herein, all of which we have assumed to be true, complete and accurate in all material respects.

With respect to all documents examined by us, we have assumed (i) the authenticity of all documents submitted to us as authentic originals, (ii) the conformity with the originals of all documents submitted to us as copies or forms, and (iii) the genuineness of all signatures.

For purposes of this opinion, we have assumed (i) that the Declaration and the Certificate are in full force and effect and have not been amended, (ii) except to the extent provided in paragraph 1 below, the due creation or due organization or due formation, as the case may be, and valid existence in good standing of each party to the documents examined by us under the laws of the jurisdiction governing its creation, organization or formation, (iii) the legal capacity of natural persons who are parties to the documents examined by us, (iv) that each of the parties to the documents examined by us has the power and authority to execute and deliver, and to perform its obligations under, such documents, (v) the due authorization, execution and delivery by all parties thereto of all documents examined by us, (vi) the receipt by each Person to whom a Preferred Security is to be issued by the Trust (collectively, the "Preferred Security Holders") of a Preferred Security Certificate for such Preferred Security and the payment for the Preferred Security acquired by it, in accordance with the Declaration and the Registration Statement, and (vii) that the Preferred Securities are issued and sold to the Preferred Security Holders in accordance with the Declaration

and the Registration Statement. We have not participated in the preparation of the Registration Statement and assume no responsibility for its contents.

This opinion is limited to the laws of the State of Delaware (excluding the securities laws of the State of Delaware), and we have not considered and express no opinion on the laws of any other jurisdiction, including federal laws and rules and regulations relating thereto. Our opinions are rendered only with respect to Delaware laws and rules, regulations and orders thereunder 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. Section 3801, et seq.).
2. The Preferred Securities will represent valid and, subject to the qualifications set forth in paragraph 3 below, fully paid and nonassessable undivided beneficial interests in the assets of the Trust.
3. The Preferred Security Holders, as beneficial owners of the Trust, will be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware. We note that the Preferred Security Holders may be obligated to make payments as set forth in the Declaration.

We consent to the filing of this opinion with the Securities and Exchange Commission as an exhibit to the Registration Statement. In addition, we hereby consent to the use of our name under the heading "Validity of the Securities and the Guarantees" in the Prospectus. In giving the foregoing consents, we do not thereby admit that we come within the category of Persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Securities and Exchange Commission thereunder. Except as stated above, without our prior written consent, this opinion may not be furnished or quoted to, or relied upon by, any other Person for any purpose.

Very truly yours,

/s/ RICHARDS, LAYTON & FINGER, P.A.

BJK



March 3, 2003

Sempra Energy Capital Trust III  
c/o Sempra Energy  
101 Ash Street  
San Diego, California 92101

Re: Sempra Energy Capital Trust III

Ladies and Gentlemen:

We have acted as special Delaware counsel for Sempra Energy, a California corporation (the "Company"), and Sempra Energy Capital Trust III, a Delaware statutory trust (the "Trust"), in connection with the matters set forth herein. At your request, this opinion is being furnished to you.

For purposes of giving the opinions hereinafter set forth, our examination of documents has been limited to the examination of originals or copies of the following:

- (a) The Certificate of Trust of the Trust, dated April 22, 1999 (the "Certificate"), as filed in the office of the Secretary of State of the State of Delaware (the "Secretary of State") on April 22, 1999;
- (b) The Declaration of Trust of the Trust, dated as of April 22, 1999, among the Company and the trustees of the Trust named therein;
- (c) A form of Amended and Restated Declaration of Trust of the Trust (including Exhibit A and Annexes I and II) (the "Declaration"), to be entered into among the Company, as sponsor, the trustees of the Trust named therein, and the holders, from time to time, of undivided beneficial interests in the assets of the Trust, attached as an exhibit to the Registration Statement (as defined below);

(d) The Registration Statement on Form S-3 (the "Registration Statement"), including a prospectus (the "Prospectus"), relating to the Preferred Securities of the Trust representing undivided beneficial interests in the assets of the Trust (each, a "Preferred Security" and collectively, the "Preferred Securities"), as proposed to be filed by the Company, the Trust and others with the Securities and Exchange Commission on or about March 3, 2003; and

(e) A Certificate of Good Standing for the Trust, dated March 3, 2003, obtained from the Secretary of State.

Initially capitalized terms used herein and not otherwise defined are used as defined in the Declaration.

For purposes of this opinion, we have not reviewed any documents other than the documents listed in paragraphs (a) through (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 assumed that there exists no provision in any document that we have not reviewed that is inconsistent with the opinions stated herein. We have conducted no independent factual investigation of our own but rather have relied solely upon the foregoing documents, the statements and information set forth therein and the additional matters recited or assumed herein, all of which we have assumed to be true, complete and accurate in all material respects.

With respect to all documents examined by us, we have assumed (i) the authenticity of all documents submitted to us as authentic originals, (ii) the conformity with the originals of all documents submitted to us as copies or forms, and (iii) the genuineness of all signatures.

For purposes of this opinion, we have assumed (i) that the Declaration and the Certificate are in full force and effect and have not been amended, (ii) except to the extent provided in paragraph 1 below, the due creation or due organization or due formation, as the case may be, and valid existence in good standing of each party to the documents examined by us under the laws of the jurisdiction governing its creation, organization or formation, (iii) the legal capacity of natural persons who are parties to the documents examined by us, (iv) that each of the parties to the documents examined by us has the power and authority to execute and deliver, and to perform its obligations under, such documents, (v) the due authorization, execution and delivery by all parties thereto of all documents examined by us, (vi) the receipt by each Person to whom a Preferred Security is to be issued by the Trust (collectively, the "Preferred Security Holders") of a Preferred Security Certificate for such Preferred Security and the payment for the Preferred Security acquired by it, in accordance with the Declaration and the Registration Statement, and (vii) that the Preferred Securities are issued and sold to the Preferred Security Holders in accordance with the Declaration

and the Registration Statement. We have not participated in the preparation of the Registration Statement and assume no responsibility for its contents.

This opinion is limited to the laws of the State of Delaware (excluding the securities laws of the State of Delaware), and we have not considered and express no opinion on the laws of any other jurisdiction, including federal laws and rules and regulations relating thereto. Our opinions are rendered only with respect to Delaware laws and rules, regulations and orders thereunder 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. Section 3801, et seq.).
2. The Preferred Securities will represent valid and, subject to the qualifications set forth in paragraph 3 below, fully paid and nonassessable undivided beneficial interests in the assets of the Trust.
3. The Preferred Security Holders, as beneficial owners of the Trust, will be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware. We note that the Preferred Securities Holders may be obligated to make payments as set forth in the Declaration.

We consent to the filing of this opinion with the Securities and Exchange Commission as an exhibit to the Registration Statement. In addition, we hereby consent to the use of our name under the heading "Validity of the Securities and the Guarantees" in the Prospectus. In giving the foregoing consents, we do not thereby admit that we come within the category of Persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Securities and Exchange Commission thereunder. Except as stated above, without our prior written consent, this opinion may not be furnished or quoted to, or relied upon by, any other Person for any purpose.

Very truly yours,

/s/ RICHARDS, LAYTON & FINGER, P.A.

BJK

**SEMPRA ENERGY**  
**COMPUTATION OF RATIO OF EARNINGS TO COMBINED FIXED CHARGES**  
**AND PREFERRED STOCK DIVIDENDS**  
**(Dollars in millions)**

	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
Fixed Charges and Preferred Stock Dividends:					
Interest	\$210	\$233	\$308	\$ 358	\$ 350
Interest portion of annual rentals	20	10	8	6	6
Preferred dividends of subsidiaries (1)	18	16	18	16	15
	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>
Combined Fixed Charges and Preferred Stock Dividends for Purpose of Ratio	\$248	\$259	\$334	\$ 380	\$ 371
	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>
Earnings:					
Pretax income from continuing operations	\$432	\$573	\$699	\$ 731	\$ 721
Total Fixed Charges (from above)	248	259	334	380	371
Less:					
Interest capitalized	1	1	3	11	29
Equity income (loss) of unconsolidated subsidiaries and joint ventures	—	—	62	12	(55)
	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>	<u>          </u>
Total Earnings for Purpose of Ratio	\$679	\$831	\$968	\$1,088	\$1,118

Ration of Earnings to Combined Fixed Charges and Preferred Stock Dividends	2.74	3.21	2.90	2.86	3.01
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(1) In computing this ratio, "Preferred dividends of subsidiaries" represents the before-tax earnings necessary to pay such dividends, computed at the effective tax rates for the applicable periods.

**INDEPENDENT AUDITOR'S CONSENT**

We consent to the incorporation by reference in this Registration Statement of Sempra Energy on Form S-3 of our reports dated February 25, 2003 and February 14, 2003, appearing and incorporated by reference in the Annual Report on Form 10-K of Sempra Energy for the year ended December 31, 2002 and to the reference to us under the heading "Experts" in the Prospectus, which is part of this Registration Statement.

/s/ DELOITTE & TOUCHE LLP

San Diego, California

March 4, 2003